MEETING DATE:
Tuesday, August 28, 2018

FROM : RUHS-MEDICAL CENTER:

SUBJECT: RIVERSIDE UNIVERSITY HEALTH SYSTEM-MEDICAL CENTER: Ratification of the Agreement with Datix (USA), Inc., for Software License and Customer Support Hosting Services without Seeking Competitive Bids; All- Districts; [$354,569 Total for five years]; Hospital Enterprise Fund.

RECOMMENDED MOTION: That the Board of Supervisors:
1. Ratify the Agreement with Datix (USA), Inc., to provide Software License and Customer Support Hosting Services effective July 1, 2018 through June 30, 2023 in the annual amounts shown in Table 1, for a total cost not to exceed $354,569 without seeking competitive bids and, authorize the Chairman of the Board to sign the Agreement on behalf of the County; and,
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459 based on the availability of fiscal funding and as approved by County Counsel to sign amendments that do not change the substantive terms of the agreement.
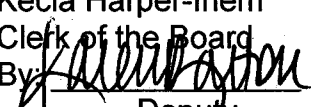
ACTION: Policy

Jennifer Cruikshank, Chief Executive Officer – Health System   8/20/2018

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None   Kecia Harper-Ihem
Absent: None   Clerk of the Board
Date: August 28, 2018   By
xc: RUHS-Medical Center, Purchasing   Deputy

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	$ 64,169	$ 67,377	$ 354,569	$0
NET COUNTY COST	$ 0	$ 0	$ 0	$ 0

SOURCE OF FUNDS: Hospital Enterprise Fund - 40050	Budget Adjustment: No
	For Fiscal Year: 18/19-22/23

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

Approval of this Software License and Customer Support Hosting Services Agreement allows Riverside University Health System (RUHS) - Medical Center to continuously use the web-based incident (event) reporting system.

These services are required to provide concurrent internal notification of incidents (events) to pre-designated RUHS executive leaders. The service supports the web-based incident reporting system which RUHS-MC currently has in place through Vizient (formerly known as Novation) and is the technological support of the program presently used. In conjunction with the Vizient Safety Intelligence Program which it interfaces with, this service has been operational for the last five years. Datix offers patient relations, malpractice claims management, incident reporting system, risk assessment, and safety alerts. Datix also provides expert advice which achieve results; such as reducing adverse events, enhancing efficiency, and improving patient experience. It allows current data to automatically populate within Datix, reducing errors and resulting in more accurate information. It not only saves RUHS report time by reducing manual entries, it can also provide immediate alerts to RUHS executive leaders and staff of events, even when they are on-the-go. Finally, the use of this system meet regulatory compliance for both The Joint Commission (TJC) and Centers for Medicare Medicaid Services (CMS).

There is not another electronic event reporting system that would allow the Medical Center to participate and interface with Vizient's Safety Intelligence Network. This network allows for serve lists and idea sharing for problem solutions. Research of other incident reporting system have shown most are stand alone and not part of a very large hospital networking system, such as Vizient. Additionally, moving to a new system would incur increased cost, time and money for the installation and training of all staff involved that use the system, possibly creating overtime.

Impact on Citizens and Businesses

The Medical Center, its site-based clinics and community-based clinics serve residents in all five Riverside supervisorial districts, providing more than 450,000 patient encounters each

year. Continuing this service will assist RUHS-MC to track and trend events reported affecting patient and staff safety.

SUPPLEMENTAL:

Additional Fiscal Information

The service would allow for five year term with the first years cost of $64,169 plus an annual increase base on consumer price index rates not to exceed a five percent (5%) cap per year.

Table 1

Description:	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23	Total
Annual Fee for software licenses and services	$64,169	$67,377	$70,745	$74,282	$77,996	$354,569
Plus an annual CPI (cap of 5% per year)	N/A	5%	5%	5%	5%	N/A
Total Costs	$64,169	$67,377	$70,745	$74,282	$77,996	$354,569

Contract History and Price Reasonableness

On September 23, 2014, Agenda Item No. 3-59, the Board approved the Group Purchasing Master Agreement with University Health Services Consortium/NOVATION. This approved Agreement allowed for the Medial Center to be able to utilize certain suppliers for medical supplies, pharmaceuticals, healthcare related services and capital equipment in which the Medical Center would also have the opportunity to realize some of the industry's most aggressive rebates and administrative fee sharebacks through use of UHC/NOVATION contracts. This specific service was previously contracted through NOVATION now known as Vizient for Datix. Datix was in the United Kingdom (UK), but have now acquired offices in the United States (US). Datix software management is now independent of Vizient. Datix USA provides software for both public and private healthcare organization around the world.

The cost remains the same as the costs from Vizient. During the last several years the Medical Center utilized the Participation Earned Credits (PEC) from Vizient which fully covered the annual cost for this service. The annual fee from Datix USA, Inc. is $64,169 for the first year and includes an annual CPI rate increase not to exceed a five percent cap. Total cost shall not exceed $354,569 for a period of five years.

ATTACHMENTS:

Attachment A: **Datix Rental Software License and Customer Support Services
Order, including Datix Standard Terms and Conditions**

Teresa Summers, Director of Purchasing   8/21/2018   Gregory P. Priamos, Director County Counsel   8/22/2018

Riverside University HEALTH SYSTEM

Date: August 8, 2018

From: Jennifer Cruikshank, RUHS CEO

To: Board of Supervisors/Purchasing Agent

Via: Naomi Santos, RUHS Contracts Administration / 951.486.4411

Subject: Sole or Single Source Procurement; Request for Request for Rental Software License and Customer Support Services

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

1. **Supplier being requested:** Datix (USA), Inc.

2. **Vendor ID: 218200**

3.   ☐ **Single Source**   ■ **Sole Source**
(*Single Source - is a purchase of a commodity or service without obtaining competitive bids although more than one source is available*)

(*Sole Source - is a purchase of a commodity or service that is proprietary or no other vendor is qualified or willing to meet the county specified requirements*)

4. **Have you previously requested <u>and</u> received approval for a sole or single source request for this vendor for your department?**

    ☐ Yes   ■ No
    SSJ# *N/A*

4a. **Was the request approved for a different project?**

    ☐ Yes   ■ No

5. **Supply/Service being requested:**
Datix Safety Intelligence Program rental software license and customer support services. This service is needed to continue the web-based incident (event) reporting system that provides concurrent internal notification of incidents to pre-designated Riverside University Health System-Medical Center (RUHS-MC) leaders. This service is the technological support of the program presently used.

6. **Unique features of the supply/service being requested from this supplier.** This service supports the we-based incident reporting system RUHS-MC currently has in place through Vizient (formerly known as Novation) and is the technological support of the program presently used. As this is a Datix product, this software is the only software that can support this system. The service is previously contracted through novation now known as Vizient for Datix. Datix was located in the United Kingdom (UK), but have now acquired offices in Chicago, IL. Datix software management is now independent of Vizient. Datix USA, Inc. provides web-based safety software. They offer patient relations, malpractice claims management, incident reporting system, risk assessment, and safety alerts. They also provide software for public and private healthcare organization around the world.

7. **Reasons why my department requires these unique features from the vendor and what benefit will accrue to the county:** Datix is RUHS-MC's current system for incident (adverse event) reporting. This has been RUHS-MC incident reporting system since 2013 in conjunction with the Vizient Safety Intelligence Program. This software interfaces with Vizient's (formerly University HealthSystem Consortium (UHC)) Patient Safety Network. RUHS-MC added this program from UHC as an additional module to our previous subscription with UHC.

Previously, RUHS was still using paper incident reporting but found there was a tremendous lag of notifications of adverse events, resource intensive for completion and inadequate ability to track. After much research and review of various companies, Datix was a comprehensive tool that was the most economical. The system has easy access for all to report, it provides RUHS management immediate notifications of incidents that cause harm to a patient which results in an immediate response to mitigate further occurrences and allows the various hospital departments to communicate regarding an incident.

As a tracking tool RUHS has been able to customize Datix to be hospital unit and incident specific with appropriate subcategories to identify trends. This system has allowed RUHS to provide event type/unit specific reports for multiple hospital departments across the organization and meet the reporting needs for a variety of departments for regulatory reporting. This system meets the regulations of The Joint Commission (TJC) and Centers for Medicare Medicaid Services (CMS) for the monitoring of events related to patient safety.

Datix Incident Reporting System can be used to share lessons within and across organizations, as it is linked with Vizient and the serve lists associated with it. The lessons learned from events can be used to educate, inform, and prevent other units and departments from experiencing the same adverse events.

Research of other incident reporting system have shown they are stand alone and not part of a very large hospital networking system, such as Vizient. Several types of events that have been trended at RUHS-MC have led to a decrease in events that would have an increased potential to become litigation. There is not another company that would support the software of this current system and have an interface with Vizient's Patient Safety Network.

Maintaining Datix would be a lean, cost effective approaches versus the installation of a new system. A new system would incur additional cost to the organization, not only financially, but in the time needed for additional resources.

RUHS-MC Information Systems resources would be needed to work with a new company to identify processes to be implemented to maintain the system. Past experience showed it was approximately 10 months with multiple meetings to accomplish the Information Systems responsibility. Staff would use this system, so a new system would incur additional time from management as well as patient care providers (nurses, physician, and ancillary department staff) to learn a new system. Additionally, overtime would be anticipated to accomplish all of the training.

Finally, RUHS-MC was able to extend the Datix Incident Reporting System to the RUHS-Federally Qualified Health Clinics (FQHC's) without additional cost, which is dependent on the structure of the system. The system was able to add users outside of the Medical Center's information systems domain.

Datix has been supportive in the changes RUHS's has made in the past several years and have built a positive working relationship with the company. RUHS-MC has worked closely with managers and staff for the use of this system and identified a strong level of comfort in reporting with the present system.

8. **Period of Performance:** July 1, 2018 – June 30, 2023
   (5 years)

Is this an annually renewable contract?	■ No	☐ Yes
Is this a fixed-term agreement:	☐ No	■ Yes

9. **Identify all costs for this requested purchase. In addition, please include any single or sole source amounts previously approved and related to this project and vendor in the section designated below for current and future fiscal years. You do not need to include previous fiscal year amounts. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained.**
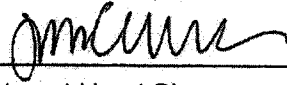
Description:	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23	Total
Annual Cost:	$64,169	$67,377	$70,745	$74,282	$77,996	$354,569
Plus an annual CPI (cap of 5% per year)	N/A	5%	5%	5%	5%	N/A
Total Costs	$64,169	$67,377	$70,745	$74,282	$77,996	$354,569

10. **Price Reasonableness:** The cost is the same as the cost Vizient charged. The last two years RUHS has been covered under the Participation Earned Credits (PEC) from Vizient.

Riverside University HEALTH SYSTEM

The cost from Vizient would also have been $64,169 for fiscal year 2018. Through Datix there will be an increased based on the consumer price index increase, but will have a five percent cap.

11. Projected Board of Supervisor Date (if applicable): <u>August 28th</u>

[signature]   Jen Cruikshank   6/8/18

<u>Department Head Signature</u>   Print Name   Date
(or designee)

The section below is to be completed by the Purchasing Agent or designee.

Purchasing Department Comments:
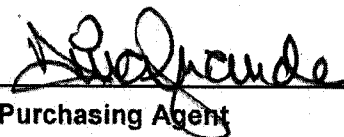
Approve   **Approve with Condition/s**   **Disapprove**

Condition/s:

_____

_____

_____

_____

_____

Not to exceed:

☐ One-time $_____

☑ Annual Amount $_____ / per fiscal year through

_____(date)   *(If Annual Amount Varies each FY)*

FY 18/19 $ 64,169
FY 19/20 $ 67,377
FY 20/21 $ 70,745
FY 21/22 $ 74,282
FY 22/23 $ 77,996

$ 354,569

[signature]   8/17/18   19-028

<u>Purchasing Agent</u>   Date   **Approval Number**
                                                (Reference on Purchasing Documents)

Datix®

Software for patient safety

155 North Wacker Drive
Suite 1930
Chicago, Illinois 60606
P: 312-724-7776
www.datix.co.uk

RENTAL SOFTWARE LICENSE AND
CUSTOMER SUPPORT SERVICES ORDER
LOCAL HOSTING

Order Effective Date	Date that this Order was executed by both parties is: _____/_____/_____
Commencement Date	Datix shall confirm in writing the Commencement Date as defined in the Datix Standard Terms and Conditions.
Customer Name and Site Address	
Customer Contact Name, Phone, Email	

The Datix Standard Terms and Conditions attached hereto as **Appendix D** govern, and are incorporated by reference into, this Rental Software License and Customer Support Services Order. The Business Associate Addendum attached hereto as **Appendix E** is incorporated into this Agreement.

LICENSED PROGRAMS	RENTAL FEE	PERMITTED USERS/ ENTERPRISE	TOTAL RENTAL FEE
Datix® Core Platform Datix® Dashboards/Reports Datix® Incident Reporting Datix® Complaints	$ 64,169 per year		$ 64,169 per year
RENTAL TERM (NON-EXCLUSIVE; NON-TRANSFERABLE)	5 Years* Start Date 07/01/18 End Date 06/30/23		
APPROVED POINTS OF CONTACT (APC)	5 APCs		
CUSTOMER SUPPORT SERVICES	**ANNUAL CHARGE**		**TOTAL**
Customer Support (See **Appendix A**)	Included in Rental Fee		Included in Rental Fee
PROFESSIONAL SERVICES	**FEES**	**HOURLY/FLAT**	**ESTIMATED TOTAL**
Software Installation	Included in Rental Fee		Included in Rental Fee
Implementation and Configuration	Included in Rental Fee		Included in Rental Fee
Training	Included in Rental Fee		Included in Rental Fee
Integration	Included in Rental Fee		Included in Rental Fee
OTHER			
PROJECT MANAGEMENT PROTOCOL: Y or N **(If yes, see Appendix B)**	N – Appendix B does not apply.		
ADDITIONAL SERVICES AND ADDITIONAL CHARGES	Time and materials, plus expenses	$0	$0

AUG 28 2018 17.3

ESTIMATED EXPENSES (including travel)	To be passed on to the customer		

Estimated Total:	$64,169
50% Rental Payment Fee Due on Effective Date:	$0
Milestone Payments ☐Y ☐N (If yes, see Appendix C)	No
Final 50% Rental Fee Payment Due on Commencement Date:	$0
Subsequent Annual Rental Fees due from Customer on each Anniversary of the Commencement Date:	$64,169

The Customer will provide Datix a valid purchase order within 10 days of the Execution of Agreement.

AUTHORIZATION AND AGREEMENT. The parties hereby agree to the Services and the Fees described herein. In addition, each of the Parties acknowledges and agrees that the Datix Standard Terms and Conditions attached hereto shall govern this Rental Software License and Customer Support Order and is hereby incorporated herein by reference. Certain capitalized terms appearing above are defined in the Standard Terms and Conditions.

Customer

By: _____
Authorized Signature

Printed Name: Chuck Washington

Title: Chairman. Board of Supervisors

Date: AUG 28 2018

Datix (USA), Inc.

By: _____
Authorized Signature

Printed Name: Dana Ballai

Title: Director of Customer Success, North America

Date: 8/1/18

FORM APPROVED COUNTY COUNSEL
BY: _____ 8/13/18
SUSANNA N. OH   DATE

ATTEST:
KECIA HARPER-IHEM, Clerk
BY _____
DEPUTY

FOR OFFICE USE:

☐ Software License Order

☐ Appendix A – Customer Support

☐ Appendix B – Project Management Protocol does not apply

☐ Appendix C – Milestone Payments does not apply

☐ Appendix D - Software License Standard Terms and Conditions

☐ Appendix E – Business Associate Addendum

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APPENDIX A
CUSTOMER SUPPORT

1. So long as Customer purchases Customer Support and pays the Annual Customer Support Charge, Datix will provide Customer Support as set forth on the Order beginning on the Go-Live Date.

2. Datix operates a Services Desk to enable a Customer-approved point of contact ("**APC**") to access technical help in the event that the Customer encounters any Errors in the Licensed Programs which prevent the Licensed Programs from running, including configurations and customizations made to the Licensed Programs by Datix under the terms of the Agreement. The Datix Service Desk is available **9:00am** to **5:00pm** Central Standard Time (Chicago), Monday to Friday, except U.S. public holidays.

3. Datix limits support to a small number of named individual APCs within the Customer's organization and only questions from these individuals will be accepted. The initial individuals so authorized will be named in the first Order executed by the parties and may be changed from time to time by written notice, within the allocated number of APCs. The Customer's APCs are expected to have been trained in the Datix software and to be familiar with the Operating Instructions and with Microsoft Windows.

4. Datix requires that details of any suspected Errors are emailed to the address provided by it from time to time for Customer Support. The Customer may also be asked to provide a more detailed description of the problem or to conduct certain investigations.

5. All requests for support are logged and allocated a call reference number. The Customer will receive an acknowledgement by email that their request has been logged and details of the priority which has been assigned to it. This will normally be done within three (3) working hours of receipt of the request. If the suspected Error is a Priority 1 (see the table below) the APC must telephone Datix and follow up with an email notification.

6. Where the problem is that the Licensed Programs do not run at all, or run more slowly than usual, this is almost always due to some change or failure in the Customer's operating

environment or hardware for which Datix is not responsible. Customer must investigate these potential causes before contacting Datix. Datix shall be entitled to levy Additional Charges if it is requested to diagnose or investigate Errors due to these or other external causes, including those causes set forth in <u>Section 5.7</u> of **Appendix D** attached to the executed Order. To minimize the possibility of Additional Charges, the APC should check first with Customer's IT department or other support service and advise Datix in the support request of the contact person in Customer's IT department who is dealing with the matter and the results of any checks that he or she has carried out.

7. Suspected Errors are prioritized and allocated to a Datix support analyst. The suspected Error may be tested against a generic copy of the Licensed Programs that may be maintained by Datix for this purpose or any Support Copy maintained at the Customer's site.

8. Datix will not be able to resolve suspected Errors which cannot be repeated or replicated on the generic copy of the Licensed Programs or the Support Copy. These will be presumed to be attributable to non-Datix software or other external causes.

9. When Datix determines that a reported Error is an Error in the Datix Licensed Programs or requires further investigation before such a determination can be made, Datix will allocate it a priority. The priority is assessed according to the effect of the problem on the Licensed Programs and its Permitted Users in accordance with the Support Response Times set forth below.

10. Datix support is not intended as a substitute for training or for consulting the online manual. However, as a discretionary service and not as a matter of obligation, the Service Desk may be available, subject to workload, to answer questions such as "How do I ......?".

11. For an Additional Charge, Datix provides service for support requests that are not covered by Customer Support. This service can be accessed by contacting the Service Desk.

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APPENDIX A
CUSTOMER SUPPORT

		Support Response Times	
Priority	**Description**	**Actions**	**Response Time**
1	This priority is for **emergencies**, where **ALL** important routines within the Licensed Programs cannot be run.	Customer will be notified within one (1) working day whether the Error reported can be repeated on the Support Copy and Datix will confirm that the problem will be worked on with reasonable expedition during normal working hours until fixed.	1 working day
2	This priority is for situations where **SOME** important routines within the Licensed Programs cannot be run.	Customer will be notified within two (2) working days whether the Error reported can be repeated on the Support Copy and that the problem will be worked on with reasonable expedition during normal working hours until fixed.	2 working days
3	This priority is for Errors where less critical routines within the Licensed Programs are affected.	Customer will be notified within five (5) working days whether the Error reported can be repeated on the Support Copy and that the problem will be worked on with reasonable expedition during normal working hours until fixed.	5 working days
4	This priority is for minor Errors which are cosmetic in nature.	Customer will be notified within ten (10) working days whether the Error reported can be repeated on the Support Copy and that the problem will be worked on with reasonable expedition during normal working hours until fixed or a fix will be included in a future Update.	10 working days

APPENDIX B
PROJECT MANAGEMENT PROTOCOL

[INTENTIONALLY OMITTED; DOES NOT APPLY]

APPENDIX C
MILESTONE PAYMENTS

[INTENTIONALLY OMITTED; DOES NOT APPLY]

APPENDIX D
SOFTWARE LICENSE AND SUPPORT SERVICES – LOCAL HOSTING
STANDARD TERMS AND CONDITIONS

These standard terms and conditions apply to all Software License and Support Orders ("**Order(s)**") executed by Datix (USA), Inc., a Delaware corporation ("**Datix**"), and the County of Riverside, a political subdivision of the State of California, on behalf of Riverside University Health System ("**Customer**") identified on such Order(s). Datix and Customer each accepts, and each agrees to be bound by, these standard terms and conditions as being incorporated into the Order as if fully set forth therein. These terms and conditions, together with the Order(s), and any appendices, attachments or exhibits thereto, constitute the "**Agreement**" between Datix and the Customer. Intending to be legally bound, the parties hereby agree as follows:

1. Definitions. In this Agreement:

"**Additional Charges**" means charges, other than the Rental Fee and Annual Customer Support Charge, for work undertaken by Datix on a time and materials basis together with any expenses reasonably incurred in the performance of such work.

"**Additional Services**" means, other than implementation and Customer Support, services performed by Datix pursuant to one or more change orders or Orders, including, but not limited to, consulting services, for Additional Charges.

"**Agreement**" means these terms and conditions together with the applicable Order and any other documents expressly incorporated by reference in the applicable Order or in these terms and conditions, including any appendices, attachments or exhibits.

"**Annual Customer Support Charge**" means the annual charge for Customer Support as set out in an Order.

"**Approved Consultant**" means any consulting entity engaged by Customer who is not a competitor of Datix or affiliated with a competitor of Datix in respect of which Customer has given advance notice to Datix and in respect of which certain of its employees who are specifically identified in an Order are given permission by

Datix to have access to the Licensed Programs solely to provide services exclusively to Customer for its Internal Operations.

"**Commencement Date**" means the date on which Datix installs the Licensed Programs on the Designated Equipment or makes available the Licensed Programs to the Customer, whichever is sooner.

"**Confidential Information**" means the terms of this Agreement along with any and all information or materials in any form or medium (whether written, oral, visual or electronic) disclosed directly or indirectly by either party or its employees or representatives to the other in connection with this Agreement which is identified as confidential or which the receiving party knows or should know is confidential, including any financial and commercial information relating to the business of either party (and, in the case of Datix, any source code, the Licensed Programs, the Operating Instructions, manuals and any other procedures, systems, information or know-how arising out of or in connection with the Licensed Programs).

"**COUNTY**" means the County of Riverside, a political subdivision of the State of California.

"**Customer**" means the entity defined as such in the Order but shall not include any parent, group, affiliated or related undertakings or entities unless otherwise agreed in writing by Datix.

"**Customer Support**" means the maintenance and support services purchased by Customer and provided by Datix in connection with the Licensed Programs and New Program Releases, according to the priorities and within the response times on **Appendix A** attached to the executed Order, including attendance by the Customer at such user groups and meetings that Datix may, in its absolute discretion hold from time to time, and any other support agreed to in writing by Datix and the Customer.

"**Datix**" means Datix (USA) Inc., with its principal place of business at 155 North Wacker Drive, Suite 1930, Chicago, Illinois 60606, USA.

APPENDIX D
SOFTWARE LICENSE AND SUPPORT SERVICES – LOCAL HOSTING
STANDARD TERMS AND CONDITIONS

"**Designated Equipment**" means Customer's computer hardware which meets or exceeds the Minimum Configuration recommended by Datix upon which the Licensed Programs are to be installed.

"**Effective Date**" means the date that this Agreement is executed by both parties.

"**Electronic protected health information**" ("ePHI") as defined in 45 CFR §160.103 means Protected Health Information transmitted by or maintained in electronic media.

"**Error**" means a failure of the Licensed Programs to perform in accordance with the Operating Instructions, which is present and is replicated in the generic copy of the Licensed Programs maintained by Datix for the purpose of supporting customers, but excludes any failure to perform which arises due to a failure by the Customer to follow the Operating Instructions, and is subject to the exceptions set forth in Section 5.7, below.

"**Existing IPRs**" means the IPRs in existence and belonging to a party prior to the date of the Order, which for purposes of clarification include, as between Customer and Datix, Datix's ownership of all IPR's in the Licensed Programs including the source code.

"**Go-Live Date**" is the date that is the earlier of: (i) the date the first module of the Licensed Programs is ready to be activated so that Permitted Users can access it; and (ii) six months from the Commencement Date.

"**Intellectual Property Rights**" or "**IPRs**" means intellectual property rights and industrial property rights of any nature whatsoever including without limitation patents, patent applications, copyright, know-how, technical and commercial information, design (whether registered or unregistered), design rights, internet domain names, database rights, trade marks, trade names, service marks or business names, applications to register any of the aforementioned rights, trade secrets and rights of confidence, in each case in any part of the world and whether or not registered or registerable.

"**Interest Rate**" means an amount equal to the *lesser of:* (i) the LIBOR rate quoted on the date that the payment became past due, plus five percent (5%); and (ii) the maximum interest allowable by applicable law.

"**Internal Operations**" means Customer's current and future internal business activities for the processing of Customer's own data, but specifically excluding Processing or facilities management services for any third party.

"**Licensed Programs**" means the software programs (in object code form) identified in the Order, including any Update or other new Datix software supplied from time to time as agreed in writing, and the Licensed Programs Database Structure associated with same.

"**Licensed Programs Database Structure**" means the whole or part of any database structure, schema or file format used by the Licensed Programs to store or access data input into the Licensed Programs.

"**Minimum Configuration**" means any minimum configuration advised by Datix to the Customer in the Order or specified at https://portal.datix.co.uk, as updated from time to time.

"**New Program Release**" means any new version of one or more of the Licensed Programs issued by Datix that is not an Update because incorporates functionality which, in Datix's sole opinion, materially improves upon, or is additional to, the functionality of the then-current version of the Licensed Programs.

"**Operating Instructions**" means the whole or any part, or copy, of, the instructions and procedures contained within the Licensed Programs.

"**Order**" means the Software License and Support Services Order setting forth the details with respect to Licensed Programs licensed to Customer by Datix, including the Term, Permitted Users, Rental Fee, Annual Customer Support Charge and payments. Orders must be executed by both Datix and Customer to be effective.

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APPENDIX D
SOFTWARE LICENSE AND SUPPORT SERVICES – LOCAL HOSTING
STANDARD TERMS AND CONDITIONS

"**Permitted Users**" means either the specified individuals or specified category or group of users, including specified employees of Approved Consultants, set out in the Order, who are authorized to access and use the Licensed Programs, subject always to Datix's right to reject an individual, category or group, at Datix's discretion.

"**Personal Information**" has the same meaning as that ascribed to it in applicable state or federal privacy acts, and includes recorded information about an identifiable individual in any form as may be more specifically set forth in the applicable legislation.

"**Protected Health Information**" or "**PHI**" has the meaning ascribed to it in 45 CFR § 160.103 and shall include "electronic protected health information", also defined therein.

"**Processing**" in relation to data, means obtaining, recording or holding that data or carrying out any operation or set of operations on such data.

"**Rental Fee**" means the annual amount paid for use of the Licensed Programs which amount is set forth in the Order for such Licensed Programs.

"**Site**" means the Customer location listed in the Order where the Licensed Programs are to be located.

"**Support Copy**" means the replica of the in-production Licensed Programs which the Customer is licensed to use, which Support Copy is maintained by the Customer at the Site and which is only populated with anonymized or dummy data.

"**Term**" means the period specified in this Agreement, for which the Customer is licensed to use the Licensed Programs, subject to Customer's compliance with the Agreement.

"**Update**" means a modification or addition by Datix to the then-current version of the Licensed Programs which is not a New Program Release.

In addition, the word "include" and other expressions derived from the word "include" are used in this Agreement for illustrative purposes, are not meant to be limiting and encompass "including without limitation".

2. Grant of License.

2.1 In consideration of the payment by the Customer of the Rental Fee, the Annual Customer Support Charge, and upon execution of a completed Order, Datix hereby grants to the Customer, during the Term, a non-exclusive, nontransferable license for Permitted Users to use the Licensed Programs on the Designated Equipment, solely for the purposes of the Internal Operations of Customer, in accordance with these terms and conditions and the details of the applicable Order.

2.2 Notwithstanding the terms of Section 2.1, nothing in this Agreement shall entitle the Customer (or the Permitted Users) to use the Licensed Programs for the purposes of Processing data for, or on behalf of, any third-party, including operation of a service bureau or time-share arrangement.

2.3 Customer assumes full responsibility and liability for ensuring that Permitted Users: (i) use the Licensed Programs in accordance with the terms of the Agreement; and (ii) otherwise comply with applicable terms of the Agreement including the obligations of confidentiality.

3. Datix Services and Responsibilities.

3.1 Datix agrees to provide to the Customer, in consideration of the payment of the Rental Fee, the Licensed Programs, and such other services as set forth in the applicable Order. Datix may from time to time provide certain Additional Services as agreed between the parties in writing in a change order or an Order setting forth the Additional Services and the Additional Charges.

3.2 Datix agrees to provide Customer Support to Customer, as described on **Appendix A**, attached to the executed Order. Any conflict or inconsistency between the provisions of these terms and conditions and any executed Order shall be resolved by giving precedence to the executed Order under which the services are to be performed and then to these terms and

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conditions. Customer Support does not include the correction of Errors or Critical Defects which arise due to a failure by the Customer to follow the Operating Instructions, including the exceptions as set forth in Section 5.7, below.

3.3 If the Customer and Datix have agreed in the applicable Order that Project Management Protocol will govern an engagement, then the parties will follow the project management guidelines set forth on **Appendix B** attached to the executed Order.

4. Customer Responsibilities; Copying of Licensed Programs.

4.1 The Customer shall:

4.1.1 assist Datix in the performance of its obligations under this Agreement including providing requested information on systems, facilities, hardware and data (as applicable) to enable the installation and implementation teams to work effectively;

4.1.2 obtain and maintain the Designated Equipment and any other equipment or ancillary services needed to connect to, access or otherwise use the Licensed Programs;

4.1.3 maintain the security of the Designated Equipment, Customer account passwords, Customer data and files, and for all uses of Customer's Licensed Programs whether with or without Customer's knowledge or consent;

4.1.4 abide by all applicable local, state, national, and foreign, laws, treaties and regulations in connection with Customer's use of the Licensed Programs, including, but not limited to, those related to data privacy, personally identifiable health information, international communications, and the transmission of technical or personal data;

4.1.5 keep confidential the Licensed Programs and limit access to the same to those of its employees, agents and approved individuals employed by its Approved Consultants who either have a need to know and/or who are engaged in the use of the Licensed Programs for the Internal Operations of Customer;

4.1.6 without prejudice to the foregoing, take all such other steps as shall from time to time be necessary to protect the Confidential Information and Intellectual Property Rights of Datix in the Licensed Programs;

4.1.7 inform all relevant employees and Approved Consultants that the Licensed Programs constitute Confidential Information of Datix and that all Intellectual Property Rights therein are the property of Datix and take all such steps as shall be necessary to ensure compliance by its employees agents and Approved Consultants with the provisions of this Section 4;

4.1.8 communicate to Datix on the Effective Date the identity of the agreed number of individuals who shall act as approved points of contact ("**APC**") and channel of communication in respect of the Agreement, and performance of the obligations hereunder during the term of Customer Support. The Customer shall immediately inform Datix of any change in the identity of any such individuals;

4.1.9 co-operate fully with Datix in diagnosing any Error;

4.1.10 make available to Datix, free of charge, all reasonable facilities and services which are reasonably required by Datix to enable it to provide services in connection with the Agreement;

4.1.11 not request, permit or authorize anyone other than Datix to provide any support or maintenance services regarding the Licensed;

4.1.12 prior to contacting the Datix Service Desk, provide first-line support and resolution services to Customer's Users so that, to the extent reasonably possible, problems and questions relating to errors,

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defects or bugs with applications on Customer's server that are capable of resolution without Datix involvement are resolved internally by Customer;

4.1.13 provide to Datix, for each reported Error, defect or bug with the Licensed Program, sufficient, detailed information to assist Datix in duplicating or reproducing the problem or Error as necessary or appropriate for its resolution; and

4.1.14 perform such other duties and tasks as may be reasonably required to permit Datix to fulfill its obligations under this Agreement.

4.2 Except as otherwise permitted under this Agreement, the Customer shall not and shall not permit any other person to:

4.2.1 assign, sublicense, transfer, sell, lease, rent, charge, or otherwise deal with, or encumber, the Licensed Programs, nor use on behalf of, or make available the same to, any third party, nor use the same to provide services to any third party;

4.2.2 copy, adapt, reverse engineer, decompile, disassemble, modify, make error corrections, or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Licensed Programs, in whole or in part, or any software, documentation or data related to the Licensed Programs or the Operating Instructions;

4.2.3 permit any software or other program to be written or developed, based on, or derived from the Licensed Programs or the Operating Instructions;

4.2.4 modify, translate or create derivative works based on the Licensed Programs or any related software, use the Licensed Programs for timesharing or service bureau purposes or otherwise for the benefit of a third party; or

4.2.5 merge or combine the whole or any part of the Licensed Programs with any other software or documentation.

In the event that Customer violates any provision of this Section 4.2, any resulting tangible and/or intellectual property shall automatically be owned exclusively by Datix, and the Customer hereby assigns to Datix any and all property, copyright and other rights, title or interests that the Customer has or may at any time assert, in such tangible and intellectual property absolutely and to the fullest extent possible by law.

4.3 Notwithstanding Section 4.2.2, the Customer may copy the whole or any part of the Licensed Programs in accordance with this Section 4.3.

4.3.1 The Customer shall be entitled to make: (i) one Support Copy of the Licensed Programs; (ii) one backup copy of the operating Licensed Programs; and (iii) one copy of the Operating Instructions for use by it only if the operating copy of the Licensed Programs is rendered unusable while Customer has a valid license for such Licensed Programs, all of which shall be maintained and retained in accordance with this Agreement. Any such copies shall in all respects be subject to the terms and conditions of this Agreement and shall be deemed to form part of the Licensed Programs. Except with prior written permission of Datix, which it may withhold in its discretion, the Customer shall not be permitted to make or store more than: (i) one Support Copy of the Licensed Programs; (ii) one backup copy of the operating Licensed Programs; and (iii) one copy of the Operating Instructions.

4.3.2 The Customer shall reproduce Datix's copyright and trademark notices on all copies of the Licensed Programs and Operating Instructions. The Customer shall not remove or alter any copyright, trademark, trade secret, government restricted rights, or other proprietary or confidentiality notices or legends from the Licensed Programs and/or Operating Instructions that are: (i) placed or

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embedded by Datix or its suppliers or licensors therein; (ii) displayed when the Licensed Programs are run; or (iii) applied to the Licensed Programs and/or Operating Instructions, their packaging, labels, or any other materials provided under this Agreement.

4.3.3 The Customer shall maintain an up-to-date written record of the copies of the Licensed Programs, Operating Instructions, and the location and date on which the copies were made, and upon request immediately produce such record to Datix.

5. Acceptance of Licensed Programs Prior to the Go-Live Date.

5.1 Datix has defined certain objective criteria in its standard testing procedures by which Licensed Programs are evaluated prior to the Go-Live Date for purposes of determining acceptance by Customer, including the functional, technical and performance characteristics as set forth in the Operating Instructions ("**Acceptance Criteria**"). Unless otherwise set forth in the Order or a change order, such Datix Acceptance Criteria will be used to conduct acceptance testing of the Licensed Programs.

5.2 Prior to the Go-Live Date, during a mutually-agreed upon time period as set forth in the Order (the "**Acceptance Period**") Datix will conduct acceptance testing with Customer's designated representative to determine whether or not the Licensed Programs perform in a manner substantially consistent with the Acceptance Criteria in an environment substantially similar to the implementation environment without any "**Critical Defects**".

5.3 A "Critical Defect" means a defect in the Licensed Programs that causes: (i) the Licensed Programs to be unusable or inoperable; or (ii) the Licensed Programs to completely fail, causing total loss of function; and (iii) no workaround exists.

5.4 During the Acceptance Period, or such other period as set forth in the Order, Datix shall correct any Critical Defect that arises in the

Licensed Programs, at no additional cost to the Customer, subject to the exceptions set forth in Section 5.7 below.

5.5 If the Licensed Programs repeatedly fail the acceptance tests, Datix will either withdraw the Licensed Programs and refund any Rental Fees which have been paid by Customer, or alternatively repair the Licensed Programs and rerun the tests in the presence of the Customer's designated representative until the tests are successfully completed.

5.6 The Licensed Programs shall be deemed successfully implemented and accepted by the Customer upon the Go-Live Date.

5.7 Datix shall have no obligation to correct any Critical Defect or Error resulting from the following:

5.7.1 the improper use, operation or neglect of either the Licensed Programs or the Designated Equipment;

5.7.2 the unauthorized modification of the Licensed Programs or merger (in whole or in part) with any other software, or the modification of any software on which the Licensed Programs depend;

5.7.3 the use of the Licensed Programs on equipment other than the Designated Equipment;

5.7.4 the failure by the Customer to implement recommendations in respect of, or solutions to, Errors previously advised by Datix;

5.7.5 any repair, adjustment, alteration or modification of the Licensed Programs by any person other than Datix, without Datix's prior consent;

5.7.6 the operating system of the Designated Equipment or the configuration of any attached devices including but not limited to terminals and printers;

5.7.7 the use of the Designated Equipment for running programs other than the Licensed Programs or the inadequacy of the Designated Equipment for running the

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Licensed Programs;

5.7.8 the Customer's failure to install *and* use upon the Designated Equipment any fixes of the Licensed Programs (including Updates) within three (3) months of receipt of the same;

5.7.9 the use of the Licensed Programs for a purpose for which they were not designed;

5.7.10 the Customer's use of third party tools to access the Licensed Programs, where such third party tools, or Customer's access through such third party tools caused the Critical Defect or Error;

5.7.11 any breach by the Customer of any of the terms or conditions of this Agreement; or 5.7.12 the Customer's use of third party tools to extract data of any kind from the Licensed Programs (and in no event any liability for the reliability of such extracted data).

5.8 Notwithstanding the foregoing exceptions, Datix may elect to correct a Critical Defect or Error resulting from an exception set forth in Section 5.7 above as an Additional Service for an Additional Charge, as set forth in a mutually agreed upon change order or Order.

6. **Representations and Warranties**.

6.1 Datix warrants that:

6.1.1 it has all rights and authority required to enter into this Agreement and each Order;

6.1.2 all services will be performed in a professional manner using qualified personnel;

6.1.3 on the Go-Live Date, the final Licensed Programs will perform in a manner substantially consistent with the Acceptance Criteria in an environment substantially similar to the implementation environment without any Critical Defects (subject to the exceptions set forth in **Section 5.7** above);

6.1.4 on the Go-Live Date, the Licensed Programs will not knowingly contain any computer code or mechanisms designed: (i) to harm or impair the Customer's use of the Licensed Programs, such as "time bombs" or "drop dead" devices without notice to Customer (in the event of non-payment, Datix will provide notice to Customer of breach in accordance with the terms of this Agreement); or (ii) to damage or corrupt Customer's data, programs or equipment; and

6.1.5 it will abide by all applicable local, state, national, and foreign, laws, treaties and regulations in connection with its performance of services under this Agreement.

6.2 The Customer represents and warrants that:

6.2.1 it has all rights and authority required to enter into this Agreement and each Order; and

6.2.2 its disclosure and delivery of any information, documents, software and other materials, and use thereof, as contemplated by this Agreement, will not knowingly infringe or violate any proprietary right of any third party, including, without limitation, any copyright, issued patent or trade secret right.

6.3 The Customer acknowledges that:

6.3.1 it will comply with all laws, rules and regulations (including any rules, codes of conduct or regulations which apply to the Customer's particular business or industry);

6.3.2 the Licensed Programs have not been prepared to meet the Customer's individual requirements;

6.3.3 it is the Customer's responsibility to ensure that the Licensed Programs are fit for the Customer's purposes and will perform adequately with any other software or program which the Customer uses;

6.3.4 it is solely responsible for the content of any reports which are generated by the Licensed Programs and that it is the

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Customer's responsibility to ensure that reports generated are adequate for the Customer's needs and purposes; and

6.3.5 any data which Customer inputs into any database operated by the Licensed Programs shall be in accordance with any instructions given by Datix, and shall be input accurately and properly.

6.4 THE REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES RELATED TO INFORMATION OR BUSINESS ADVICE PROVIDED, WARRANTIES RELATED TO OUTCOMES BASED ON INFORMATION OR ADVICE PROVIDED, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE OR USE, WARRANTIES OR CONDITIONS ARISING BY STATUTE OR OTHERWISE IN LAW, OR WARRANTIES OF ANY PRODUCTS OR SERVICES PROVIDED BY THIRD PARTY VENDORS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

TO THE EXTENT THAT REPRESENTATIONS AND WARRANTIES IMPLIED BY LAW CANNOT BE EXCLUDED, THE LIABILITY OF DATIX FOR BREACH OF ANY SUCH REPRESENTATION OR WARRANTY IS LIMITED, AT DATIX'S OPTION, TO THE REPLACEMENT OF, RECTIFICATION OF DEFECTS IN, OR REFUND OF THE AMOUNT PAID IN RESPECT OF, THE LICENSED PROGRAMS, SUBJECT TO AMORTIZATION AS PROVIDED FOR IN THIS AGREEMENT, OR, IN THE CASE OF CUSTOMER-SUPPORT SERVICES, TO THE SUPPLY OF THOSE SERVICES AGAIN.

DATIX DOES NOT WARRANT THAT THE USE OF THE LICENSED PROGRAMS WILL MEET THE CUSTOMER'S DATA PROCESSING REQUIREMENTS, OR THAT THE OPERATION OF THE LICENSED PROGRAMS (INCLUDING WHERE IN MACHINE-READABLE FORM THE

OPERATING INSTRUCTIONS) WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION AND PROPERTY, FOR WHICH DATIX SHALL HAVE NO LIABILITY.

DATIX DOES NOT PROVIDE HOSTING SERVICES OR SECURITY VALIDATION TO CUSTOMER UNDER THIS AGREEMENT. DATIX DOES NOT ASSUME LIABILITY FOR CUSTOMER'S HOSTING OF THE LICENSED PROGRAMS, THE SECURITY OF CUSTOMER'S SYSTEMS OR EXTERNAL PENETRATION OF CUSTOMER'S SYSTEMS BY A THIRD PARTY.

7. Intellectual Property Rights Indemnity.

7.1 Subject to **Section 12** (Limitation of Liability) below, Datix will indemnify, and hold harmless, the Customer against any damages (including costs) that may be awarded against Customer, or agreed by Datix to be paid to any third party, in respect of any claim or action that the normal operation or normal course use of the Licensed Programs by the Customer in accordance with the terms of this Agreement infringes the registered patent, copyright or registered trade mark rights of said third party (an "**Intellectual Property Infringement**") provided that the Customer:

7.1.1 gives written notice to Datix of any Intellectual Property Infringement immediately upon becoming aware of the same;

7.1.2 gives Datix the sole conduct of the defense to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise attempt to settle or compromise such claim or action except upon the express written instructions of Datix;

7.1.3 acts in accordance with the reasonable instructions of Datix and gives to Datix such assistance as it shall

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reasonably require in regard to the conduct of such defense including, without prejudice to the generality of the foregoing, the filing of all pleadings and other court process and the provision of all relevant documents; and

7.1.4 mitigates its losses and the damages to the extent possible.

7.2 Datix shall have no liability to the Customer for Intellectual Property Infringement if such infringement results from any instructions, act or omission of the Customer, or by another party on Customer's behalf, including any failure by Customer to implement any Update or New Program Release that would have prevented or cured the Intellectual Property Infringement.

7.3 In the event of an Intellectual Property Infringement, or potential Intellectual Property Infringement, Datix shall also be entitled, at its sole option and expense either to:

7.3.1 procure the right for the Customer to continue using the Licensed Programs; or

7.3.2 make such alterations, modifications or adjustments necessary to make the Licensed Programs non-infringing without incurring a substantial diminution in performance or function; or

7.3.3 if neither of the options described above is commercially feasible as reasonably determined by Datix, then Datix will terminate this Agreement and the licenses granted herein by immediate written notice, in which case Datix's sole liability to the Customer, and Customer's sole additional remedy (but without limiting Datix's obligation of indemnification set out in Section 7.1 subject to Section 7.2) shall be the refund to the Customer of: (i) the depreciated value of the Rental Fee for the first year, assuming amortization over a five-year life; and (ii) the portion of the Annual Customer Support Charge applicable to the unexpired portion of the year to which the Annual Customer Support Charge then applies (calculated *pro rata*).

7.4 No claim for indemnification may be asserted by the Customer more than two (2) years following the discovery of the events giving rise to such claim.

8. Indemnification.

Datix shall indemnify and hold harmless the Customer, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability, action, claim or damage whatsoever, based or asserted upon any services of Datix, its officers, employees, subcontractors, agents or representatives to the extent arising out of or in any way relating to Datix's gross negligence or willful misconduct with regard to its performance under this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature. Datix shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to reasonable attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services provided that the Indemnitee follows the requirements of Sections 7.1.1 – 7.1.4 above with regard to any such claim.

9. Customer Support; Additional Charges; New Program Releases.

9.1 For the period or periods for which Customer Support is purchased, Datix shall correct any Errors in the Licensed Programs which prevent the running of the Licensed Programs, in accordance with the priorities and response times set forth on **Appendix A** attached to the executed Order. Upon Datix's request the Customer will submit documented Error reports.

9.3 Correction of Errors may comprise all or any of the following:

9.3.1 the diagnosis of Errors in the Licensed Programs and the correction of such Errors (remotely) by the issue of fixes, workarounds or an Update of the

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Licensed Programs; and

9.3.2 the creation and dispatch to the Customer from time to time, at Datix's sole discretion, of an Update to the Licensed Programs.

9.4 Datix shall have no obligation under this Agreement to correct any Critical Defect or Error resulting from anything set forth in Section 5.7.

9.5 Datix's performance of the following diagnoses or Error corrections may also be subject to Additional Charges:

9.5.1 those avoidable by (i) operations capable of being carried out by Permitted Users; or (ii) any configuration of the Licensed Programs capable of being carried out by the Customer's systems administrators;

9.5.2 those related to matters which are explained in the Operating Instructions or for which training is available but not undertaken by the Customer:

9.5.3 those rendered more difficult or onerous due to:

(i) the non-availability, for whatever reason, of any remote diagnostic facility, including no remote access to a Support Copy of the affected Licensed Program maintained by the Customer in accordance with this Agreement;

(ii) the unsuitability of the Designated Equipment for running the Licensed Programs; or

(iii) the presence on the Designated Equipment of any programs other than the Licensed Programs; or

9.5.4 caused directly or indirectly by operator error or omission.

9.6 Datix shall have no obligation to provide Error correction, or any other goods or services connected with the use of the Licensed Programs under the following conditions only:

9.6.1 if the Customer is in arrears with payment of the Rental Fee or Annual

Customer Support Charge, or any other payment due to Datix, or is in breach of any term of this Agreement; or

9.6.2 related to the correction of lost or corrupted data.

9.7 If Customer Support: (i) is not purchased; (ii) is terminated for any reason; or (iii) expires, and if Customer wishes to obtain, reinstate or renew Customer-Support after more than a thirty (30) day gap, then Customer may be permitted to purchase, reinstate or renew Customer Support, in Datix's sole discretion, provided that: (a) Datix offers Customer Support to its customers generally for the Licensed Programs in question; and (b) Customer pays Datix on an hourly basis to bring the Licensed Programs up-to-date and fees for the new Customer Support term.

9.8 So long as Customer purchases Customer Support and pays the Annual Customer Support Charge, Datix may, from time to time, notify the Customer that it has issued a New Program Release, however Datix is under no obligation to offer New Program Releases. If the Customer chooses to install the New Program Release, the terms of the license to use the New Program Release shall be the same as the license terms of this Agreement and references herein to the "**Licensed Programs**" shall be construed as including references to the New Program Release. Without prejudice to the generality of the foregoing, the New Program Release may be subject to an Annual Customer Support Charge in excess of the maximum increase permitted in Section 10.6 below. Any such revision to the Annual Customer Support Charge shall be consistent with Datix's charges for the New Program Release, or as otherwise agreed by the parties in writing in a negotiated change order.

9.9 Notwithstanding that the Customer is not obligated to install New Program Releases, the Customer acknowledges that it would be unreasonable to expect Datix to continue indefinitely its provision of the Customer Support services , or any other support or maintenance services with respect to earlier versions of the Licensed Programs. Accordingly, where the Customer does not install a New Program

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Release (or any subsequent New Program Release) within twelve (12) months of the date on which Datix notifies the Customer via email that it has been issued ("**New Program Release Period**"), Datix may terminate its provision of Customer Support, support or maintenance services in respect of earlier versions of the Licensed Programs to the Customer by giving thirty (30) days' notice in writing, such notice to expire on or at any time after the expiration of such twelve (12)-month New Program Release Period.

10. Fees, Charges, Taxes, Payment, Invoices.

10.1 The Customer shall pay fifty percent (50%) of the first year's Rental Fee (together with taxes thereon) upon the execution of this Agreement; and fifty percent (50%) of the first year's Rental Fee upon installation of the Licensed Programs. The Customer shall pay the professional services fees as provided in the Order. The Customer shall pay the Annual Customer Support Charge (together with taxes thereon) annually on the Commencement Date and each anniversary thereof, unless otherwise agreed in writing by Datix. Datix may invoice the Rental Fee and each Annual Customer Support Charge up to sixty (60) days in advance, and the Customer shall pay Datix within sixty (60) days of the date of Datix's invoice therefor.

10.2 If the Customer and Datix have agreed on milestone payments, the Customer shall make payments in accordance with **Appendix C** attached to the executed Order.

10.3 Unless otherwise set forth in the applicable Order, the Customer shall reimburse Datix for all materials and reasonable out-of-pocket expenses it incurs in connection with the performance of its obligations under this Agreement.

10.4 [Intentionally Deleted].

10.5 The Rental Fee, Additional Charges, Annual Customer Support Charge and any other charges that Customer may incur from time to time do not include value added, service and/or sales taxes, which amounts shall be payable by the Customer, in addition to the fees and charges, in the manner and at the rate from time to time prescribed by applicable law.

10.6 Datix shall be entitled to increase the Annual Customer Support Charge once in any twelve (12)-month period following each anniversary of the Commencement Date by an amount which does not exceed the greater of: (i) the percentage increase in the Consumer Price Index – All Urban Consumers ("CPI") (as published by the United States Department of Labor Bureau of Labor Statistics) in the preceding twelve (12) month period); or (ii) 5%. The first such increase shall be based on the latest available figure for the percentage increase in CPI at the beginning of the last month before the first anniversary of the Commencement Date. Any price increases are subject to satisfactory performance review by the Customer and approval by the County Board of Supervisors, as required.

10.7 The Customer is not permitted to access data stored by the Licensed Programs via any software or program which does not form part of the Licensed Programs unless Datix has given its prior written permission to the Customer. If Datix has reasonable grounds to believe that the Customer has accessed data other than in accordance with this Section 10.7, Datix shall be entitled to increase the Annual Customer Support Charge, in addition to any other increases permitted by this Agreement. Datix shall notify the Customer of the new amount payable by the Customer and the Customer shall pay such amount. If the Customer does not agree to the increased payment amount, the Customer may terminate this Agreement and the licenses granted herein by giving written notice to Datix within thirty (30) days of the date of Datix's notification of the increased amount, otherwise the new amount shall be deemed to have been accepted by the Customer. Additional Charges shall be invoiced by Datix monthly in arrears and shall be paid by the Customer (together with taxes thereon) within thirty (30) days of the date of invoice therefor.

10.8 The Customer shall keep records pertaining to the Permitted Users (including

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where applicable a record of named individuals) during the term of this Agreement and the license, and the nature of their use of the Licensed Programs, and shall disclose and certify those records on request by Datix. Datix shall have the right to revoke permission to use the Licensed Programs in respect of any Permitted User who does not follow the requirements of this Agreement.

10.9 If the Customer: (a) permits the use of the Licensed Programs by more Permitted Users than any maximum number set out in the applicable Order or by persons who are not Permitted Users, or (b) experiences business growth of more than five percent (5%) from the date of this Agreement, as measured by the number of beds or patient volume, or other factors used by Datix in determining the Annual Customer Support Charge, then, without prejudice to any other rights Datix may have, Datix may levy Additional Charges according to Datix's then-current charges per additional Permitted User or internal Annual Customer Support Charge formula, and Customer shall pay same within thirty (30) days of Datix's invoice therefor.

10.10 All amounts payable to Datix by the Customer under this Agreement must be paid within thirty (30) working days from the date of receipt of the invoice (the "**Due Date**") provided that Customer provides written notice to Datix of the date of receipt of the invoice and further provided that such Due Date shall not be more than five (5) business days from the date of the invoice. If the Customer fails to make payment by the Due Date, then without prejudice to either party's other rights and remedies, Datix has the right, by providing thirty (30) days' written notice, to do any or all of the following:

10.10.1 suspend its obligations to provide the Licensed Programs and/or Customer Support services;

10.10.2 [Intentionally Deleted];

10.10.3 terminate this Agreement, including the Customer's right to use the Licensed Programs; and/or

10.10.4 [Intentionally Deleted].

11. Confidentiality.

11.1 A party may receive Confidential Information ("**Recipient**") from the other party ("**Discloser**"). Each party agrees to keep confidential, and not disclose, all of the Discloser's Confidential Information (written or oral) disclosed to it in connection with the Agreement (whether prior to or during the terms of the Agreement). As to a Recipient, Confidential Information does not include information that is:

11.1.1 already in its possession other than as a result of a breach of this Section;

11.1.2 in the public domain other than as a result of a breach of this Section; or

11.1.3 lawfully received from a third party subject to no restriction of confidentiality; or

11.1.4 shown by the Recipient to have been independently developed by it prior to disclosure by the Discloser.

11.2 Each party agrees to take all such steps as shall from time to time be reasonable to ensure compliance with the provisions of this Section, using the same standard of care that it uses to protect its own Confidential Information of like importance, but in any event not less than reasonable care. The Confidential Information shall not be used by the Recipient and its employees, agents and contractors except as necessary to exercise its rights and perform its obligations under this Agreement. The Recipient shall have an appropriate agreement with each of its employees, agents and contractors having access to Confidential Information (or such individuals shall be otherwise bound by confidentiality obligations), with terms no less restrictive than the terms of this Section. The Customer shall be liable for any breaches by its Approved Consultants of the obligations in this Section, and each party shall be liable for any breaches of the obligations in this Section by its employees, agents or subcontractors.

11.3 Notwithstanding anything to the contrary set forth in this Agreement, if the Recipient (or anyone to whom the Recipient has disclosed the

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Discloser's Confidential Information as permitted under this Agreement) is legally required to disclose any of the Discloser's Confidential Information to a court, governmental or regulatory authority acting within its proper capacity, then, unless the Recipient is legally prohibited by law from doing so, the Recipient shall provide the Discloser with prompt written notice before such Confidential Information is disclosed so that the Discloser may seek a protective order or other remedy or assurances. If the Recipient is not permitted by law to give the Discloser prior written notice of such required disclosure or if the Discloser does obtain a protective order or other remedy or assurances, then the Recipient shall use commercially reasonable efforts, to the extent permitted to do so by law, to obtain written assurances that the Confidential Information shall be kept confidential and secure and used only for the purposes for which it must be disclosed.

11.4 Each party acknowledges that its breach of confidentiality could result in irreparable damage to the other party that could not be fully remedied by monetary damages. Each party therefore agrees that the Discloser may specifically seek to enforce confidentiality and shall be entitled, in addition to any other remedies available to it at law or in equity, to seek such injunctive or other equitable relief as may be necessary or appropriate to prevent or mitigate such damage. Each party hereby waives the defense that the other party has an adequate remedy at law.

12. Limitation of Liability.

12.1 The following provisions set out Datix's entire liability (including any liability for the acts and omissions of its employees, agents and subcontractors) to the Customer.

12.2 If Datix, by its gross negligence or willful misconduct, causes injury to, or death of, any person, its liability (if any) for such injury or death shall not be limited, including by Section 12.5 below.

12.3 If Datix, by its gross negligence or willful misconduct, causes damage to or loss of any physical property, its aggregate liability in respect of any one event or series of connected events shall not exceed $50,000.00 (Fifty Thousand Dollars).

12.4 EXCEPT UNDER THE CIRCUMSTANCES SET FORTH IN SECTIONS 12.2 AND 12.3, DATIX'S AGGREGATE LIABILITY ARISING IN CONNECTION WITH ALL CLAIMS HOWEVER ARISING, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE UNDER OR PURSUANT TO THIS AGREEMENT SHALL (I) DURING THE PERIOD FROM THE EFFECTIVE DATE TO THE GO-LIVE DATE BE LIMITED TO DIRECT DAMAGES ONLY AND WILL NOT IN SUCH PERIOD EXCEED 100% OF THE FIRST YEAR'S RENTAL FEE; AND (II) DURING ANY COMPLETE 12-MONTH PERIOD COMMENCING ON THE GO-LIVE DATE OF THIS AGREEMENT, OR ANY ANNIVERSARY THEREOF, WILL BE LIMITED TO DIRECT DAMAGES ONLY AND WILL NOT IN ANY SUCH PERIOD EXCEED FEES PAID IN THE PREVIOUS TWELVE (12) MONTHS.

12.5 EXCEPT UNDER THE CIRCUMSTANCES SET FORTH IN SECTION 12.2 ABOVE, DATIX SHALL NOT BE LIABLE UNDER, OR IN RELATION TO THIS AGREEMENT (WHETHER SUCH LIABILITY ARISES DUE TO NEGLIGENCE, TORT, BREACH OF CONTRACT, MISREPRESENTATION OR OTHERWISE, INCLUDING BREACH) FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY NATURE WHATSOEVER INCLUDING, BUT NOT LIMTITED TO: LOSS OF PROFITS OR REVENUES; LOSS OF SALES; LOSS OF GOODWILL; LOSS OF CONTRACT; LOSS OF SAVINGS; LOSS OF OPPORTUNITY; LOSS OR CORRUPTION OF DATA; BREACH OF THE AGREEMENT BY, OR ANY NEGLIGENT ACT OR OMISSION OF, THE CUSTOMER; FOR ANY CLAIM OR DEMAND BY ANY THIRD PERSON; OR PERFORMANCE OR BREACH OF THIS AGREEMENT, EVEN IF ADVISED OF THIS POSSIBILITY.

12.6 The Customer acknowledges that the provisions of this Section 12 are reasonable in every respect, taking into account all the

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circumstances and the ability of the parties to obtain insurance.

12.7 Nothing in this Agreement shall exclude or limit the liability of either party arising out of fraud, fraudulent misrepresentation or fraudulent concealment.

12.8 The provisions of this Section 12 shall survive any termination of the Agreement.

13. Insurance. During the term of this Agreement, Datix shall maintain in force, the following minimum insurance coverages:

13.1.1 Products liability coverage with a minimum combined single limit of $1,000,000 per occurrence and $3,000,000 in the aggregate;

13.1.2 Workers' compensation coverage in amounts as required by law; and

13.1.3 Professional liability coverage with a minimum combined single limit of $5,000,000 per occurrence and $5,000,000 in the aggregate.

13.1.4 Cyber Liability Insurance coverage with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Datix in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic response costs as well as regulatory fines and penalties as well as credit monitoring expense with limits sufficient to respond to these obligations.

14. Term and Termination.

14.1 The Term of this Agreement is five (5) years, effective July 1, 2018 through June 30, 2023. This Agreement shall automatically renew in one-year increments each July 1st, when the Customer pays the Annual Customer Support Charge.

14.2 This Agreement may be terminated immediately:

14.2.1 upon written notice by Datix if the Customer: (i) fails to pay any amount due hereunder within sixty (60) days of the Due Date therefor; or (ii) otherwise fails to remedy any material breach of this Agreement within ten (10) days of delivery of the notice by Datix;

14.2.2 upon written notice by Datix if the Customer breaches its non-solicitation obligations set forth in Section 18;

14.2.3 upon written notice by the Customer if Datix or any of its employees is excluded from any federal health care programs, including Medicare, Medicaid, TRICARE, and Department of Veterans Affairs, as provided in Section 19;

14.2.4 upon written notice by the Customer if Datix fails to remedy any breach of this Agreement within thirty (30) days following notification thereof by the Customer; or

14.2.5 by either party if the other party commences any proceeding to liquidate, wind up, reorganize or seek protection, relief or a consolidation of debts under any law relating to insolvency, reorganization or relief of debtors, seeks the appointment of a receiver or trustee, or is unable to pay its debts as they become due, or anything equivalent to any of the events or circumstances stated in this Section 14.2.5 occurs in any applicable jurisdiction.

14.3 Within thirty (30) days of the termination of this Agreement (by either party for any reason), or upon its expiration, the Customer shall cease to use, and shall destroy, all copies of the Licensed Programs and Operating Instructions in its possession, and a duly authorized officer of the Customer shall certify in writing to Datix that the Customer has complied with such obligation. Datix shall be entitled to inspect the Customer's premises at reasonable times to ensure that this Section has been complied with.

14.4 Any termination of this Agreement pursuant

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to the terms hereof shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law, and shall not affect any accrued rights or liabilities of either party, or the effectiveness, survival or enforcement of, any provision hereof which is expressly or by implication intended to arise and/or survive on or after such termination.

15.   Ownership and Intellectual Property Rights.

15.1 Customer will retain ownership of all Customer data. Customer hereby grants Datix a limited, non-exclusive right to access and use the Customer data to implement the Licensed Programs and provide the services hereunder.

15.2 Each party shall retain ownership of its own Existing IPRs and its own Confidential Information.

15.3 Subject to Section 15.2 Datix shall own all property, copyright and other IPRs arising out of or in connection with this Agreement and the Licensed Programs, including the use thereof by or on behalf of the Customer, (collectively the "**New IPRs**") and the Customer hereby assigns to Datix, any and all rights, title or interests that the Customer has or may at any time assert, in the New IPRs absolutely and to the fullest extent possible by law.

15.4 The Customer shall ensure that, where relevant, all intellectual property rights in respect of the New IPRs are waived by the relevant third parties. Further, at the request and reasonable expense of Datix, Customer shall do and/or shall ensure that its consultants employees, Approved Consultants, agents, contractors and sub-contractors shall do all such things and sign all such documents or instruments necessary in the opinion of Datix to enable Datix to obtain defend and enforce its rights in the New IPRs.

15.5 The Customer agrees that Datix shall be entitled to use any know-how, ideas, methods, processes or techniques which relate to any developments arising out of the provision of or in connection with the Agreement for the purposes of Datix's business from time to time provided that Datix does not use any Confidential Information belonging to the Customer for that

purpose.

15.6 The Customer acknowledges and agrees that the Licensed Programs are the sole property and Confidential Information of Datix and that the Customer has a license to use, but not ownership of, the Licensed Programs.

15.7 The provisions of this Section 15 shall survive the expiration or termination of this Agreement.

16.   Personal Information and Protected Health Information.

16.1 Datix may collect Personal Information in the course of performing its obligations under the Agreement, including name, business title, business e-mail address, business mailing address, business phone number and organization name, for purposes of performing its obligations under the Agreement, and for quality improvement and collecting statistical data.

16.2 Datix shall not, and shall not be required to, receive, create, use, maintain or transmit Protected Health Information in order to carry out its obligations under the Agreement. Customer shall establish a Support Copy of the Licensed Programs which it will populate only with with anonymized or "dummy" data for use during installation and implementation.

16.3 In the event that the Customer is required to provide any Protected Health Information to Datix in order for Datix to provide Customer Support, the Customer shall notify Datix prior to transmission and the parties will agree upon how to transfer and receive such data and information in compliance with all applicable law.

16.4 The parties shall comply with all applicable state and federal laws, rules and regulations relating to the confidentiality of individually identifiable protected health information including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 at 45 C.F.R. Parts 160 and 164, and the Privacy, Security, Breach Notification, and Enforcement rules promulgated thereunder, all as may be amended from time to time ("**HIPAA**"). In the event that Datix agrees to receive, create, use, maintain or transmit

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Protected Health Information on behalf of the Customer, the parties will execute the business associate agreement attached to the executed Order as **Appendix E**.

17. **Anonymized Data.** Customer acknowledges and agrees that Datix may use anonymized Customer data for increased functionality of the Licensed Programs related to data aggregation and benchmarking. Datix may use Customer data for such purposes, provided that Datix de-identifies such data in accordance with HIPAA, and further provided that such de-identification reasonably prevents identification of the Customer as the source of such data, unless otherwise agreed to in writing by the Customer.

18. **Non-Solicitation.** Neither party shall, during the period of this Agreement or within one (1) year of the date of its expiration or termination, knowingly employ, engage or make any offer of employment or engagement, or assist any other person to employ, engage or make any offer of employment or engagement, to any person, consultant, or contractor who is at the time of the offer employed or engaged by the other party or who has been so employed or engaged during the preceding twelve (12) months, and who has been involved in the performance of this Agreement or dealings between the parties. This limitation shall not apply to an employee, consultant, or contractor who applies for an advertised position which is not brought to the employee's, consultant's, or contractor's attention by or on behalf of the advertising party. Any breach of this provision by or on behalf of Customer shall be a material breach of this Agreement entitling Datix to immediately terminate this Agreement and the licenses set forth herein as provided in Section 14. In the event that either party breaches this provision, the hiring party shall pay to the other party, as liquidated damages, an amount equal to one hundred percent (100%) of the employee's first year salary, including bonuses, with the hiring arty, payable as of the date of hire.

19. **No Excluded Providers.** Neither Datix nor

any of its employees has been excluded from any federal health care programs, including Medicare, Medicaid, TRICARE, and Department of Veterans Affairs. In the event that Datix or any of its employees is so excluded, Datix will provide notice to the Customer and the Customer may, at its election, terminate the Agreement.

20. **Access to Books and Records.** To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the "Act") and the regulations promulgated thereunder are applicable to this Agreement, and the value of the Agreement exceeds $10,000 in any twelve (12)-month period, Datix shall, until four (4) years after the furnishing of services pursuant to this Agreement, comply with requests by the Comptroller General, the Secretary of the Department of Health and Human Services, and their duly authorized representatives for access, in accordance with Section 952 of the Act, to any contract or agreement between Datix and such related organizations, as well as the books, documents and records of Datix which are necessary to verify the cost of the services provided.

21. **Order of Precedence.** In the event of any conflict between the terms of an Order and these terms and conditions, the terms of the Order shall prevail as to that Order, except for Section 12 (Limitation of Liability) and Section 15 (Ownership and Intellectual Property Rights) of this Agreement which will prevail in any event.

22. **Force Majeure.** Neither party will be liable for delay in or failure to perform obligations (other than payment obligations) if that delay or failure is caused by circumstances beyond the control of the party including, but not limited to, fires, strikes (of its own or other employees), insurrection or riots, embargoes or delays in transportation, inability to obtain supplies and raw materials, and requirements or regulations of any civil or military authority.

23. **Notices.** Any notice, request, instruction, or other document to be given hereunder shall be in writing to the address of the other party set out in this Agreement or such other address

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as may have been notified by it to the other in writing and shall be deemed to have been delivered:

23.1 immediately if delivered in person (including by courier);

23.2 upon proof of delivery if delivered by U.S. mail, upon proof of successful transmission if by facsimile, or upon proof of successful delivery to the e-mail addressee, except that delivery shall be deemed to take place on the next business day for deliveries on the weekend or after 5pm recipient's local time.

All legal notices not initially delivered in person (including by courier) or by registered or certified mail, must also be delivered in person (including by courier) or by registered or certified post in order to be effective.

24. Waiver. The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions of this Agreement nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

25. Entire Agreement

25.1 This Agreement together with any relevant Order constitutes the entire agreement between the parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, negotiations, or collateral contracts of any nature made by the parties, whether oral or written, in relation to such subject matter, including any term sheet or letter of intent agreed by the parties and any proposal or tender submitted to the Customer by Datix. Any terms preprinted on a Customer purchase order, change request or work statement will not apply to this Agreement.

25.2 There are no representations, understandings or agreements relating to this Agreement which are not fully expressed in this Agreement. Each party acknowledges that, in entering into this Agreement, it is not relying on, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by the other party to this Agreement, except as set out herein.

26. Successors. This Agreement shall be binding upon and inure for the benefit of the successors in title of the parties hereto.

27. Assignment. Customer shall not be entitled to assign this Agreement or any of its rights and obligations, hereunder without the prior written consent of Datix, which consent is contingent on the assignee meeting Datix's credit approval criteria. Datix may assign this Agreement or any of its rights and obligations under this Agreement in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of Datix's assets without the Customer's consent.

28. Subcontractors. Datix may perform its obligations under this Agreement directly, or through a related entity or through subcontractors. Datix will provide the names of each Subcontractor or related entity that will perform any obligations under this Agreement to Customer. In the event that Customer purchases hosting services, Datix may perform its obligations through its affiliate, Datix Hosting LLC. However, in such event, Datix will remain responsible for the fulfillment of all of its obligations under this Agreement.

29. Rights of Third Parties. A person who is not a party to this Agreement shall not be entitled to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties; and any such agreement by the parties must refer to this Section 29.

30. Severability. If any part of this Agreement is found by any court or administrative body of competent jurisdiction to be illegal, invalid or

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unenforceable, the remaining portion of the Agreement will remain in full force and effect, provided that the parties shall negotiate in good faith to agree upon any lawful and reasonable variations to the Agreement which may be necessary in order to achieve, to the greatest extent possible, the same effect as would have been achieved by the part in question.

31. Amendment. Datix shall be entitled to amend the terms set out in the Agreement upon provision of no less than thirty (30) days' written notice to the Customer. Except for the foregoing, no amendment to this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

32. Import/Export Controls. Customer acknowledges that the Licensed Programs and all related technical information, documents and materials are subject to export controls under the U.S. Department of Commerce's Export Administration Regulations ("**EAR**") and the US Department of State's International Traffic in Arms Regulations ("**ITAR**"). Customer will: (i) comply strictly with all legal requirements established under these controls, (ii) cooperate fully with Datix in any official or unofficial audit or inspection that relates to these controls and (iii) not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to any country (or nationals thereof) that is subject to restrictions or embargoed under applicable laws and regulations, unless Customer has obtained the prior written authorization of Datix and the U.S. Commerce Department.

33. Headings. Headings to Sections in this Agreement are for the purpose of information and identification only and shall not be construed as forming part of this Agreement.

34. Governing Law. This Agreement shall in all respects be governed by and construed in accordance with laws of the State of California, without regard to its conflicts of law rules and in the event of legal action, the parties hereby submit to the exclusive jurisdiction of the courts located in Riverside, California. The parties hereby agree to waive their respective rights to a

jury trial of any claim or cause of action relating to or arising out of this Agreement. The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods. Each provision of this Agreement shall be fairly interpreted and construed in accordance with its provisions and without any strict interpretation or construction in favor of or against either party.

35. Relationship of Parties. Datix, in furnishing Licensed Programs and/or Services to Customer under this Agreement, is acting as an independent contractor. Under no circumstances will either party be deemed to be in any relationship with the other party carrying with it fiduciary or trust responsibilities, whether through partnership or otherwise. A party does not undertake by this Agreement, or otherwise, to perform any obligation of the other party, whether regulatory or contractual, or to assume any responsibility for the other party's business or operations.

36. Publicity. Neither party may use the name of the other in any advertising or publicity relating to the Licensed Programs without the prior written consent of the other. However Datix may use the name of the Customer in any list of users used by Datix including in its promotional materials and website.

37. U.S. Government Restricted Rights. The Licensed Programs and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the US Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Datix Ltd., 51 Wimbledon Hill Road, London SW19 7QW.

38. Additional Terms and Conditions. Any additional terms and conditions shall be set out in the Order.

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39.   **Counterparts**. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute on instrument.

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APPENDIX E
BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Rental Software license and Customer Support Services Order Local Hosting Services (the "Underlying Agreement") between the County of Riverside ("County") and **Datix (USA), Inc.** ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the Contractor provides services to County, and in conjunction with the provision of such services certain protected health information ("PHI") and/or certain electronic protected health information ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

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

WHEREAS, to the extent County discloses PHI and/or ePHI to Contractor or Contractor creates, receives, maintains, transmits, or has access to PHI and/or ePHI of County, Contractor is a business associate, as defined in the Privacy Rule; and,

WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to the covered entity, the additional security and privacy requirements of HITECH are applicable to business associates and must be incorporated into the business associate agreement, and a business associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy provisions; and,

WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

WHEREAS, the parties intend to enter into this Addendum to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to Contractor as a business associate of County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing functions, services and activities on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.

    A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of the Privacy Rule which compromises the

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security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.

(1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following four factors:

(a) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

(b) The unauthorized person who used the PHI or to whom the disclosure was made;

(c) Whether the PHI was actually acquired or viewed; and

(d) The extent to which the risk to the PHI has been mitigated.

(2) Breach excludes:

(a) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.

(b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.

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

B. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf of the business associate.

C. "Data aggregation" has the meaning given such term in 45 CFR §164.501.

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

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

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

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

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

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

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

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

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

M. "Secretary" means the Secretary of the U.S. Department of Health and Human Services ("HHS").

N. "Security incident" as defined in 45 CFR §164.304 means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

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

P. "Subcontractor" as defined in 45 CFR §160.103 means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

Q. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2).

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

   A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.

   B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:

      1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,

      2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:

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a)   The disclosure is required by law; or,

b)   Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:

    i.   Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,

    ii.   Notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached; and,

3)   Use PHI to provide data aggregation services relating to the health care operations of County pursuant to the Underlying Agreement or as requested by County; and,

4)   De-identify all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.

C.   Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3.   **Prohibited Uses and Disclosures.**

A.   Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.

B.   Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.

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

D.   Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §17935 and §17936. Contractor agrees:

1)   Not to use or disclose PHI for fundraising , unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45 CFR §164.508;

2)   Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.508(a)(3);

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3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,

4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted by the Underlying Agreement and in compliance with the requirements of a valid authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

A. County agrees to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.

B. County agrees to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.

C. County agrees to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.

D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.

E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying Agreement.

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

A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that 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 and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.

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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, including breaches of unsecured PHI as required by 45 CFR §164.410.

F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create, receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract 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 the Secretary, in the time and manner designated by 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. In the event that Contractor provides any information regarding County or PHI to the Secretary, Contractor shall provide copies of such information to County, to the extent not prohibited by the Secretary or by law.

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.

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

M. Comply with the requirements of the Privacy Rule that apply to the County to the extent Contractor is to carry out County's obligations under the Privacy Rule.

N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of which Contractor becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Contractor, and if such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if feasible.

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

   A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County or an individual as directed by County, within ten (10) business days of request from County, to satisfy the requirements of 45 CFR §164.524.

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

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

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

      2) Within ten (10) business days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.

      3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record (as applicable and if Contractor had PHI during such time).

7. **Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create, receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:

   1. Comply with the applicable requirements of the Security Rule, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;

   2. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;

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

   4. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;

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5. Ensure compliance with the Security Rule by Contractor's workforce;

6. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same restrictions and requirements contained in this Addendum and comply with the applicable requirements of the Security Rule;

7. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,

8. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.

8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.

A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.

1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).

2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:

a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;

b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;

c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;

d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;

e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,

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f) In cooperation with County per Section B below, contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.

C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than ten (10) business days after the end of each calendar year for submission to the Secretary.

D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.

E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with Contractor, or third parties approved by Contractor, providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.

F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's completed risk assessment and investigation documentation.

G. **Additional State Reporting Requirements.** The parties agree that this Section 8.G applies only if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more stringent requirements of California Health & Safety Code §1280.15. For purposes of this Section 8.G, "unauthorized" has the meaning given such term in California Health & Safety Code §1280.15(j)(2).

1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.

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2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than seven (7) business days after Contractor detects such incident. Contractor further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.

9. **Hold Harmless/Indemnification.**

A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives to the extent arising out of its or their gross negligence or willful misconduct in the performance of Contractor's obligations under his Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives of Contactor's obligations under this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to reasonable attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.

B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. County may, at its sole cost and expense, engage its own counsel. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice immediately upon becoming aware of same, providing information and reasonable assistance as Contractor may reasonably require in accordance with reasonable instructions of Contractor for the defense or settlement thereof and mitigates its losses and damages to the extent possible.

C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.

D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.

E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

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10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum which breach is incapable of cure, including cure pursuant to applicable law.

2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.

3) If termination of the Underlying Agreement is not feasible, the breaching party, upon the request of the non-breaching party, shall implement, at its own expense, a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

B. **Effect of Termination.**

1) Upon termination of this Addendum, for any reason, Contractor shall return or, if agreed to in writing by County, destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.

2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

12. **General Provisions.**

A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.

B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.

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C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.

D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.

E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.

F. **Interpretation of Addendum.**
   1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
   2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.

G. **Notices to County.** All notifications required to be given by Contractor to County pursuant to the terms of this Addendum shall be made in writing and delivered to the County both by fax and to both of the addresses listed below by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability, or at such other address as County may hereafter designate. All notices to County provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

County HIPAA Privacy Officer:	HIPAA Privacy Manager
County HIPAA Privacy Officer Address:	26520 Cactus Avenue, Moreno Valley, CA 92555
County HIPAA Privacy Officer Phone Number:	(951) 486-6471
County HIPAA Privacy Fax:	(951) 486-4475

H. **Limitation of Liability.** Contractor's aggregate liability arising in connection with all claims however arising, whether in contract, tort (including negligence) or otherwise under or pursuant to this Addendum shall be limited to direct damages only and will not exceed TWO MILLION DOLLARS ($2,000,000).