



**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH SYSTEM MEDICAL CENTER GOVERNING BOARD  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM:** 15.3  
(ID # 23872)

**MEETING DATE:**

Tuesday, January 09, 2024

**FROM :** RUHS-MEDICAL CENTER:

**SUBJECT:** RIVERSIDE UNIVERSITY HEALTH SYSTEM - MEDICAL CENTER: Approve the Equipment Purchase, License, and Services Agreement with Avasure, LLC for Avasure Telesitter Solution for five years, with the option to renew for two additional one-year periods, All Districts. [Total Cost: \$9,420,485; Total Annual Cost \$1,345,784; Up to \$134,578 in Additional Annual Compensation, 100% Hospital Enterprise Fund – 40050]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Equipment Purchase, License, and Services Agreement with Avasure, LLC for Avasure Telesitter Solution for five years in an annual amount of \$1,345,784 with the option to renew for two additional one-year periods for a total of \$9,420,485; and authorize the Chair of the Board to sign the amendment on behalf of the County; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459 and based on the availability of funding and as approved as to form by County Counsel to: a) sign amendments that exercise the options of the agreement including modifications of the statement of work that stay within the intent of the Agreement; and b) sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) of the total annual cost of the agreement.

**ACTION:**Policy

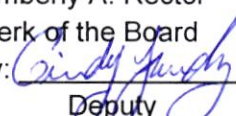
  
 Jennifer Crulkshank, Chief Executive Officer – Health System 1/2/2024

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**MINUTES OF THE GOVERNING BOARD**

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, Spiegel, Washington, Perez and Gutierrez  
 Nays: None  
 Absent: None  
 Date: January 9, 2024  
 xc: RUHS-Medical Center

Kimberly A. Rector  
 Clerk of the Board  
 By:   
 Deputy

**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH  
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS  
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<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$1,345,784	\$1,345,784	\$9,420,485	\$0
<b>NET COUNTY COST</b>	\$0	\$0	\$0	\$0
<b>SOURCE OF FUNDS:</b> 100% Hospital Enterprise Fund - 40050			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> FY23/24–FY29/30	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

The requested Board action would approve a new five (5) year agreement with Avasure, LLC for Avasure Telesitter Solution. The Avasure Telesitter Solution includes 36 Guardian Hardware devices – Mobile and Avasure Software and support for remote patient monitoring services. The existing hardware and software is being traded in. The equipment will be replaced with new, leased Guardian Hardware devices and the perpetual licensed software is being upgraded to the Subscription Enterprise Platform. Any unused portion of the current AvaNET agreement will be credited back to RUHS once the Go Live is determined. Credit to be calculated on a prorated daily basis from Go Live date through 5/16/2024.

The AvaSure Subscription includes the following:

- Server Software
- Client Software
- AvaNET Silver Support & Warranty
- ORNA Reporting Tool
- Clinical Program Materials
- eLearning Modules
- Pre-recorded Languages
- AvaSure Guardian Hardware Device
- AvaSure Install Services
- AvaSure Clinical Services
- AvaSure Project Management Services
- AvaSure Monitoring Service

This solution includes 24x7x365 support services, online reporting of nursing analytics, metrics export license, adverse event tracking, eLearning Modules, and 24x7x365 remote patient monitoring services that allow nurses to get an assessment that is as clear as an in-person visit.

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**Impact on Residents and Businesses**

These services are a component of RUHS's system of care aimed at improving the health and safety of its patients and the community.

**Additional Fiscal Information**

Funds for this contract have been allocated in the FY23/24 budget. Budget adjustments are not necessary. No additional County funds are required.

**Contract History and Price Reasonableness**

On January 2018, under Direct Patient Care authority BOS Form 11 Agenda item 3.42), Purchasing approved the request to implement a Telesitter solution that would permit a single individual to observe 12 patients at the same time remotely. The purchase request included 12 audio/video mobile carts as well as a headset, software, and licensing for a central monitoring station, installation services, program materials license, spare parts kit, a clinical development program, and system project manager to provide a variety of professional implementation services. The purchase also included a one-year subscription for program analytics and a 24/7 support agreement.

In March of 2020, twelve (12) additional AvaSure Telesitter units as well as Central Monitoring Station concurrent connection, headset parts, installation, management services, and support agreement was purchased due to the successful outcome of the original request.

In December of 2020, an additional eight (8) AvaSure Telesitter units were purchased due to COVID-19 pandemic to utilize in person sitters for other COVID efforts.

In July of 2021, the AvaNet Support Agreement and Online Reporting of Nursing Analytics (ORNA) Subscription were renewed for an additional three years through May 16, 2024.

In August of 2021, an additional four (4) Guardian Hardware Mobile devices were ordered for a third workstation in the staffing office.

This new agreement is for a five (5) year full subscription term. The existing hardware and software will be traded in. The equipment will be replaced with new, leased Guardian Hardware devices and the perpetual licensed software is being upgraded to the Subscription Enterprise Platform. Any unused portion of the current AvaNET agreement will be credited back to RUHS once the Go Live is determined. Credit to be calculated on a prorated daily basis from Go Live date through May 16, 2024.

This Agreement requires Board approval as the annual compensation of the Agreement exceeds the Purchasing Agent's delegated authority for contracting with a single vendor per Resolution 2021-116.

SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH  
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

ATTACHMENT A     Equipment Purchase, License, and Services Agreement

  
\_\_\_\_\_  
Meghan Hahn, Director of Procurement     1/2/2024

            
\_\_\_\_\_  
Douglas Cordonez Jr.     Douglas Cordonez Jr.     Douglas Cordonez Jr.     1/3/2024

  
\_\_\_\_\_  
Gregg Gu, Chief Deputy County Counsel     1/3/2024

**EQUIPMENT PURCHASE, LICENSE, AND SERVICES AGREEMENT**

**for**

**AVASURE TELESITTER® SOLUTION**

**between**

**COUNTY OF RIVERSIDE**

**and**

**AVASURE, LLC**



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This Agreement, made and entered into this \_\_\_ day of \_\_\_, 2023, by and between AvaSure, LLC, (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree that the Amended and Restated Equipment Purchase, License and Services Agreement between the parties dated June 1, 2021, will be terminated and void as of the effective date of this Agreement. The parties agree as follows:

**1. Description of Equipment, Software Licenses, and Services**

**1.1** CONTRACTOR shall provide all equipment, software licenses, and related services as outlined and specified herein and as further described in (a) Exhibit A, AvaSure Statement of Work, (b) Exhibit B, AvaNET Support Services and, (c) Exhibit C, ORNA<sup>®</sup> Subscription and License, (d) at the prices stated in Exhibit D, Schedule and Payment Provisions, and (e) in accordance with Attachment I, HIPAA Business Associate Attachment to the Agreement.

**1.2** CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

**1.3** CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit D. CONTRACTOR is not to perform services or provide products outside of the Agreement.

**1.4** Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

**2. Period of Performance**

**2.1** This Agreement shall be effective upon signature of this Agreement by both parties and continues in effect for five (5) years, with the option to renew for two (2) additional years in one-year increments by written amendment, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

**3. Compensation**

**3.1** The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit D. Maximum payments by COUNTY to CONTRACTOR shall not exceed one million three hundred forty-five thousand seven hundred eighty-three dollars and sixty cents (\$1,345,783.60) annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit D, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.



**3.2** No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

**3.3** CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made in accordance with the payment terms outlined in Exhibit D. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

County of Riverside University Health Systems  
Nursing Administration Department  
Attn: Paul Woodward  
26520 Cactus Avenue  
Moreno Valley CA 92555

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.

**3.4** The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made, and invoices shall be rendered "monthly" in arrears. In the State of California, Government agencies are not allowed to pay excess interest and late charges, per Government Codes, Section 926.10. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

**4. Alteration or Changes to the Agreement**

**4.1** The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such

alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

**4.2** Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

## **5. Termination**

**5.1.** COUNTY may terminate this Agreement without cause upon sixty (60) days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

**5.2** COUNTY may, upon five (5) days written notice terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress that may endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

**5.3** After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

**5.4** After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

**5.5** CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

**5.6** If the Agreement is federally or State funded, CONTRACTOR cannot be debarred from the System for Award Management (SAM). CONTRACTOR must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>)

(Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

**5.7** The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

**6. Licenses; Ownership/Use of Contract Materials and Products.**

**6.1 Software License.** Subject to the terms and conditions of this Agreement (including the payment of the applicable amounts set forth in the Schedule), CONTRACTOR hereby grants to COUNTY (or the applicable Affiliate) a non-exclusive, non-transferable limited license to use the Software during COUNTY's active Subscription Term solely (i) at the applicable permitted Deployment Location(s) as set forth in the Schedule, (ii) for COUNTY's or Affiliates' internal business purposes, (iii) with the Deliverables or with such other equipment approved in writing by CONTRACTOR, and (iv) in a manner and scope set forth in this Agreement. COUNTY may not rent, lease, sell or otherwise transfer or distribute copies of Software License to others including Affiliates not specifically named as a permitted Deployment Location(s) in an executed Schedule.

COUNTY acknowledges that the Software is licensed, not sold, to COUNTY by CONTRACTOR, that COUNTY and Affiliates shall not acquire any ownership interest in the Software under this Agreement, and that CONTRACTOR and its licensors reserve and retain their entire right, title and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software except as expressly granted herein. COUNTY and Affiliates shall use commercially reasonable efforts to safeguard the Software from infringement, misappropriation, theft, misuse or unauthorized access.

**6.2 Updates and Upgrades to Software.** From time to time, Updates and/or Upgrades may become available. When such Updates and/or Upgrades are made available on a general basis, Client may elect to have the Update or Upgrade installed on Client's system via SecureLink access or similar means. Updates and Upgrades may require downtime of Client's system, and AvaSure will coordinate times with Client to help minimize operational impact of the proposed Update or Upgrade. Notwithstanding any other remedy available to Client, AvaSure shall develop Updates in order to comply with active warranties under this Agreement, which will be made available to Client after internal beta releases or production releases, along with any necessary software Documentation related to such Updates. Updates and Upgrades shall be made available and provided to Clients as part of their purchased Maintenance as more fully described in Exhibit B, the AvaNET SSA. AvaSure represents and warrants that all Updates and Upgrades will comply with applicable International, Federal, State, and local laws, rules and Government regulations. On-site training or consulting services requested by Client as a result of Updates and/or Upgrades are not included and shall be procured by Client from AvaSure pursuant to

an additional Schedule.

**6.3 Service Level Response Times.** AvaSure will provide Maintenance in accordance with the AvaNET SSA, attached hereto as Exhibit B.

**6.4 AvaSure Program Materials License.** Subject to the terms and conditions of this Agreement (including the payment of the applicable amounts set forth in the Schedule), CONTRACTOR hereby grants to COUNTY or the applicable Affiliate a nonexclusive, nontransferable perpetual license to use AvaSure Program Materials solely (i) at the applicable permitted Deployment Location(s) as set forth in the Schedule, (ii) for COUNTY's or Affiliates' internal business purposes, (iii) with the Deliverables, and (iv) in a manner and scope set forth in this Agreement. COUNTY may not rent, lease, sell or otherwise transfer or distribute copies of the AvaSure Program Materials to others, including Affiliates not specifically named as a permitted Deployment Location(s) in an executed Schedule.

CONTRACTOR represents and warrants that it owns or has obtained the rights to license to COUNTY the AvaSure Program Materials delivered under this Agreement. COUNTY acknowledges that the Program Materials are licensed, not sold, to COUNTY by CONTRACTOR and that COUNTY and Affiliates shall not acquire any ownership interest in the Program Materials under this Agreement and that CONTRACTOR and its licensors reserve and retain their entire right, title and interest in and to the Program Materials and all Intellectual Property Rights arising out of or relating to the Program Materials except as expressly granted herein. COUNTY and Affiliates shall use commercially reasonable efforts to safeguard the Program Materials from infringement, misappropriation, theft, misuse or unauthorized access.

**6.5 Restrictions.** COUNTY and its Affiliate(s) shall not, and shall not permit any of its Representatives or third parties to, in any manner (a) modify, alter, amend, fix, translate, enhance or otherwise create derivative works of the Software, Equipment or AvaSure Program Materials; (b) reverse engineer, disassemble, decompile, decode or adapt the Software or Equipment, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (c) remove, disable, or otherwise create or implement any workaround to, any security features contained in the Software or Equipment; (d) remove, delete or alter any trademarks, copyright notices or other Intellectual Property Rights notices of AvaSure or its licensors, if any, from the Software, Equipment, or AvaSure Program Materials; (e) copy the Software, Equipment, AvaSure Program Materials or other Deliverables, in whole or in part unless pre-authorized in writing by CONTRACTOR; (f) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Software, Equipment, AvaSure Program Materials or other Deliverables available to any third party for any reason; or, (g) use the Software, Equipment, AvaSure Program Materials anywhere other than the applicable permitted Deployment Location(s) as set forth in the Schedule or otherwise in violation of this Agreement or any federal, state or local law, regulation or rule.

**6.6 Ownership of Metrics and Reports.** COUNTY acknowledges that CONTRACTOR has and will expend significant resources gathering, assembling and compiling data and information generated by the provision of the Services, ORNA, and the licensing of the Software and AvaSure Program Materials. COUNTY acknowledges that such information and data is the exclusive property of CONTRACTOR. Any derivative works thereof, based on, derived from or otherwise using any such information and data also are the sole and exclusive property of CONTRACTOR. COUNTY acknowledges that CONTRACTOR may use any such information and data for any and every lawful purpose that does not violate any applicable federal, state, or local regulation, including the privacy and security standards promulgated pursuant to HIPAA. CONTRACTOR 's ownership of such data and information shall continue in perpetuity and beyond the termination of this Agreement. Under no circumstances shall CONTRACTOR utilize or disseminate any patient or healthcare information disclosed by COUNTY other than in a de-identified, aggregate manner in compliance with HIPAA. Subject to the terms and conditions of this Agreement, CONTRACTOR hereby grants to COUNTY a non-exclusive, non-transferable, limited license to use the documentation and reports provided hereunder solely for COUNTY's internal business purposes, and in the manner and scope set forth herein. COUNTY may not rent, lease, sell or otherwise transfer or distribute its license without written permission of CONTRACTOR.

## **7. Representation and Warranty**

CONTRACTOR acknowledges that COUNTY is relying on these representations and warranties as essential elements to this Agreement. All of the warranties referenced or set forth in this Agreement shall be in addition to all other warranties which may be prescribed by law, including, without limitation, the warranty of merchantability and fitness for a particular purpose.

### **7.1 Equipment and Software Representations and Warranties.**

CONTRACTOR represents and warrants that all Equipment provided under this Agreement, as of the date of Acceptance (a) are new and unused (unless otherwise specified or agreed to in writing by COUNTY) and free from material defects in material and workmanship; (b) are generally of the quality, size, dimension and specifications ordered; (c) meets the performance and manufacturing specifications as described in the Documentation, SOW, Schedule or other Exhibit in all material respects; (d) are not, to CONTRACTOR's knowledge, restricted in any way by patents, copyrights, trade secrets, security interest, lien, or any other encumbrances or rights of third parties, and (e) shall have been properly stored, labeled, handled and shipped by CONTRACTOR.

CONTRACTOR further represents that (f) Software will function in conformance with its Specifications for a minimum period of twelve (12) months from the date of Go Live, and for the duration of COUNTY's Subscription Term and AvaNET Support Services ("Software Warranty Period"); (g) Software shall be free of material defects; and (h) that the Software shall not include any disablers, time-bombs, including encrypted

software keys, Trojan horses and any other such virus or other instructions of any kind designed to terminate or disrupt the operation of the Software. Upon any failure of the Software to function in conformance with its Specifications during the Software Warranty Period, CONTRACTOR shall promptly, and at no charge to COUNTY, repair or replace the Software.

Further, CONTRACTOR warrants that it shall pass through any manufacturer's warranties and indemnities for any hardware provided under this Agreement.

**7.2 General Services Warranty.** CONTRACTOR warrants that the Services provided to COUNTY will be performed in a competent, workman-like, timely and professional manner, which shall meet or exceed industry standards. CONTRACTOR will be responsible for the quality of Services performed by CONTRACTOR Personnel and the delivery of Deliverables. CONTRACTOR warrants and represents that each individual providing Services (i) will possess all capabilities, knowledge, training, and expertise necessary to perform, in a satisfactory and efficient manner, the Services described herein, (ii) is familiar with all applicable federal, state and local laws, regulations, standards, requirements, and guidelines applicable to the provision of Services to COUNTY ("Applicable Laws"), and (iii) shall perform their respective obligations hereunder in accordance with all Applicable Laws and standards of COUNTY. COUNTY will have the right of refusal for any CONTRACTOR Personnel assigned to perform services on-site at the permitted Deployment Location(s) under this Agreement. In the event CONTRACTOR is notified of a breach of this warranty, CONTRACTOR shall re-perform the nonconforming services or refund a pro-rated portion of any prepaid fees, at COUNTY's discretion.

**7.3 Title to Deliverables.** CONTRACTOR represents it possesses and shall transfer good and marketable title to any Equipment among the Deliverables upon full payment for same by COUNTY.

**7.4 Non-Infringement.** CONTRACTOR warrants that CONTRACTOR's Software, Equipment and AvaSure Program Materials and/or COUNTY's Permitted Uses of the Equipment, Software and Program Materials do not at the time of this Agreement infringe upon the copyright, patent or other proprietary rights of others. If the Equipment, Software, or Program Materials become, or in CONTRACTOR's opinion is likely to become, subject to an infringement claim, CONTRACTOR may, at its sole option and expense, take any of the following steps: (i) obtain the right for COUNTY to continue to use the affected Deliverable; (ii) modify or replace the affected Deliverable with functionally equivalent software, materials or products that CONTRACTOR believes to be non-infringing, which software, materials or products must be approved by COUNTY; or, (iii) if neither (i) or (ii) is possible, immediately terminate this Agreement on written notice to COUNTY and promptly provide to COUNTY a pro-rata refund of the fees paid by COUNTY for the portion of the Deliverables that is deemed to be infringing.

**7.5 Exclusions.** Notwithstanding anything to the contrary, the limited warranties set forth in this Section shall not apply to problems arising out of or relating to: (i) Software, Equipment, Program Materials or

other Deliverables that are modified or damaged by COUNTY or its Representatives, or any other software or hardware that are operated with or incorporated into the Software or Equipment other than in material compliance with the specifications in the Documentation; or (ii) COUNTY or a third party's negligence, abuse, misapplication or misuse of the Software, Equipment, Program Materials or other Deliverables, including any use of the Software, Equipment, Program Materials or other Deliverables other than in material compliance with the specifications in the Documentation.

## **8. Conduct of Contractor**

**8.1** The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

**8.2** The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

**8.3** The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

## **9. Inspection of Service; Quality Control/Assurance**

**9.1** All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected; the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

**9.2** CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time, upon reasonable notice to the CONTRACTOR.

**10. Independent Contractor/Employment Eligibility**

**10.1** The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

**10.2** CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed by the law.

**10.3** Ineligible Person shall be any individual or entity who: Is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

**10.4** CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services directly relative to this Agreement. CONTRACTOR shall screen all current Covered Individuals within sixty (60) days of execution of this Agreement to ensure that they have not become Ineligible Persons unless CONTRACTOR has performed such screening on same Covered Individuals under a separate agreement with COUNTY within the past six (6) months. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment,



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exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual providing services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an Ineligible Person.

**10.5** CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement.

**10.6** CONTRACTOR shall notify COUNTY within five (5) business days if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be promptly removed from participating in any activity associated with this Agreement.

**11. Subcontract for Work or Services**

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

**12. Disputes**

**12.1** The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

**12.2** Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

**13. Licensing and Permits**

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required

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by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

**14. Use By Other Political Entities**

The CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

**15. Non-Discrimination**

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. §1210 et seq.) and all other applicable laws or regulations.

**16. Records and Documents**

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

**17. Confidentiality**

**17.1** The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

**17.2** The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other

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than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

**17.3** The CONTRACTOR is subject to and shall operate in compliance with all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, enacted August 21, 1996, and the related laws and regulations promulgated subsequent thereto. Please refer to Attachment 1 of this Agreement.

**17.4** Each Party acknowledges and agrees that it may gain access to or become familiar with the other Party's Confidential Information. Each Party, as the receiving Party, shall (i) protect and safeguard the disclosing Party's Confidential Information with at least the same degree of care as the receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to perform its obligations under this Agreement, or otherwise to be used in any manner to the Disclosing Party's detriment; (iii) not disclose any such Confidential Information to any person or entity, except to the receiving Party's Representatives for purposes consistent with Client's own allowable uses hereunder; and (iv) be responsible for any breach of this Agreement caused by any of its Representatives. The receiving Party may disclose the disclosing Party's Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order or bona fide legal process issued by a court or governmental agency of competent jurisdiction, provided that the receiving Party shall first provide the disclosing Party with prompt written notice of such requirement so that the disclosing Party may seek, at its sole cost and expense, a protective order or other remedy and reasonable assistance, at the disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

**18. Administration/Contract Liaison**

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

**19. Notices**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

**COUNTY OF RIVERSIDE**

Riverside University Health Systems  
26520 Cactus Avenue  
Moreno Valley CA 92555  
Attn: Purchasing

**CONTRACTOR**

AvaSure, LLC  
5801 Safety Drive NE  
Belmont, MI 49306  
Attn: Contracts/Legal

**20. Force Majeure**

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

**21. EDD Reporting Requirements**

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at [www.edd.ca.gov](http://www.edd.ca.gov).

**22. Hold Harmless/Indemnification**

**22.1** CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents 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 CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way

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relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature. CONTRACTOR shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.

**22.2** 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 own 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 indemnification to Indemnitees as set forth herein.

**22.3** CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

**22.4 Disclaimer and Limitation of Liability.** In no event shall CONTRACTOR or any of its Representatives be liable for any special, indirect, incidental, consequential, punitive or other similar damages, including but not limited to, damages for loss of profits or revenue, or loss of use, data, revenue or profit, whether arising out of breach of contract, tort, save for the limited exception of CONTRACTOR's negligence or intentional acts, or otherwise, regardless of whether such damages were foreseeable and whether or not COUNTY was advised of the possibility of such damages. CONTRACTOR is not liable for unlicensed media used by COUNTY. COUNTY acknowledges and agrees that the maximum recovery COUNTY may receive from CONTRACTOR on any theory of liability or damages is an amount equal to three (3) times the fees paid to CONTRACTOR by COUNTY in the calendar year in which the event or actions giving rise to liability for CONTRACTOR took place.

COUNTY agrees and acknowledges that COUNTY's use of the Deliverables for any application related to patient care and/or monitoring (including both images and oral communication) is the sole responsibility of COUNTY based upon COUNTY's policies, procedures and clinical judgment. COUNTY further acknowledges and agrees that the use of the Deliverables contemplates and requires the involvement of COUNTY's Representatives and that CONTRACTOR is not engaged in the practice of medicine and has not represented the Deliverables have the ability to perform any tasks that constitute the practice of medicine. COUNTY acknowledges that CONTRACTOR: (i) has no control of or responsibility for the use of the Deliverables by COUNTY and its Representatives and (ii) has no knowledge of the specific, individual or unique circumstances under which the information derived from use of the Deliverables may be used by COUNTY on particular patients. COUNTY acknowledges that federal and state laws may govern the use of the Deliverables for patient

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care and monitoring, and that it shall be COUNTY's sole responsibility to determine if the intended use of the Deliverables by COUNTY comply with such laws.

**22.5** The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

**23. Insurance**

**23.1** Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

**A. Workers' Compensation:**

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

**B. Commercial General Liability:**

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

**C. Vehicle Liability:**

If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

**D. Professional Liability.** Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate. If Contractor's Professional Liability Insurance is

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written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

**E. General Insurance Provisions - All lines:**

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other

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attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

## **24. General**

**24.1** CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**24.2** Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

**24.3** In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

**24.4** CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.



**24.5** CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

**24.6** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

**24.7** The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

**24.8** CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

**24.9** CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

**24.10** CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

**24.11** This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

## **25. Definitions**

**"Acceptance"** means when COUNTY in good faith agrees that the Software and Equipment are operating in accordance to specifications and are ready for clinical use. COUNTY's Acceptance shall be memorialized in writing by signature of its authorized representative of an Acceptance Addendum, in the format attached hereto and incorporated into this Agreement by reference as Addendum A.

**"Agreement"** means, collectively, (i) this base Agreement, (ii) the CONTRACTOR Statement of Work ("SOW"), attached hereto and incorporated herein as Exhibit A, (iii) AvaNET Support Services Agreement ("AvaNET SSA"), attached hereto and incorporated herein as Exhibit B, (iv) ORNA™ Subscription and License Agreement ("ORNA SLA"), attached hereto and incorporated herein as Exhibit C, and (v) a Schedule ("Schedule") in substantial form to that which is attached hereto and incorporated herein as Exhibit D. In the event of any inconsistency between the Agreement and any of its Exhibits, this Agreement shall control. Further,

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any modification within an executed Schedule shall only apply to that particular Schedule and shall not carry forward to other Schedules. CONTRACTOR reserves the right to amend the Exhibits to the Agreement from time to time to remain consistent with CONTRACTOR's policies and current product and/or service offerings. Any such amendments shall be mutually agreed to between the Parties in the form of a written Amendment to this Agreement.

**"Affiliates"** means any and all companies or affiliates which control, are controlled by, or are under substantially common control with COUNTY.

**"CONTRACTOR Personnel"** means agents, employees, consultants or subcontractors engaged or appointed by CONTRACTOR.

**"AvaSure Program Materials"** or **"Program Materials"** is a complete tool kit of program building and maintenance guidelines for the TeleSitter program, including, but not limited to: policy and procedure templates, program algorithms, patient selection guidelines, operational models, job descriptions, customized training materials, patient education materials, a library of logs, charts and electronic documentation builds, and all other related clinical materials supplied by CONTRACTOR or CONTRACTOR Personnel to COUNTY, whether in print, machine readable media or other format. AvaSure Program Materials are licensed by Deployment Location.

**"Confidential Information"** means all nonpublic or proprietary information treated as confidential by a Party and disclosed by one Party to the other during the course of this Agreement, including, without limitation, all: (a) information concerning a Party's past, present and future business affairs including finances, products, services, organizational structure, internal practices, forecasts and sales; (b) unpatented inventions, ideas, methods and discoveries, trade secrets, know-how and other confidential intellectual property; (c) designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing; (d) any third-party confidential information included with, or incorporated in, any information provided by a Party; (e) all patient information (including medical and financial records), payer contracts, appeals or other payer information, employee information; (f) all AvaSure Program Materials; and (g) all notes prepared by or for a Party or its Representatives that contain, reflect or are derived from, in whole or in part, any of the foregoing. Except as required by applicable federal, state or local law or regulation, "Confidential Information" shall not include information that, at the time of disclosure: (1) is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Agreement by the receiving Party or any of its Representatives; (2) is, or thereafter becomes, available to the receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (3) was known by or in the possession of the receiving Party or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of the disclosing Party; or (4) was or is independently developed by the receiving Party, as established by documentary evidence, without reference to or use of, in whole or in part, any of the disclosing Party's Confidential Information. "Confidential Information" shall further include the Confidential Information of Affiliates.

**"Deliverables"** means all items that CONTRACTOR prepares for or provides to COUNTY as described in the Agreement. Deliverables include, but are not limited to, hardware, Software, parts, equipment, Services, AvaSure Program Materials, Documentation, as well as subscription and support services.

**"Deployment Location(s)"** means the facility(ies) and/or location(s) where Deliverables may be provided or licensed as described in this Agreement pursuant to an executed Schedule(s).

**“Documentation”** shall mean any user guides, operating manuals, and specifications, and all materials supplied by CONTRACTOR or CONTRACTOR Personnel to COUNTY, whether in print, machine readable media, or other form, that describe the installation, operation, use or technical specifications of the Deliverables or Software.

**“Equipment”** shall mean the physical units/devices , including all components, parts and hardware provided to COUNTY by CONTRACTOR under this Agreement.

**“Equum Medical Personnel”** means employees, agents, consultants, or subcontractors engaged or appointed by CONTRACTOR to provide Monitoring Services.

**“Go Live”** shall mean the date when the Software, Equipment and other Deliverables first become available for active use by COUNTY. In the event COUNTY has elected to install Deliverables on its own, the Go Live date shall become the date the Deliverables are received by COUNTY.

**"Intellectual Property Rights"** means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including AvaSure Program Materials and computer programs) and rights in data and databases, (d) trade secrets, know-how and other confidential or proprietary information (including as contained in AvaSure Program Materials), and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law, regulations or rules in any jurisdiction throughout the world.

**“Monitoring Services”** means the valued-added services provided directly by Equum Medical Personnel in operating the AvaSure TeleSitter® Solution and collaborating with Client’s clinical staff to observe individuals for, with and on behalf of Client whether on-site or remotely, as described in this Agreement and pursuant its Exhibits and executed Schedule(s).

**“Permitted Use”** means use of the Software, AvXcel™ Program Materials, and Deliverables by a user authorized by COUNTY or Affiliates at a permitted Deployment Location(s) for the intended purpose of the Software, AvaSure Program Materials or Deliverables in the ordinary course of COUNTY’s or Affiliates’ internal business operations/purpose.

**"Representatives"** means a Party's and its successors' and permitted assigns' affiliates, employees, officers, directors, partners, shareholders, agents, attorneys, accountants, and third-party advisors, including Affiliates.

**"Services"** means work CONTRACTOR performs on behalf of or for COUNTY, whether on-site or remote, as described in this Agreement pursuant to an executed Schedule(s).

**“Software”** means the server software, the monitoring station client software, and/or any other software provided and licensed to COUNTY by CONTRACTOR. Software includes applicable Documentation and end-user license code.

**“Statement of Work”** or **“SOW”** means the document attached hereto as Exhibit A, which describes in further detail the Services to be performed and identifies additional responsibilities of the Parties, as delineated in each executed Schedule.

**“Subscription Term”** means the term during which COUNTY shall lease AvaSure Software from AvaSure under the terms of this Agreement, and pursuant to each executed Schedule.

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**“Support Services”** or **“AvaNET Support Services”** or **“AvaNET SSA”** means the maintenance and support of Software and Equipment performed by CONTRACTOR as described in this Agreement for the duration of the Subscription Term indicated in an executed Schedule(s), and as further described in Exhibit B.

**“Taxes”** means any and all applicable taxes, charges, fees, levies or other assessments imposed or collected by any governmental entity or any political subdivision thereof and however designated or levied on sales of Deliverables, or sales, use, transfer, goods and services or value added tax or any other duties or fees related to any payment made by COUNTY to CONTRACTOR for Deliverables provided by CONTRACTOR to COUNTY, under or pursuant to, the Agreement.

**“Updates”** means any interim releases of the Software containing modifications, error corrections, revisions, bug fixes, or patches used to (i) fix or improve the Software, (ii) conform the Software to regulatory requirements, or (iii) comply with the warranties described in this Agreement. Updates are indicated by changes in the tenths or hundredths of the Software version number. Updates do not include new modules or a new product by virtue of different features or functionality.

**“Upgrades”** means any new versions or releases of the Software adding new functionality or components. Upgrades are indicated by adding a new digit to the Software version number.

## 26. **Entire Agreement**

This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

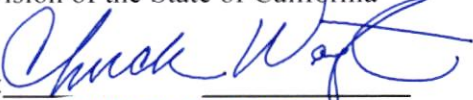
27. **Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The parties further agree that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital


signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political subdivision of the State of California

AVASURE, LLC, a Michigan limited liability company

By:   
Name: **CHUCK WASHINGTON**  
Title: Chair, Board of Supervisors  
Dated: 1/9/24

By:   
Name: Kyle Pett  
Title: President & COO  
Dated: Dec 19, 2023

**ATTEST:**

**Kimberly A. Rector**  
Clerk of the Board

By:   
**Deputy**

APPROVED AS TO FORM:

**Minh C. Tran**  
County Counsel

By:   
Gregg Gu  
Chief Deputy County Counsel

Dec 22, 2023

## Exhibit A

### Scope of Work

#### AvaSure Statement of Work (SOW)

- 1.0 Scope.** This SOW is subject to and supplements and amends the Agreement between AvaSure, LLC (“AvaSure” or “CONTRACTOR”) and the County of Riverside (“COUNTY” or “Client”) with respect to the license of certain Software, Program Materials, and other Deliverables, the sale of certain Equipment, and the provision of certain Services, further described below and pursuant to each executed Schedule, by AvaSure to Client, and is expressly incorporated into and made a part of the Agreement.
- 2.0 Solution Summary.** Pursuant to each executed order Schedule, AvaSure will deliver and install the TeleSitter Solution for Client in accordance with the Agreement and pursuant to the specifications within this SOW. Items not included in an executed order Schedule will not be included in the scope of the related project. The installation of the TeleSitter Solution includes equipment, software that operates over Client’s existing network, and the implementation of protocols and processes for use of the TeleSitter Solution includes clinical and other materials to calibrate and integrate with Client's delivery system. Together, the system and clinical and other materials provides Client the ability to monitor, communicate, engage and respond to changing patient circumstances and conditions.

The installation of the TeleSitter Solution includes Equipment, Software that operates over Client’s existing network, and the implementation of workflows and processes for use of the TeleSitter Solution, including clinical and other materials to calibrate and integrate with Client's delivery system. Together, the system and clinical and other materials provides Client the ability to monitor, communicate, engage and respond to changing patient circumstances and conditions.

**2.1 AvaSure’s TeleSitter Solution includes the following Deliverables:**

- 2.1.1 Equipment;
- 2.1.2 Server Software License;
- 2.1.3 Client (monitoring station) Software License;
- 2.1.4 Clinical Program Materials License;
- 2.1.5 Services, including Technical Services and Training, and the Clinical Services Program;
- 2.1.6 AvaNET Support Services; and,
- 2.1.7 ORNA<sup>®</sup> (Online Reporting of Nursing Analytics) Program Metrics and Analytics Subscription and License.

**2.2 Implementation Meetings and Scheduling**

- 2.2.1 Initial Teleconference Call with AvaSure Project Manager
- 2.2.2 Project Kick-off Teleconference Call
- 2.2.3 Recurring teleconference Project Implementation Meetings

**2.3 Engineering and Technical Management.** Provision of technical support and installation of the TeleSitter program, including, but not limited to:

- 2.3.1 Identification of Client-specific server specifications, design guidance, and software installation
- 2.3.2 Identification of Monitor station PC specifications, design guidance, and software installation
- 2.3.3 System initialization and test verification
- 2.3.4 Review of existing Client-supplied wireless heat maps for connectivity testing
- 2.3.5 TeleSitter Solution technical training

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**2.4 Technical Services and Training – On-Site or Remote.**

**2.4.1 On-Site Technical Deployment and Training Services.** AvaSure shall provide personnel to conduct on-site technical deployment and training, subject to availability and implementation requirements, as more fully described in each executed Schedule. Standard on-site technical deployment and training services shall be scheduled for a period of one work week, with deployment and training conducted on Tuesdays, Wednesdays, and Thursdays between the hours of 8:00 am and 5:00 pm (local time). Mondays and Fridays are reserved for travel time. Additional training hours and/or days are available subject to approval by AvaSure and are subject to additional fees. Each On-Site Technical Deployment and Training Program shall include the following:

**2.4.1.1** Cart and/or System assembly and configuration (as applicable)

**2.4.1.2** Server Software installation

**2.4.1.3** Monitoring station and training room Software installation

**2.4.1.4** In-Room installation of Equipment (as defined in the related Schedule) - Hospital responsible for electrical and data into room

**2.4.1.5** Connectivity testing (as applicable)

**2.4.1.6** Troubleshooting guides & training session(s)

**2.4.2 Remote Technical and Training Services.** AvaSure shall provide personnel to conduct remote technical deployment and training, subject to availability and implementation requirements, as more fully described in each executed Schedule. Standard remote technical and training services shall be scheduled Mondays-Fridays between the hours of 8:00 am and 5:00 pm (EST). Additional training hours and/or days are available subject to approval by AvaSure and may be subject to additional fees. Each Remote Technical and Training Program may include the following:

**2.4.2.1** Device Configuration Pre-Ship

**2.4.2.2** Phone/Email Support to On-Site Staff

**2.4.2.3** Remotely adding devices to Server

**2.4.2.4** Remote Configuration/Test Support

**2.5 AvaSure Clinical Services.** AvaSure shall provide personnel to assist in ensuring a successful TeleSitter program development and Go Live, followed by ongoing post Go Live support. The Clinical Program Materials License provides for the use of AvaSure's proprietary Program Materials in the implementation and training processes involved in the Clinical Program.

**2.5.1 Clinical Program Development and Clinical Program Materials.** The provision of customized planning and program development, and licensed Clinical Program Materials such as documentation, policies, and workflow, representing industry best practices for the TeleSitter program, including, but not limited to:

**2.5.1.1** Customized training schedule

**2.5.1.2** Clinical education & training materials

**2.5.1.3** Monitor staff training materials

**2.5.1.4** Job descriptions

**2.5.1.5** Staffing structure model guidance

**2.5.1.6** Patient selection guides

**2.5.1.7** Sample TeleSitter policies and workflows

**2.5.1.8** Patient education materials

**2.5.1.9** Internal marketing and awareness plan, with related materials

**2.5.2 On-Site Clinical Training and Go Live.** AvaSure may provide personnel to conduct on-site clinical training, subject to availability and implementation requirements, as more fully described in each executed Schedule. AvaSure offers varying training models based on the

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scope of each Client's program, with standard on-site clinical training and Go Live services scheduled for a period of one work week, with training conducted on Tuesdays, Wednesdays, and Thursdays between the hours of 7:00 am and 9:00 pm (local time). Mondays and Fridays are reserved for travel time. Additional clinical training and Go Live hours and/or days are available subject to approval by AvaSure and are subject to additional fees. Each On-Site Clinical Training Program may include the following (refer to Schedule for specific Deliverables):

- 2.5.2.1 Multiple eLearning modules for all hospital staff
- 2.5.2.2 Monitor Staff interactive practice
- 2.5.2.3 Global Hospital Awareness training
- 2.5.2.4 Gatekeeper training
- 2.5.2.5 Clinical Champion training
- 2.5.2.6 Transitional Care training
- 2.5.2.7 Go Live Support
- 2.5.2.8 One Follow Up visit within one year of Go Live date

**2.6 Ongoing Clinical Program Support.**

- 2.6.1 Post Go Live support
- 2.6.2 Ongoing follow-up calls to ensure program success
- 2.6.3 Ongoing data review to assist in program success metrics

**2.7 AvaNET Support Services.** Client software support services and extended equipment warranty, as more fully described in Exhibit B to the Agreement.

**2.8 ORNA (Online Reporting of Nursing Analytics) Subscription and License.** Participation in the national TeleSitter Program database providing hospital specific analysis, as more fully described in Exhibit C to the Agreement.

**2.9 Remote Patient Monitoring Services.** Remote patient monitoring services provided in accordance with Attachment 1 to Exhibit A.

**3.0 Orders and Modifications.**

- 3.1 The Deliverables and fixed charge for same for each order shall be defined in each executable, applicable Schedule, which shall be in substantial form to Exhibit D to the Agreement.
- 3.2 For any hardware, software, materials, or services not identified in a previously executed Schedule, Client and AvaSure will be required to execute a new mutually agreeable Schedule in substantial form to Exhibit D, which shall list all out of scope item(s) and associated charges and incorporate the terms and conditions of the Agreement.
- 3.3 Should Client fail to pay any undisputed invoices when due, or delay or stop work on a project for any reason beyond AvaSure's control, and such delinquent payment or delay shall continue for a period exceeding forty-five (45) days, AvaSure may place the project "ON HOLD" and Client shall pay for all Deliverables and/or Services to date, provided AvaSure has provided Client with written notice of the undisputed amount in arrears. AvaSure will work with Client to resume projects placed "ON HOLD" at the earliest available date after receipt of past-due payments by AvaSure from Client.



- 3.4 In the event final installation and deployment of Deliverables is delayed for reasons caused by or requested by Client, AvaSure shall be permitted to bill Client, and Client shall pay, for the pro-rata share of those installations completed consistent with the executed Schedule, notwithstanding some portion of the Deliverables' installation are yet to be completed. Incremental billings shall then occur as needed until all installations are finalized.
- 3.5 In the event Client cancels and/or reschedules an on-site deployment or training after travel arrangements have been secured, and AvaSure in good faith cannot reschedule its resources, AvaSure shall be permitted to bill Client, and Client shall pay, a cancellation fee not to exceed thirty percent (30%) of the total implementation service deliverables charge listed in the applicable Schedule, and Client shall additionally be responsible for and shall be billed for actual travel costs, including non-refundable airline tickets, incurred by AvaSure as a result. In order to provide the best pricing to Client, all travel expenses assume four (4) weeks advanced notice to AvaSure for scheduling.
- 3.6 The AvaSure Mobile Carts and Portable Room Systems are designed to be moved, and can be moved by Client from room to room. In the event that any Equipment has been moved or modified by any person or entity other than AvaSure except as instructed in the Documentation, and in AvaSure's reasonable opinion, damage or improper operation has resulted from such action, the costs of any necessary repairs or replacement to such damaged Equipment shall be the sole responsibility of Client. Client shall also be responsible for the costs of any time spent by AvaSure with respect to remediation of the moved/modified Equipment at AvaSure's then current time and materials rate.
- 3.7 The AvaSure Program Materials are proprietary materials tailored by AvaSure for the express and limited use at permitted Deployment Locations, as identified in each related Schedule. An AvXcel Program Materials License purchase is required for each initial purchase at any Deployment Location, whether or not other clinical and technical deployment and installation services are purchased. In the event that Client desires to use the Program Materials at additional permitted Deployment Locations or additional new Deployment Locations, Client shall be first required to execute a new Schedule and shall be required to pay AvaSure's then-standard licensing rates for the tailoring, customization and expanded use of the Program Materials as required for expanding the scope of the license for such materials to such additional or new Deployment Locations.
- 3.8 Client grants AvaSure a security interest in the Deliverables and any proceeds of sale, regardless of mode of attachment to realty or other property, until full payment for the Deliverables has been made.
- 4.0 **Client Cooperation.** Client acknowledges and agrees that the ability of AvaSure to provide the Services contemplated under this Agreement requires that Client provide AvaSure with all required information, cooperation and access to Client's network and facilities as necessary for AvaSure to perform its obligations hereunder, including those provisions set forth in Section 8 below. In addition, Client acknowledges and agrees that Client is responsible for purchasing any additional software, manufacturers' maintenance contracts, internet connectivity, hardware and/or Deliverables contemplated by this SOW or otherwise required to permit AvaSure to provide the Services and Deliverables. AvaSure shall not be liable for any failure to provide the Services if Client fails to honor such obligations or if such actions are undertaken by AvaSure in reliance upon inaccurate, incorrect or incomplete information provided by Client.
- 5.0 **Normal Operating Conditions.** Client is responsible for secure on-site storage for all Deliverables and related deliveries, staging, and installation and must operate, store, and maintain the Deliverables in accordance with normal operating conditions as such concept is generally understood in the computer

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industry. In general, Client is responsible for maintaining an operational environment in which the Deliverables can operate and perform properly. Examples of unacceptable conditions include, but are not limited to, extreme heat, extreme cold, dusty environments, moist environments or installations where the hardware or software is exposed to outdoor elements or rapidly changing elements. In addition, Client is responsible for complying with AvaSure or the OEM's written installation, operation, backup, storage, and support instructions relating to the Deliverables. AvaSure shall not be liable for any failure or malfunction caused due to Client's failure to comply with Normal Operating Conditions.

**6.0 General Project Details.** Project details include, but are not limited to:

- 6.1** All Equipment will be shipped within thirty (30) days of PO receipt, or as otherwise agreed between the parties, in full working order and possessing a copy of the correct OS image loaded, where applicable. Applicable training materials will be shipped separately.
- 6.2** Adequate staffing and project management will be provided by AvaSure for deployment and installation, which will include a designated Project Manager to remotely oversee the project. For clarity and efficacy, all communication affecting the technical aspects of a project must be directed through the designated Project Manager. All scheduling changes by Client must be communicated to the Project Manager in writing thirty-six (36) hours in advance, except as described in 4.4 or 4.5 above. If Client requests acceleration of the Schedule's stated timeline and same requires additional staffing and/or overtime, an additional Schedule will be required.
- 6.3** One or more of AvaSure's personnel may perform work on-site during implementation. Client agrees to designate a project representative who will be available during business hours which is defined as Monday through Friday, 8AM – 5PM (local time). Additionally, Client agrees to designate an on-site representative, and provide AvaSure personnel with contact information for such on-site representative, during non-business hours where AvaSure personnel remain on-site.
- 6.4** Unless specifically described otherwise in a Schedule, pricing provided is for work performed "during normal business hours", which is defined as Monday through Friday, 8:00 am to 5:00 pm in the time zone in which AvaSure personnel are located. Work performed outside of these hours will be subject to AvaSure pre-approval, and may be subject to additional fees.
- 6.5** AvaSure expressly retains the right to re-schedule and/or cancel any on-site technical deployment and/or on-site clinical training and Go Live in the event it is determined, at AvaSure's sole and reasonable discretion, that deployment of AvaSure Personnel would be substantially unsuccessful in attaining stated on-site objectives.
- 6.6** Review meetings will be held at milestone points in the project. These meetings are intended to facilitate discussion regarding project timelines. Client agrees to make Client's management and support personnel available as may be required by AvaSure at such milestone meetings.
- 6.7** Subject to Client's remote access and other security requirements, policies and procedures, Client shall grant AvaSure remote access to Client's systems for maintenance and support of Deliverables and for any other purpose requested by Client. AvaSure's access may require prior certification by Client that AvaSure complies with Client's security policies. If Client revises the requirements for access to its computer system, then Client must notify AvaSure of the changed or additional requirements. Client may require each individual who is to be allowed access to Client's computer system to acknowledge the individual's responsibilities in connection with the access.

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6.9 AvaSure acknowledges Client's obligations to comply with certain laws and regulations as well as the need for AvaSure and AvaSure Personnel to comply with reasonable requests, standard rules, and regulations of Client regarding personal and professional conduct (including the use of an identification badge, personal protective Deliverables, health care facility regulations, criminal background checks, credit checks, health screening and vaccinations and testing).

**7.0 Client Responsibilities.** Client responsibilities include:

- 7.1 Ensuring all sites are ready for Product delivery: Client shall ensure that any and all conditioned power, rack space, cable management, air conditioning, carrier circuit installation, or other preparation work has been completed prior to AvaSure Personnel arrival.
- 7.2 Client shall identify and have access to the main communications area in the occupied building. Client shall ensure that all carrier circuits intended to connect to AvaSure's provided or re-programmed Deliverables have been fully tested, extended, identified/labeled, and subsequently proven to be suitable to carry data network traffic.
- 7.3 If Deliverables' warehousing is not included as part of this project, Client shall implement the security measures necessary to ensure the protection and safe-keeping of purchased Deliverables.
- 7.4 If not included as part of this SOW, Client shall implement a back-up power and backup data strategy ensuring the high availability of mission critical data deliverables and applications.
- 7.5 If not included as part of this project, Client shall procure any additional required software, hardware, network wiring, patch cords, uplink cables and/or additional network deliverables in a timeframe allowing Services to be completed and completed within project milestones.
- 7.6 Client shall provide adequate office working conditions as reasonably determined by Client, including necessary telephone, desk, and network (internet) connection for remote communications with AvaSure.
- 7.7 Client shall provide AvaSure with an assigned project manager to facilitate all tasks contained within the Agreement and its Exhibits. Client shall provide AvaSure Personnel with sufficient client personnel resources while on-site in order to satisfactorily complete project parameters.
- 7.8 Client shall communicate to AvaSure any issues or desired changes to the project immediately upon discovery.
- 7.9 Client shall ensure that the work environment is free of hazardous materials and free from asbestos. Client is responsible for disclosing to AvaSure any information concerning safety issues and/or hazardous materials.
- 7.10 Client shall ensure that AvaSure is given required access to all necessary facilities, passwords, Deliverables, and other access required to successfully complete the project, inclusive of necessary local administrator rights on any servers or workstations running AvaSys software.
- 7.11 If not included as part of this project, Client shall be responsible for the backup and/or data migration of existing data unless otherwise agreed to by AvaSure.

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- 7.12 Client shall be responsible for obtaining all permits, licenses, and right of ways necessary for the completion of this project, including but not limited to building and city requirements.
- 7.13 When Client takes delivery of all Deliverables, all necessary and appropriate power rails and circuit breakers shall have been tested in the racks and cabinets where required. The physical power plant shall be verified and tested as operational to ensure it is capable of supplying appropriate power to the Deliverables intended to be installed.
- 7.14 Client shall ensure availability of necessary grounding points for Deliverables/cabinets.
- 7.15 Client shall assign implementation technicians who are deemed capable and competent to follow the implementation plan with due care and skill, and authorized to sign off and approve the required parts of the implementation.
- 7.16 Client shall assign dedicated clinical educator(s) and/or hospital staff who are deemed capable and competent to follow the Clinical Training Program with due care and skill, and who shall be available to support AvaSure's Clinical Training personnel throughout Clinical Training Program and Go Live.
- 7.17 All Client and 3rd party contractor actions that either accelerate or postpone AvaSure's responsibilities may result in an amendment to the Schedule.
- 7.18 Since remote access is required, Client shall allow remote desktop connectivity via SecureLink or similar approved access to both server(s) and monitor stations.
- 7.19 Client shall be responsible for providing most-current, existing wireless connectivity heat maps (if available).
- 7.20 Unless specifically addressed, Client is expected to have all copper and fiber runs identified (clearly labeled with an accompanying structured cabling map/diagram). Improperly labeled (or no labels) structured cabling may require an additional Schedule.
- 7.21 Client shall also be solely responsible to provide day-to-day guidance, assistance and information as is necessary for the successful and timely implementation of the project.
- 7.22 Client shall be responsible for providing environmental, electrical and telecommunications connections for the Software and Equipment as required for each as outlined by specifications provided to Client.
- 7.23 Client shall be responsible for providing access to the Software and Equipment to enable AvaSure personnel to perform the required support to such Software and Equipment.
- 7.24 Client shall be responsible for providing sufficient Client representative(s) during any on-site support activity to enable AvaSure Personnel to satisfactorily accomplish on-site objectives; and
- 7.25 Client shall maintain, at Client's sole cost and expense, all Software and supportable levels as defined within AvaSure's specifications.
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**Attachment I to Exhibit A****STATEMENT OF WORK FOR EQUUM MEDICAL MONITORING SERVICES**

- 1.0 Scope.** This SOW is subject to and supplements and amends Agreement between AvaSure, LLC (“AvaSure” or “CONTRACTOR”) and the County of Riverside (“COUNTY” or “Client”), with respect to the license and lease of certain Software, Clinical Program Materials, Equipment, and other Deliverables, and the provision of certain Services and Monitoring Services, further described below and pursuant to each executed Schedule, by AvaSure to Client, and is expressly incorporated into and made a part of the Agreement. Capitalized terms used, but not defined, in this SOW shall have the meanings set forth in the Agreement. AvaSure is a licensed re-seller of Equum Medical Monitoring Services and Equum Medical is an independent contractor of AvaSure.
- 1.1 Provision of Services.** Pursuant to those Monitoring Services purchased in each executed Schedule, Equum Medical, at the direction of AvaSure, as AvaSure’s subcontractor, and in collaboration with Client, shall provide the required staffing of trained Equum Medical Personnel to deliver Monitoring Services to Client. Equum Medical shall deliver the Monitoring Services in accordance with the Agreement and pursuant to the specifications within this SOW. Equum Medical will provide the Services in this SOW in good faith, in an ethical, professional, and workmanlike manner, and in compliance with the terms of the Agreement. Equum Medical will be responsible for the quality of Services performed by Equum Medical Personnel and the delivery of Monitoring Services.
- 1.2** The Monitoring Services shall be conducted by Equum Medical Personnel operating TeleSitter Solution Client Monitoring Equipment and Software remotely, from a secure, HIPAA-compliant location within the boundaries of the United States of America as determined in the sole discretion of Equum Medical, that operates over Client’s existing network subject to the protocols and processes for use of the TeleSitter Solution adopted by Client. Together, the system and clinical and other materials provide Equum Medical Personnel, in conjunction with the clinical staff of Client, the ability to: monitor, communicate, engage and respond to changing patient circumstances and conditions.
- 2.0 Training.** All Equum Medical Personnel assigned to provide Monitoring Services for Client shall be trained to provide Monitoring Services consistent with AvaSure’s clinical training for monitoring staff and customized planning, protocols and procedures of Client’s program as set forth by AvaSure within Exhibit A, SOW and the Clinical Materials. Equum Medical Personnel will be subject to testing and continued training from time to time at the discretion of AvaSure and Equum Medical.
- 3.0 Client Cooperation.** Client acknowledges and agrees that the ability of Equum Medical Personnel to provide the Monitoring Services contemplated under this Agreement requires that Client provide Equum Medical with all required information, cooperation and access to Client’s clinical staff, network and facilities as necessary for Equum Medical to perform its obligations hereunder, including those provisions set forth in Section 7 below. In addition, Client acknowledges and agrees that Client is responsible for purchasing any additional software, manufacturers’ maintenance contracts, internet connectivity, hardware and/or Deliverables contemplated by this SOW or otherwise required to permit Equum Medical to provide the Services and Deliverables. Equum Medical shall not be liable for any failure to provide the Services if Client fails to honor such obligations or if such actions are undertaken by Equum Medical in reliance upon inaccurate, incorrect or incomplete information provided by Client.
- 4.0 Compliance.** Equum Medical, as subcontractor of AvaSure shall be provided with a copy of and notified that they are subject to comply with the BAA between Client and AvaSure.
- 5.0 Support & Oversight.** Client shall report all incidents or complaints as to Monitoring Services to AvaSure Customer Service at 1-844-428-2797 or email at [customerservice@avasure.com](mailto:customerservice@avasure.com), for review and processing with Equum Medical.

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**Exhibit B**  
**AvaNET Support Services**

**1.0 Software Support Services.** AvaSure's software support services are available after Client first attempts to diagnosis and resolve Software functionality through its own technical personnel. In the event Client personnel are unable to resolve software issues affecting the AvaSure TeleSitter Solution ("AvaSure System"), the following services are provided by AvaSure to support and resolve Client's software issues.

**1.1 Support Coverage via Phone or Email.** AvaNET SSA support is available by contacting AvaSure Customer Care via phone at **1-844-428-2797** or via email at [support@avasure.com](mailto:support@avasure.com) 24 hours a day, 7 days a week during Client's active AvaNET SSA term (as purchased in each relevant Schedule or renewal acknowledgement).

**1.2 Incident Reporting.** The telephone number and email provided in Section 1.1 above are to be used by Client for making requests for support services under AvaNET SSA and for tracking the status of such requests.

Support requests may be made by Client personnel who have been approved to make such support requests by Client, and have been provided access to Client's Support ID Number. Client's Support ID Number shall be assigned by AvaSure prior to Go Live.

**1.3 Designated Authorized Personnel.** Configuration changes to Client's system may only be requested by Client's Designated Authorized Personnel ("DAP") designated in the relevant executed Schedule or otherwise authorized in written notice provided to AvaSure. The DAP may or may not be the same in-house technical personnel. DAP may be changed by Client from time-to-time by notifying AvaSure in writing of the replacement personnel with the Name, Telephone, Email Address and the name of the DAP being replaced.

**1.4 Problem Diagnosis Response Time.** After initial notification of a support request from Client, AvaSure Personnel will respond via phone or remote login within four (4) hours to begin to diagnose and attempt to repair the problem, except as in accordance with the times outlined in the AvaNET Tiers chart in 2.0 below. In all cases, within a maximum of six (6) hours, AvaSure Personnel will directly notify Client of the nature of the failure and the estimated time to repair, if known.

AvaSure shall utilize reasonable business efforts during the active term of this AvaNET SSA to diagnose and correct Client's Product incidents remotely via telephone, desktop collaboration, internet and/or secure SecureLink access. Remote local administrative access into the relevant server and workstations is required for AvaSure's provision of support described herein.

In the event remote repairs are attempted but unsuccessful, AvaSure will provide Client with access to spare parts/software/equipment as determined appropriate by remote diagnostics and reported failure symptoms.

**2.0 AvaNET Tiers.** AvaSure offers multiple AvaNET support options to best suit each Client's needs. All Software subscriptions include AvaNET Silver, but Client may elect to purchase AvaNET Gold or AvaNET Platinum. The following are included with each AvaNET Tier level:

Description of Service	AvaNET Silver	AvaNET Gold	AvaNET Platinum
Response to system down support request (hours)	4	2	1
Response to non-system down support request (hours)	4	4	2
Advance Replacement RMA - purchased Equipment	No	Yes	Yes
Advance Replacement RMA - leased Equipment	Yes	Yes	Yes
Headset Replacement	No	No	Yes. 1 per every 8 devices (or portion of) annually
Monthly detailed ticket report	No	Yes	Yes
Monthly ticket open/close status report	No	No	Yes
Quarterly metrics report	No	No	Yes
Antenna replacement (non surface-mount)	No	No	1 per device annually
Free Software Updates/Upgrades (additional training services not included)	Yes	Yes	Yes
AvaNET Tier Additional annual cost per device	No	Yes	Yes

**3.0 Software Updates.** Updates and Upgrades to **AvaSure System** Software will be made available to Client consistent with the Agreement and each Schedule, and same will be provided via remote SecureLink access. Upgrades and Updates may require downtime of the System and AvaSure will coordinate times with Client to help minimize the operational impact of the proposed Upgrade or Update. Should Client request additional training services after an Update and/or Upgrade, such services must be procured and billed separately.

**4.0 Equipment Warranty Coverage.** AvaSure warrants that the Equipment will function in accordance with the functional specifications provided to Client and consistent with the operation of the Equipment beginning upon Go Live and continuing for the continuously active Subscription Term, (the "Equipment Warranty Term").

In the event of a failure of a hardware component as determined by AvaSure's DAP during the active Equipment Warranty Term or an Extended Equipment Warranty term, AvaSure shall repair and/or replace the component, at its option, upon receipt of the failed component from Client. Client shall request and receive a returned merchandise authorization (RMA) from AvaSure prior to returning a failed component. AvaSure shall pay freight and insurance of the replacement component(s) back to Client. Client has been advised that to reduce operational downtime it is good practice to maintain one or more back-up devices at its operating facilities. AvaSure shall make every effort to provide a replacement that is functionally identical to the failed component, but will provide a component at least as functional as the failed component.

**4.0 Hardware and/or Software Acquired from 3<sup>rd</sup> Parties.** If AvaSure determines that a reported problem is caused by software and/or deliverables acquired by Client from a third party, and such software and/or deliverables are not an expressed Deliverable under an executed Schedule, AvaSure shall have no obligation under this AvaNET SSA with respect to that software and/or deliverables. Further, Client shall be solely responsible for contacting that third party's support operation, if any, in order to resolve the problem at issue. Client shall be solely responsible for obtaining the required support and for the cost of such support,

and AvaSure shall have no responsibility for Services or for the cost of repair with respect to problems arising from such software and/or deliverables.

**5.0 Support Coverage.** During Client's active Subscription Term, AvaSure shall provide equipment warranty coverage (not to exceed three (3) years from Go Live) and software support services described herein to Client for the Deliverables delineated in the relevant Schedule.

**6.0 Services Exclusions.** Support Services and Warranties to be provided by AvaSure hereunder do not cover repair for damages, malfunctions or service failures due to: (i) the storage, operation or support of the Software or Equipment under any condition other than normal operating conditions; (ii) any repair or support of the Software or Equipment which was performed by non-AvaSure Personnel or otherwise authorized by AvaSure in writing; (iii) Client's failure to follow AvaSure's written operation, storage or support instructions; (iv) abuse, misuse or negligent acts by anyone other than AvaSure affecting the Software or Equipment; (v) power surges; (vi) any damage or system failure resulting from Client moving the Equipment; (vii) any damage or system failure resulting from the modification of the Software or Equipment by anyone other than AvaSure; (viii) the removal or alteration of the original identification marks from any Equipment; (ix) the Software being used by Client in violation of its license; (x) Client's failure to upgrade Software to supportable levels as defined by AvaSure; or (xi) any other failure of Client to comply with the provisions stated in the Agreement.

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**EXHIBIT C****ORNA<sup>®</sup> Subscription and License Agreement**

This Online Reporting of Nursing Analytics (ORNA<sup>®</sup>) Subscription and License Agreement (“ORNA<sup>®</sup> SLA”) adopts and incorporates the terms and conditions of the Agreement AvaSure and Client. The ORNA SLA establishes the basis under which AvaSure will provide Client with the ORNA services contemplated within the Agreement and each applicable Schedule and is subject to the terms and conditions of same. Capitalized terms used in this ORNA SLA shall have the meanings ascribed to them in the Agreement, unless otherwise defined herein.

- 1.0 ORNA.** ORNA is an annual subscription and license which enables Client to securely access AvaSure’s proprietary comparative database and analysis services. An active ORNA SLA includes:
- 1.1** ORNA analytics – on demand charts and graphs relating to program metrics.
  - 1.2** ORNA registry – on demand comparison to a national aggregate of all AvaSys users.
  - 1.3** ORNA data export – on demand program event logs for detailed views of TeleSitter events.

The metrics collected and compiled in ORNA from the AvaSys TeleSitter software and hardware provide Client’s key decision makers with valuable information relating to Client’s utilization of the AvaSys TeleSitter monitoring program, and further allow Client to analyze and compare pertinent metrics to help ensure program quality and outcomes to improve patient safety and maximize Client’s return on investment.

- 2.0 Designated Authorized Personnel.** Client shall be responsible for identifying Designated Authorized Personnel (DAP) within the Client’s organization to support ORNA. Client shall manage access to the ORNA dashboard, data export, and administrative rights, including usernames and passwords. Client shall define two (2) tiers of log-in access for its personnel: (i) basic administrator log-in which allows access only to the ORNA dashboard; and (ii) advanced administrator log-in which allows access to the ORNA dashboard, data export and Client’s administrative settings. Clients must designate which users will have which level of access. The Client shall provide contact information for the advanced administrator-level DAP to AvaSure prior to AvaSure providing ORNA dashboard and website access. DAP may be changed by Client from time-to-time by notifying AvaSure in writing of the replacement personnel with the Name, Telephone, Email Address and the name of the DAP being replaced.
- 3.0 Metrics.** AvaSure’s proprietary TeleSitter Software collects key performance and utilization metrics from each Client’s use of AvaSys devices and software (the “AvaSys Program Metrics” or “Metrics”). Metrics include but are not limited to the following: (i) unit utilization rates; (ii) non-identifiable, limited demographics; (iii) StatAlarm rates, and (iv) verbal intervention rates. Metrics are exported from Client’s server either by AvaSure support personnel via SecureLink or related approved access, or exported to AvaSure by Client’s DAP. Prior to inclusion in the ORNA database, all Metrics are de-identified following the HIPAA Safe Harbor Method. Any data fields within the Metrics containing patient identifiers or PHI shall be de-identified and suppressed from the ORNA database. Any patient data received from the Client shall be handled in accordance with all applicable federal, state, and local regulations, including the privacy and security standards promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”).

- 
- 4.0 License.** Subject to the terms and conditions of this ORNA SLA and the Agreement and for the duration of Client's Subscription Term, AvaSure hereby grants to Client a non-exclusive, non-transferable, limited license to access and use ORNA solely for Client's internal business purposes, and in the manner and scope set forth herein. Client may not rent, lease, sell or otherwise transfer or distribute its license under this ORNA SLA.
- 5.0 Access to Metrics.** Client shall be responsible for providing authorized AvaSure personnel with remote SecureLink access to the AvaSys application server(s), pursuant to a pre-defined schedule, to allow AvaSure to export relevant TeleSitter Metrics. AvaSure acknowledges that such access shall be granted in accordance with Client's applicable policies and procedures.
- 6.0 Ownership of Metrics.** Client agrees that the exported Metrics collected by AvaSure on behalf of ORNA and/or AvaSure shall become the proprietary property of AvaSure, and may be used by AvaSure for any reasonable business purpose, including but not limited to establishing industry averages, publishing trade literature, and/or sales or marketing purposes. Metrics included in the ORNA database cannot be retroactively removed. In no event shall AvaSure assume ownership of any confidential patient information, including PHI, or any confidential Client information. AvaSure does not and shall not sell PHI or any Client information to third party vendors.
- 7.0 Use of Reports.** Client acknowledges and agrees that any and all ORNA reports, analysis, comparisons and any other written work product generated by AvaSure through the ORNA SLA shall only be used by Client for its internal business purposes and shall not be shared with any third parties without the prior written consent of AvaSure. This limitation on use specifically includes, by way of example, and not limitation, that Client will not export electronically or through any other means to any third party, any reports or other communications generated for it by AvaSure without AvaSure's prior written approval.
- 8.0 Training.** ORNA training shall be provided as part of the AvXcel Clinical Training Program. Training on ORNA commences following the AvaSys implementation and Go Live phases to allow adequate TeleSitter metrics collection for presentation. ORNA training shall be scheduled with Client with reasonable discretion of the AvaSure Clinical Team and AvaSure Project Manager responsible for the implementation process.
- 9.0 Part 2 Program Service Exclusions.** Client acknowledges and attests that it is not a covered "program" (as defined by 42 CFR 2 §§ 2.11 and 2.12) under 42 CFR Part 2 ("Part 2"), and will immediately notify AvaSure in the event it becomes a Part 2 program.
- 10.0 Support.** ORNA SLA data export, aggregation, analysis and reporting services will be provided on a pre-defined schedule and in a standard format. The export, aggregation, analysis and reporting shall take place during standard business hours (Eastern Standard Time). ORNA services shall be managed by AvaSure's Clinical Team, and shall not be responsible for providing assistance with any investigation into TeleSitter events. Any AvaSys equipment and software support shall be covered pursuant to the terms Client's active AvaNET SSA.
-

**11.0** In the event of any inconsistency between this ORNA SLA and the Agreement, the terms of the Agreement shall control.

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**Exhibit D  
SCHEDULE  
Description and Pricing of Deliverables & Services**

This Schedule ("Schedule") adopts and incorporates the terms and conditions of the Equipment, License and Services Agreement dated \_\_\_\_\_ between AvaSure, LLC ("AvaSure") and the County of Riverside ("Client"). This Schedule is subject to and supplements and amends the Agreement with respect to the license of certain Software, AvXcel Program Materials and other Deliverables, the sale of certain Equipment, and the provision of certain Services by AvaSure to the Client (or Affiliate) executing this Schedule and is expressly incorporated into and made a part of the Agreement. Any Affiliate executing this Schedule is agreeing, solely for purposes of the purchase under this Schedule, to be a separate and distinct Client or Party under the Agreement and its corresponding terms and obligations. Capitalized terms used in this Schedule shall have the meanings ascribed to them in the Agreement, unless otherwise defined herein.

AvaSure will provide to Client and/or its Affiliate(s) designated at the location below ("Deployment Location") the Deliverables specified and at the pricing designated herein, consistent with the terms and conditions of the Agreement.

**DEPLOYMENT LOCATION(S)**

The AvaSure TeleSitter Solution elements designated herein will be installed in the following facilities / locations:

Name of Location	Address, City, State
Riverside University Health System Medical Center	26520 Cactus Avenue, Moreno Valley, CA

**SOFTWARE LICENSES**

Subscription Term	Description	Included	Not Included
~	AvaSure Software – Standard Server License(s)	~	X
~	AvaSure Software – Standard Client License(s)	~	X
5 Years	AvaSure Software – Enterprise Server License(s)	X	~
5 Years	AvaSure Software – Enterprise Client License(s)	X	~
5 Years	Verify Software - Application License	X	~
5 Years	AvaSure Connect – Application License	X	~
5 Years	AvaSure Connect -Server License	X	~

**Included in Subscription Term:**

Description	Included	Not Included
<b>AvaNET Silver Support Services</b> (see Exhibit B to Agreement) - Provide 24x7x365 Support Services - Software Updates and Upgrades Coverage - Equipment Warranty Coverage	X	~
<b>Clinical Program Materials License</b>	X	~
<b>ORNA® Subscription and License</b> (see Exhibit C to Agreement) - Online Reporting of Nursing Analytics (ORNA) Subscription - Metrics export license - Adverse event tracking - ORNA Updates and additional Metrics releases	X	~
<b>eLearning Modules</b>	X	~
<b>Remote Patient Monitoring Services</b> 24x7x365 Remote Patient Monitoring Services	X	~

**EQUIPMENT AND REQUIREMENTS**

**Guardian Hardware – Mobile**

Qty.	Description	AvaSure Supplied	Client Supplied
As needed	Computer Server*	X	~
	Monitor Station PC	X	~
	Large Screen Monitor	X	~
As needed	Wireless Coverage in Rooms	~	X
	Network Switch / Switch Ports	~	X
	Active Network Port per Room	~	X
	110VAC Power Connection per Room	~	X
36	Guardian Hardware - Mobile (wireless)	X	~
3	Spare Parts Kit	X	~
36	Removeable Power Cords – US 10' Medical	X	~

**EQUIPMENT INSTALLATION SERVICE DELIVERABLES**

**Guardian Hardware – Mobile**

Qty.	Description	AvaSure Supplied	Client Supplied
36	Configuration & Test Wireless Settings on Guardian Hardware	X	~
36	Test Wireless Network Settings with Guardian Hardware	~	X
36	Verify Connectivity to Hospital Wireless System for Wireless Guardian Hardware	X	~
36	Install Guardian Hardware - mobile	X	~
36	Configure & Test Guardian Hardware – Mobile	X	~

**REMOTE - De-installation of Trade-In Devices**

Qty.	Description	AvaSure Supplied	Client Supplied
36	Remotely remove decommissioned devices from server	X	~
36	Package trade-in devices for shipping	~	X
36	Schedule and ship trade-in devices back to AvaSure	~	X
1	Remotely remove decommissioned server licenses	X	~
3	Remotely remove decommissioned client licenses	X	~

Client is responsible for the packaging, scheduling and return shipping of the trade-in devices to AvaSure within thirty (30) days of Client's Go Live of the new Guardian Hardware devices. Client shall request a return authorization from AvaSure for the devices, and Client shall be responsible for boxes, freight and insurance costs related to return shipment. All trade-in devices shall be shipped FOB Destination. Upon receipt, all title and interest in the returned devices shall pass back to AvaSure. In the event trade-in devices are not returned to AvaSure within forty-five (45) days of Client's Go Live of the new Guardian Hardware devices, Client forfeits the Trade-In Credit listed below, and same shall become immediately due and payable by Client to AvaSure.

**PROFESSIONAL SERVICES**

**Technical Deployment and Training Services Deliverables: On-Site**

Qty.	Description	AvaSure Supplied	Client Supplied
1	Project Planning, Engineering & Management	X	~

1	Travel Cost & Time	X	~
As needed	Install, Configure, Power and Test Server(s)	X	~
As needed	Install, Configure & Test AvaSure Software –Enterprise	X	~
As needed	Pull 110VAC Power Cabling & Fixtures & Termination at Room As Needed	~	X
	Provision of Static IP Address for Server	X	~
	Provision of SecureLink access and Local Admin Rights for AvaSure Personnel	~	X
1	TeleSitter Solution Technical Training	X	~
1	On-site contact(s) to support AvaSure personnel* (must be accessible while AvaSure personnel are on-site)	~	X

**AvaSure Clinical Services Deliverables**

Qty.	Description	AvaSure Supplied	Client Supplied
1	<b>AvaSure Clinical Services</b> <ul style="list-style-type: none"> <li>• Policy &amp; Procedure Planning</li> <li>• Resource sharing &amp; guidance</li> <li>• Program development and best practices</li> <li>• Travel Cost &amp; Time</li> <li>• Monitor Staff interactive practice</li> <li>• Global Hospital Awareness training</li> <li>• Go Live support</li> <li>• One (1) follow-up visit per year of Subscription Term (Years 2+) for sites with 10+ devices</li> </ul>	X	~
1	Clinical Contact on-site for support during training and Go Live	~	X
1	Clinical educator or other hospital staff available at each site to assist with on-site training and Go Live Support	~	X
1	Clinical educator or program lead available at each site to co-present a leadership session with AvaSure trainer(s)	~	X

**AvaSure Project Management Services**

Qty.	Description	AvaSure Supplied	Client Supplied
------	-------------	------------------	-----------------

1	Dedicated AvaSure Project Manager to remotely coordinate tasks, resources and timelines for the technical implementation, clinical policies & procedures, trainings and Go Live	X	~
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**FUNCTIONAL SPECIFICATIONS OF DELIVERABLES**

<b>All Guardian Hardware</b>	
<ul style="list-style-type: none"> <li>• PTZ Camera with 10x optical zoom, 4x digital zoom</li> <li>• Internet Protocol Based Communications over Ethernet 10\100\1000 Base-T</li> <li>• 360-degree pan with Auto-Flip</li> <li>• Camera Dome</li> <li>• High resolution 704x480 up to 1920x1080</li> <li>• 940 nm (invisible) infrared Light for low light viewing conditions</li> <li>• Speaker and Microphone for 2-way audio communication</li> <li>• Privacy Mask</li> <li>• LED Courtesy Lamp</li> <li>• Software-controlled courtesy Chime</li> </ul>	
<b>Guardian Hardware Wireless Systems</b>	
<ul style="list-style-type: none"> <li>• IEEE 802.11 a/b/g/n/ac WiFi compliant</li> <li>• Zero footprint</li> </ul>	
<b>Clinical Program Materials License</b>	
<ul style="list-style-type: none"> <li>• The Clinical Program Materials License is defined as one master set of program materials for each Deployment Location</li> </ul>	
<b>All Guardian Hardware</b>	
<ul style="list-style-type: none"> <li>• PTZ Camera with 10x optical zoom, 4x digital zoom</li> <li>• Internet Protocol Based Communications over Ethernet 10\100\1000 Base-T</li> <li>• 360-degree pan with Auto-Flip</li> <li>• Camera Dome</li> <li>• High resolution 704x480 up to 1920x1080</li> <li>• 940 nm (invisible) infrared Light for low light viewing conditions</li> <li>• Speaker and Microphone for 2-way audio communication</li> <li>• Privacy Mask</li> <li>• LED Courtesy Lamp</li> <li>• Software-controlled courtesy Chime</li> </ul>	
<b>AvaSure Software – Enterprise Server License</b>	
<ul style="list-style-type: none"> <li>• The AvaSure Software – Enterprise Server License is defined as one license per server instance, and is not tied to a specific site or location</li> <li>• multiple licenses may be used on virtual or physical servers to handle the load for any particular site</li> <li>• horizontal scaling</li> <li>• Server cluster software, database replication, client load balancing, automatic client failover.</li> <li>• each additional server requires an additional license</li> </ul>	
<b>AvaSure Software – Enterprise Client License</b>	
<ul style="list-style-type: none"> <li>• Full-Screen Utilization</li> <li>• Courtesy reminders and Observer Alertness</li> <li>• Privacy On/Off</li> <li>• Stat Alert Alarm</li> <li>• Foreign Language Feature</li> </ul>	

<ul style="list-style-type: none"> <li>• Dynamic Notes</li> <li>• Adverse Event tracking and avoidance (requires ORNA subscription)</li> <li>• Wireless signal meter with colored bar indicator as signal decreases.</li> <li>• Concurrent License may be installed on multiple monitoring stations, server will allow concurrent connection for each licensed purchased.</li> <li>• Automatic Client failover to any active server configured in Enterprise Cluster.</li> <li>• Client may create a redundant environment for disaster recovery purposes.</li> </ul>
<p><b>Test Server License (Enterprise)</b></p> <ul style="list-style-type: none"> <li>• <b>Requires active Subscription</b></li> <li>• Consists of: one (1) AvaSure Software – Enterprise Server, one (1) AvaSure Software – Enterprise Client, and two (2) device test licenses</li> <li>• Does not include: additional languages or Metric Export</li> <li>• Expiration of Test License is equal to that of Client’s Subscription term</li> </ul>
<p><b>Online Reporting of Nursing Analytics (ORNA) Subscription and License</b></p> <ul style="list-style-type: none"> <li>• Annual Subscription required</li> <li>• Metric Export</li> <li>• Adverse Event Tracking</li> <li>• Operational dashboard access</li> </ul>
<p><b>Foreign Language Feature</b></p> <ul style="list-style-type: none"> <li>• Subscription language pack includes pre-recorded commands/prompts in all of the languages currently available from AvaSure: Arabic, Armenian, Bengali, Bhutan, Bosnian, Burmese, (Burmese) Karen Sgaw, Cantonese, Croatian, English, Farsi, French (EU), French Canadian, German, Greek, Haitian Creole, Hindi, Hmong, Italian, Japanese, Khmer, Korean, Laotian, Mandarin, Nepali, Philippines Tagalog, Polish, Portuguese, Russian, Sgaw Karen\Sgaw Kayin, Somali, Spanish, Swahili, Uzbek, Vietnamese</li> </ul>
<p><b>System Technical Training</b></p> <ul style="list-style-type: none"> <li>• “Train the trainer” program</li> <li>• Except as otherwise agreed to by Client and AvaSure: On-site training of up to two persons per monitoring station (2 sessions); and system training for two additional persons per location or facility. The system training designees become the Designated Authorized Personnel (“DAP”) as defined in <u>Exhibit B</u>.</li> </ul>

**SUBSCRIPTION TERM**

The Subscription Term shall commence on the date of Go Live and continue thereafter for a minimum of five (5) years (“Subscription Term”), with the option to renew for two (2) additional years in one-year increments by written amendment, unless otherwise terminated in accordance with the Agreement.

Upon expiration or termination of this Agreement for any reason, Client shall immediately discontinue use of the Software and Equipment, and return to AvaSure or destroy all copies of the Software, Program Materials and Documentation, and each Party shall return to the other any and all materials containing the other Party’s Confidential Information.

Client shall further promptly (within fifteen (15) business days) of termination or expiration of this Agreement, request an RMA from AvaSure and return all Equipment and other Deliverables to AvaSure, freight and insurance for such return to be paid by Client. Any damage or repair costs related to such damage to the Equipment except for normal wear and tear will be charged to Client.

In the event Client terminates this Agreement or a Subscription Term prior to the end of the then-current Term without cause, Client shall be liable for and shall pay an Early Termination Fee equal to thirty percent (30%) of the total Subscription Fee that would be due for the remaining Term. If early termination occurs in the final or only year of a Subscription Term, or in a one-year automatic renewal Term, there shall not be an additional fee charged, but AvaSure shall apply the unused balance as the Early Termination Fee.



**PRICING AND PAYMENT TERMS**

AvaSure shall invoice and Client shall pay AvaSure according to the pricing terms below.

**Subscription Fee & Payments – Quote #**

<b>Subscription Fee Total – 5 Year Term With Remote Monitoring Services</b>	<b>\$6,330,420.00</b>
<b>Discount – Trade-In Software</b>	<b>(\$13,394.50)</b>
<b>Discount – Trade-In Hardware</b>	<b>(\$72,090.00)</b>
<b>Annual Subscription Fee Payment*</b>	<b>\$1,248,987.10*</b>
<b>Quarterly Subscription Fee Payment**</b>	<b>\$312,246.78*</b>

\*Annual Subscription Fee Payment subject to annual increase not to exceed 3% per annum.

\*\*Applicable taxes will be added at time of invoice.

- o The Subscription Fee shall be payable in equal quarterly installments.
- o The Deposit and first Quarterly Subscription Fee Payment installation shall be invoiced upon receipt of Client’s related purchase order (“PO”).
- o The remaining installations shall be billed on a quarterly basis

Unless expressly agreed otherwise in writing by the parties, all payments payable under this Agreement shall be due forty-five (45) days from the receipt of applicable invoice(s) by Client. In the event Client receives written notice of an undisputed amount in arrears, AvaSure reserves the right to suspend its Services and/or Deliverable shipments until any undisputed payment more than thirty (30) days past due has been received by AvaSure.

**13.0 Designated Authorized Personnel**

Name of Initial DAP 1	
Name of Initial DAP 2	

**14.0 Schedule**

Milestones:	Date:
1. Contract execution	Last date signed below
2. Kick-Off Teleconference Meeting and revised Schedule	Within 14 days of executed Schedule and PO
3. Materials delivered to Client’s facility	COMPLETE
4. Remote installation of components	Per project coordination between the Parties
5. Installation and training finalized	Per project coordination between the Parties
6. Go Live Date	TBD

**15.0 Communications**

All project communications between the Parties will be carried out through the following designated coordinators. All notices required in writing under this Agreement will be made to the appropriate contact listed below at the following addresses and will be effective upon actual receipt. Notices may be transmitted electronically, by registered or certified mail, or courier. All notices, with the exception of legal notices, may also be provided by facsimile.

AvaSure Project Contact		Client Business Contact	
	AvaSure LLC	<b>Affiliate Name</b>	Riverside University Health Systems
<b>Name</b>	Assigned Project Manager	<b>Name</b>	Paul Woodward
<b>Title</b>	Project Manager	<b>Title</b>	Executive Director – Medical Surgical Services
<b>Address</b>	5801 Safety Drive NE Belmont, MI 49306	<b>Address</b>	26520 Cactus Avenue Moreno Valley CA 92555
<b>Phone</b>	(616) 301-0129	<b>Phone</b>	(951) 486-4454

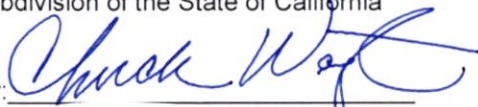
Fax	(616) 301-0128	Fax	
E-mail		E-mail	P.Woodward@RUHealth.org


AvaSure Finance Department Contact		Client Accounts Payable Contact	
	AvaSure, LLC	<b>Affiliate Name</b>	Riverside University Health Systems
Name		Name	Kevin Worhack
Title		Title	Fiscal Services
Address	PO BOX 30516 DEPT 6406 LANSING, MI 48909-8016	Address	26520 Cactus Avenue Moreno Valley CA 92555
Phone	(616) 301-0129	Phone	(951) 486-4364
Fax	(616) 301-0128	Fax	
E-mail	ACCOUNTS.RECEIVABLE@avasure.com	E-mail	k.worhack@RUHealth.org

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Schedule.

COUNTY OF RIVERSIDE, a political subdivision of the State of California

AVASURE, LLC, a Michigan limited liability company

By:   
 Name: **CHUCK WASHINGTON**  
 Title: Chair, Board of Supervisors

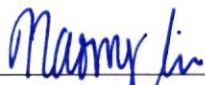
By:   
 Name: Kyle Pett  
 Title: President & COO

Dated: 1/9/24

Dated: Dec 19, 2023

**ATTEST:**

**Kimberly A. Rector**  
 Clerk of the Board

By:   
**Deputy**

APPROVED AS TO FORM:

**Minh C. Tran**  
 County Counsel

By:   
 Gregg Gu  
 Chief Deputy County Counsel

Dated: Dec 22, 2023

15.3



To Whom It May Concern:

The following documents include details about the proposal for your organizations AvaSure Subscription.

## Pricing Overview

### Subscription Model

- Annual Subscription Cost
  - This is an annual payment based on the term length, number, and type of hardware devices.

## Deliverables Overview

- AvaSure Subscription Licenses
  - Licensed Per Device
    - Server Software
    - Client Software
    - Application Software
    - AvaNET Support & Warranty
    - ORNA Reporting Tool
    - Clinical Program Materials
    - eLearning Modules
    - Pre-recorded Languages
    - AvaSure Guardian Hardware Device
    - AvaSure Install Services
    - AvaSure Clinical Services
    - AvaSure Project Management Services

## Payment Overview

- Deposit and first annual payment will be due upon receipt of PO.
- Each annual installment will be invoiced payable on the anniversary of Go Live.

\*\* The Purchase Order (PO) is to be cut for total term amount including deposit. \*\*

Sincerely,

**Brian Warren, Enterprise Sales Executive**



5801 Safety Drive NE  
 Belmont, MI 49306  
 Phone: (616) 301-0129  
 Fax: (616) 301-0128  
 Web: [www.avasure.com](http://www.avasure.com)  
 E-Mail: [sales@avasure.com](mailto:sales@avasure.com)

Date	Customer #	Proposal #
12/14/2023	R00217	<b>49544</b>

**BILL TO:**

**Riverside University Health System Medical Center**  
 26520 Cactus Avenue  
 Moreno Valley, CA 92555  
 Phone: Fax:

**SHIP TO:**

**Riverside University Health System Medical Center**  
 Riverside University Health System Medical Center  
 26520 Cactus Avenue  
 Moreno Valley, CA 92555

REP	DESCRIPTION	TERMS	QUOTE DATE
Kellen Gilmore	36 Mobile Trade-in Move to Enterprise Subscription with Hosted Monitoring 5 years	Net 30	12/14/2023

Qty	Part Number	Description	Per Device	Total
36	AVA-MON-P-0201-5Y	Guardian Hardware - Mobile /AvaSure Software - Enterprise -with monitoring services	\$175,845.00	\$6,330,420.00
AvaSure Subscription Includes: - Server Software - Client Software - AvaNET Silver Support & Warranty - ORNA Reporting Tool - Clinical Program Materials - eLearning Modules - Pre-recorded Languages - AvaSure Guardian Hardware Device - AvaSure Install Services - AvaSure Clinical Services - AvaSure Project Management Services - AvaSure Monitoring Service				
1	AVA-DISCOUNT-0510	TRADE-IN SOFTWARE - MOVE TO FULL SUB	(\$13,394.50)	(\$13,394.50)
Credit for trade-in of (3) client and (1) server licenses. Client must have an active AvaNET to qualify for this discount. To be applied in annual installments on initial term in the amount of -\$2,678.90.				
36	AVA-DISCOUNT-0112	TRADE-IN HARDWARE - MOVE TO FULL SUB	(\$2,002.50)	(\$72,090.00)
Credit for trading in (36) devices. Client is required to schedule and pay for shipping devices to AvaSure. Client must have an active AvaNET or Subscription contract to qualify for this discount. To be applied in annual installments on initial term in the amount of -\$14,418.00.				
0		Avalara Tax Calculated	\$0.00	\$483,982.49

**Notes/Clarifications**

- This proposal is subject to the terms & conditions of the mutually executed Agreement between AvaSure and Client.
  - Such Agreement, including all applicable Schedules, supersedes and voids any inconsistent provisions or pre-printed terms in Client's purchase order or similar documents.
  - Pricing valid until 12/31/2023.
  - If devices are to be configured for wired use, ethernet cables are not included.
- To be paid per the terms of the Agreement and related order Schedule
- Deposit and first annual installment will be invoiced upon receipt of PO.
  - Equipment ships FOB Destination
  - Hardware installation including power and network cabling for AvaSure devices is the cost and responsibility of the hospital
  - AvaSure Connect requires a separate server environment from the AvaSure TeleSitter Solution
  - This is not an invoice – do not use for payment

Device serial numbers -

011805485, 011805487, 011805488, 011805489, 011805490, 011805491, 011805493, 011805494, 011805495, 011805496, 011805497, 011805498, 042009237, 042009238, 042009276, 042009289, 042009292, 042009304, 042009307, 042009330, 042009336, 042009337, 042009342, 042009343, 122011006, 122011009, 122011010, 122011017, 122011026, 122011027, 122011028, 122011029, 052009522, 052009680, 072112808, 101908178.

Monthly Total: \$104,082.25

Annual Total: \$1,248,987.10

Term Length: 5 year

Deposit: \$25,092.00

Tax: \$483,982.49

Term Total, Including Deposit and Tax: \$6,754,009.99

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## Attachment I

### HIPAA Business Associate Agreement Addendum to Contract

Between the County of Riverside and AvaSure, LLC

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Underlying Agreement between the County of Riverside ("County") and Contractor and shall be effective as of the date the Underlying Agreement 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 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:

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- (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).
- 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.
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- 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:
    - 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 County 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.



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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);
  - 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 make its best efforts 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 make its best efforts 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 make its best efforts 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.
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- 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.
  - 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 County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
  - H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
  - I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
  - J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
  - K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
  - 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.
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 five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.
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- 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 fifteen (15) 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 fifteen (15) 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.
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:
- A. 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;
  - B. 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;
  - C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
  - D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
  - E. Ensure compliance with the Security Rule by Contractor's workforce;
  - F. 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;
  - G. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
  - H. 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.
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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,
- f) 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 fifteen (15) 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 providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to
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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.
  - 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 two (2) 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, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this 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 from this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to 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, subject to the approval of County, which shall not be unreasonably withheld, 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. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- 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.

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- 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.
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.
  - 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.
- 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.
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- 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









# Equipment Purchase, License, and Services Agreement - Avasure

Final Audit Report

2023-12-22

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By:	Adilene Godines (agodines@rivco.org)
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