



October 2017

Notice of Request for Proposals

**General Conditions and Instructions to
Offerors for HEDIS Abstraction Services**

Alameda Alliance for Health
1240 South Loop Road
Alameda, California 94502
VendorMgmt@AlamedaAlliance.org

Key Dates:

| Timeline | |
|---------------------------------------|----------------------|
| RFP issued | October 20, 2017 |
| RFP responses due (no exceptions) | November 8, 2017 |
| Finalist selection | November 15, 2017 |
| Finalist interviews and presentations | November 20-22, 2017 |
| Vendor selection | November 30, 2017 |

I. About Alameda Alliance for Health

Alameda Alliance for Health (“Alameda Alliance” or “Plan”) is a local, public, not-for-profit managed care health plan committed to making high-quality health care services accessible and affordable to Alameda County residents. Established in 1996, Alameda Alliance was created by and for Alameda County residents. The Alameda Alliance Board of Governors, leadership, staff, and provider network reflect the county’s cultural and linguistic diversity. Alameda Alliance provides health care coverage to more than 270,000 low-income children and adults through National Committee on Quality Assurance (“NCQA”) accredited Medi-Cal and Alliance Group Care programs, an employer-sponsored commercial plan that provides low cost comprehensive health care coverage to In-Home Supportive Services (“IHSS”) workers in Alameda County.

a) Programs

Medi-Cal:

Medi-Cal is a state-sponsored health insurance program administered through Alameda Alliance. Medi-Cal provides comprehensive health care coverage for those who meet income guidelines, including:

- Families and children;
- People with disabilities; and
- Seniors.

Alliance Group Care:

Alliance Group Care provides low-cost health care coverage to IHSS workers in Alameda County. Benefits include routine care from a primary care physician, specialty care, hospital care, and other services.

IHSS home care workers may qualify for Alliance Group Care through the Alameda County Public Authority for IHSS.

II. Alameda Alliance Abstraction and Over-Read Needs

a) Purpose

Alameda Alliance seeks a vendor to conduct the onshore abstraction and onshore over-read of charts for the 2018 HEDIS season. Plan is searching for a vendor to provide:

1. Medical Record Review (“MRR”) software solution to support, track, and report abstraction progress.
2. Onshore abstraction services for approx. 7,000 (+/- 10%) Plan retrieved charts.

3. Onshore over-reading services for 10% to 30% of the approx. 7,000 (+/- 10%) charts abstracted.
4. Availability to download and reproduce annotated medical record images at all times during the project and delivery of same annotated medical records after the project.
5. Vendor compatible data file delivery of all outcome related information related to medical record review.
6. Report hybrid HEDIS measures according to the most current NCQA HEDIS specifications (for both Medi-Cal (Medicaid) and Commercial lines of business).
7. Meet California-specific state Medi-Cal requirements, including HEDIS hybrid measures and non-HEDIS hybrid measures.
8. Integrate with Alameda Alliance's certified software vendor (Verscend Quality Intelligence [ASP+] product) with accurate and complete HEDIS results and non-HEDIS measure results for the purpose of submission to NCQA and DHCS within required timelines.

b) Definitions

Chase: A chase is a request for one member's medical record retrieval for one (1) measure at one (1) provider address. Each provider address and measure count as one (1) unique chase.

Chart Abstraction: The process of collecting important information from a patient's medical record and transcribing that information into discrete fields or locations. Abstraction must be in accordance with the NCQA HEDIS 2018 Technical specifications. The abstractor must be located in the United States of America (onshore). Vendor must guarantee no less than a 95% abstraction accuracy rate.

Over-reading: Over-reading is the quality control process performed by validating medical record abstraction results through a second round of review after field abstractors have completed their process. The over-reader is responsible for verifying that the data captured for hybrid numerator compliance is accurate for the outlined measures. The over-reader must be located in the United States of America (onshore).

Annotation: The process of highlighting, bookmarking or otherwise identifying hybrid numerator compliance or exclusionary evidence in a medical record. The annotator must be located in the United States of America (onshore).

III. Solicitation Terms and Conditions

a) Questions about this RFP:

Vendors may submit written questions regarding this RFP by email to **VendorMgmt@AlamedaAlliance.org**. Alameda Alliance will reply as appropriate.

b) Amendment of RFP:

Alameda Alliance retains the right to amend the RFP by a written amendment posted on the Alameda Alliance website.

c) Alameda Alliance option to reject proposals:

Alameda Alliance may, at its sole discretion, reject any or all proposals submitted in response to this RFP at any time, with or without cause. Alameda Alliance shall not be liable for any costs incurred by the Vendor in connection with the preparation and submission of any proposal. Alameda Alliance reserves the right to waive immaterial deviations in a submitted proposal.

d) Proposal timeline:

The timeline for this RFP is as follows:

| Timeline | |
|---------------------------------------|----------------------|
| RFP issued | October 20, 2017 |
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IV. General Vendor Information

Provide the following information about your organization:

a) Vendor primary contact:

| Vendor Primary Contact | |
|------------------------|--|
| Name and title | |
| Address | |
| City, State Zip | |
| Alternate phone | |
| Fax | |
| E-mail | |
| Vendor website | |

b) Vendor locations (City and State):

| Department/Entity | City | State |
|------------------------|------|-------|
| Corporate headquarters | | |

| | | |
|--|--|--|
| Support personnel | | |
| Client education personnel | | |
| In what state(s) is the vendor incorporated? | | |

c) Vendor employee details:

Indicate the number of employees in your organization (by category):

| Department/Entity | Number of Employees |
|---------------------------------------|---------------------|
| Total employees | |
| Client education personnel | |
| Installation | |
| Ongoing support | |
| Technical support and hours available | |
| Trained or licensed abstractors | |

d) Vendor background and customer base:

| Criteria | Answer |
|---|--------|
| How long has your company been in business? | |
| Has your company received notice of violation of, or been convicted of a violation of any Federal, State or local law? If yes, please explain. Provide additional attachments if necessary. | |
| Has your company been listed as an excluded vendor by any Federal or State agency or convicted of a criminal offense related to healthcare? If yes, please explain. Provide additional attachments if necessary. | |
| Has your company been cited for or does your company have business activities that contribute to the violation of human rights? If yes, please explain. Provide additional attachments if necessary. | |
| Does your organization offshore any obligation of its services which requires access, use or disclosure of Alameda Alliance's confidential or proprietary information, to any Subcontractor that is not located in the United States, or is not subject to the jurisdiction of a court in the United States. If chosen, Vendor shall not fulfill any obligation of this Agreement through such means. | |

V. RFP Submission Responses

| | Topic | Explain your responses for each question outlined below: |
|-----|---|--|
| 1. | Executive Summary | Please provide a high-level description of how your proposal will meet the project requirements. <i>(Maximum response: 1 page)</i> |
| 2. | Experience | Describe your firm’s experiences providing HEDIS abstraction services. Specify your experience in the following: <i>(Maximum response: 4 pages for all Q2)</i> |
| 2a. | | Working with any Medi-Cal Health Plans. If yes, which plans and what services did you perform? |
| 2b. | | Working with other Commercial Health Plans . If yes, what services did you perform? |
| 2c. | | How many clients did not re-contract with you in the last two (2) years? Why? |
| 2d. | | List the certified HEDIS vendors you have worked with in the last three (3) years. |
| 2e. | | Please provide three (3) client references that Alameda Alliance can contact. Please select client(s) preferably in the state of California and similar in size and makeup to Alameda Alliance. |
| 3. | Implementation process | Describe your company’s process for implementing your MRR HEDIS software at a new client site. Provide a sample implementation work plan indicating: <ul style="list-style-type: none"> a. Tasks required; b. Relative sequence of tasks and any key dependencies between tasks; c. Responsible parties for each task (Vendor and Alameda Alliance); d. Include major areas of subcontractor work, if any; and e. Estimated time to complete each task. <i>(Maximum response:4 pages for all Q3)</i> |
| 4. | Inbound data files technical requirements and reporting | Describe your software’s ability to accept large volume files of different file types. Include any inbound chart chase file requirements needed to populate your software. <i>(Maximum response:4 pages for all Q4)</i> |
| 4a. | | What type of testing is done when loading incoming files? |

| | Topic | Explain your responses for each question outlined below: |
|-----|--|--|
| | | Provide the file layout and instructions for a data load. |
| 5. | Data validation | For files received from Alameda Alliance and our provider network, what type of data validation would be completed? Will Alameda Alliance be notified of any data removed from the sample as part of the cleaning process? <i>(Maximum response:2 pages for all Q5)</i> |
| 5a. | | Explain how your company de-duplicates chase records and quality checks files received. |
| 6. | Abstraction and over-read process | Describe your record abstraction process. Include your software's ability to track the abstraction status and workflow for each request. <i>(Maximum response 4 pages for all Q6)</i> |
| 6a. | | What are the qualifications of your abstraction staff? Are they Registered Nurses ("RN"), Licensed Vocational Nurses ("LVN"), Certified Professional Coders ("CPC") or other? What HEDIS specific certification or training hours are required? |
| 6b. | | What are your chart abstraction turn-around-times? |
| 6c. | | Describe your over-read process and if your software has the capability for Alameda Alliance to perform over-reads in the system. Include your recommended percentage of records over-read. |
| 6d. | | What is your recommended percentage of charts to be over-read for Alameda Alliance, (10%, 20%, or a different percentage)? |
| 6e. | | Will you accommodate requests for increased over reading by measure or for a particular reviewer? |
| 6f. | | Describe your exclusion process workflow. How are excluded files handled and viewed in your system? What dispositions are available and communicated to Alameda Alliance for excluded records? |
| 6g. | | Describe your onsite staffing model to perform the abstraction and over-read process. |
| 7. | Outbound (back to Alameda Alliance and certified HEDIS software) | Describe workflow(s) for transmission for chart data pickup and results delivery to Alameda Alliance. Are there any constraints for file receipt? Also describe the naming convention used and any relevant crosswalk or communication tools used to track progress. |

| | Topic | Explain your responses for each question outlined below: <i>(Maximum response:4 pages for all Q7)</i> |
|-----|------------------|---|
| 7a. | | Explain how completed files (abstracted, and if completed, over-read) are annotated then transferred and communicated to Alameda Alliance. Please include analytic capabilities to measure progress against stated goals. |
| 7b. | | Describe the frequency and format of reports that you would provide to Alameda Alliance. Is abstraction data viewable in real-time? |
| 8. | MRR Software | Describe the hosting and platform/hardware requirements of your MRR software application. <i>(Maximum response:4 pages for all Q8)</i> |
| 8a. | | Explain the availability and capability for your MMR software when offline (example: when abstractors are on site where internet may be unavailable). |
| 8b. | | Describe your MRR software's key differentiator(s) from your top three (3) competitors. |
| 8c. | | Does your MRR software system permit medical records to be attached and viewed in your system for your abstraction? Please explain the searchable and viewable elements and functions. |
| 8d. | | Describe how your MRR software system integrates medical record/hybrid data to a certified vendor's software. |
| 8e. | | If Alameda Alliance can host your MRR software in-house, describe the required IT resources and estimated resource usage for our internal IT staff to support this option. |
| 8f. | | Would you share your system data model with Alameda Alliance? Or is your system a closed system? Would Alameda Alliance be permitted to query the data in the backend? |
| 9. | Service approach | Describe your help desk support capabilities, policies/ procedures and hours of operation. <i>(Maximum response: 5 pages for all Q9)</i> |
| 9a. | | How will you keep Alameda Alliance informed of the project status? Please describe how project milestones are determined and communicated. |

| | Topic | Explain your responses for each question outlined below: |
|------|-------|--|
| 9b. | | Specify the primary point of contact or project manager for this contract and any other core team members that may support this project, including resume(s), percentage of time to be devoted to project, and experience with similar projects. What are standard project management hours? |
| 9c. | | Describe your standard Service Level Agreements (SLAs) regarding MMR software availability, critical and non-critical bug fixes, and help desk response times. |
| 9d. | | How do you handle customer issues during the HEDIS reporting period? Potential situations that might require communication: <ul style="list-style-type: none"> a. Delays in delivery of chart chase file(s); b. Scheduling delays; and c. Retrieval delays. |
| 9e. | | Describe the procedures used to correct disputes between vendor and customer. What time period does Alameda Alliance have to report any disputes? |
| 9f. | | Describe your dispute escalation process. Please include communication turnaround time expectations for inquiries, issue resolution, scope change response and file transmission. |
| 9g. | | Describe any services or portion of services which will be performed by another firm, and provide relevant information on said firm's qualifications and personnel. |
| 9h. | | Explain training options for NCQA hybrid specification training by the vendor for Alameda Alliance staff. |
| 10. | | Pricing |
| 10a. | | Does your pricing include any client disincentive premium fees added based on non-adherence to project |

| | Topic | Explain your responses for each question outlined below: |
|------|---------------|--|
| | | milestones? If so, explain. |
| 10b. | | In Question 6d , you provided professional suggestions for percentage of vendor abstracted charts over-read. Include associated pricing determinants and calculation. |
| 10c. | | Does vendor permit performance guarantee tied to performance? |
| 11. | Value add | Do you provide any value added services with no charge to Alameda Alliance? <i>(Maximum response: 2 pages for all Q11)</i> |
| 12. | Miscellaneous | Add any details pertinent to your organizational capabilities and the topics of this RFP. <i>(Maximum response: 1 page for all Q12)</i> |

VI. Requested Attachments

Review the table below for required and optional supplemental attachments, and include the names of all additional documents returned with your response to this RFP. Any additional attachments you would like to include can be added into additional rows in the table. As a reminder, attachments are not to be used in lieu of answering the questions included in this RFP document.

| Attachment Requested | Required (Y/N) | Name of File Submitted |
|---|----------------|------------------------|
| Three (3) written client references (letters and contact details) | Y | |
| Implementation plan and timelines | Y | |
| Resumes for key individuals | Y | |

VII. Instructions for Response

Included as the attachment to this RFP is Alameda Alliance’s standard Consultant Services Agreement (“CSA”) and Business Associate Agreement (“BAA”); Vendor agrees to be bound by the terms of both CSA and BAA.

If you have any questions regarding this Request for Proposal, email your questions to **VendorMgmt@AlamedaAlliance.org**.

Submit RFP responses electronically or via mail to:

VendorMgmt@AlamedaAlliance.org

1240 South Loop Road
Alameda, CA 94502

Please include the following in the Subject Line:

RFP Submission – HEDIS Abstraction

Electronic submissions must be received by **November 8, 2017 by 5 pm Pacific Time** in order to be considered.

CONSULTANT SERVICES AGREEMENT

THIS CONSULTANT SERVICES AGREEMENT (“Agreement”) is made and entered into as of _____ (“Effective Date”) by and between Alameda Alliance for Health, a managed care health plan (“Company”), and _____ (“Consultant”) with reference to the following:

- A. Consultant shall furnish services to Company for the Project in accordance with the terms of this Agreement.
- B. This Agreement is intended to and shall govern all services and work furnished by Consultant for the Project.

1. BASIC AGREEMENTS.

1.1 Basic Services. In compliance with all of the terms and conditions of this Agreement, Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit A, which services are referred to herein as the “Basic Services”. Consultant shall meet with Company from time to time as requested by Company to discuss the progress of the Basic Services rendered to date and to ensure that Company is satisfied with the scope and quality of the Basic Services. Company may have a representative present at any meeting of Consultant concerning the Project.

1.2 Subconsultants. Consultant may retain subconsultants subject to the prior written approval of Company (“Subconsultants”). The retention of the Subconsultants shall not diminish or reduce the obligations and duties of Consultant hereunder. Company shall be listed as an intended third party beneficiary in each of Consultant’s agreements with the Subconsultants to the extent applicable to the Project (the “Subconsultant Agreements”), and the Subconsultant Agreements shall provide that such Subconsultants shall be bound to the same terms and conditions of Consultant under this Agreement to the extent applicable to the portion of the Basic Services being provided by such Subconsultants. In the event this Agreement is terminated by Company for cause, Company shall have the right, but not the responsibility, to assume the rights and responsibilities of Consultant under all or some of the Subconsultant Agreements that Company in its sole discretion chooses to assume. While this provision shall constitute a present assignment of Consultant’s rights with respect to any and all such Subconsultant Agreements that Company so chooses to assume, Consultant, upon request from Company, shall promptly execute and deliver to Company written assignments of such Subconsultant Agreements that Company in its sole discretion so chooses to take by assignment. All Subconsultant Agreements shall provide for this assignment. Unless Company specifically approves in writing, in each instance, that the payment to any Subconsultant is a reimbursable expense, Company shall not have any liability for the cost and expenses of any Subconsultant, and Consultant solely shall be liable for any payment due to such Subconsultants from the Fees (as defined below) paid by Company to Consultant. Consultant shall work with and coordinate its Basic Services with other consultants retained by Company in connection with the design of the Project as a Basic Service hereunder, but Consultant shall not be responsible for the content of their work or the errors or omissions of the Company’s other consultants.

1.3 Standard of Performance. As a material inducement to Company to enter into this Agreement, Consultant hereby represents that Consultant has all applicable licenses to perform the Basic Services and is experienced in performing work or services similar to the Basic Services and, in light of such experience, Consultant hereby covenants that it shall exercise the same degree of care, skill, and diligence as is ordinarily possessed and exercised by reputable members of the same profession currently practicing under similar circumstances in the same geographic area in performing the Basic Services and all services required hereunder and using only qualified personnel. Consultant shall comply with all applicable federal, state and local laws, ordinances, regulations and orders in performing the Basic Services and all services hereunder, subject to the prevailing interpretations thereof.

1.4 Additional Services. Company shall have the right at any time during the performance of the Basic Services, without invalidating this Agreement, to order extra services beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said services (“Additional Services”). No Additional Services may be undertaken unless authorized by Company in advance and in writing, including via email. Additional Services shall be paid for by Company as provided in Section 2.2. All services performed in connection with this Agreement may be referred to herein as the “Services.” All terms and conditions under this Agreement applicable to Basic Services shall be applicable to all Services except as otherwise agreed to in writing by Company and Consultant.

2. COMPENSATION. Company shall compensate Consultant for the Services to be performed in accordance with the terms and conditions of this Agreement as follows:

2.1 Basic Services. For Basic Services, as described in the Scope of Services, Company shall compensate Consultant for the Basic Services in the amount set forth in Exhibit A, not to exceed _____ (“Fee Schedule Sum”) without prior written authorization of Company. Said compensation shall be inclusive of all benefits, compensation costs, and expenses unless specifically set forth to the contrary in this Section 2.

2.2 Additional Services. For Additional Services, as described in Section 1.4 hereof, except as otherwise set forth in a separate written agreement between Company and Consultant, compensation shall be paid at the hourly rates set forth in Exhibit A attached hereto, plus the actual cost for those out-of-pocket expenses for long-distance calls, fax transmission (not to exceed the cost of the call), photocopies, and delivery charges incurred in connection with the work hereunder. All other costs, expenses, or charges, including, but not limited to, daily working and commuting travel expenses and all compensation and benefits paid to Consultant’s employees, incurred by Consultant in connection with the Additional Services, shall be paid by Consultant without reimbursement from Company. Notwithstanding anything in this Agreement to the contrary, Consultant shall not be entitled to reimbursement for such reimbursable expenses unless Company pre-approves such expenses in writing.

2.3 Payment. Payments for Basic Services shall be made monthly in proportion to services performed. Payments for Additional Services of Consultant, and for reimbursable expenses permitted hereunder, shall be made monthly upon presentation of Consultant’s statement of services rendered with sufficient supporting data acceptable to Company. Consultant shall submit one complete application for payment per month, rendered on or before

the fifth (5th) day of each month based on services completed to date. Each invoice from Consultant shall include an updated invoice tracking sheet describing the information required therein for all previous invoices related to the Basic Services and Additional Services, if any, and the information related to the most current invoice. Each invoice must include detail of daily hours by individual. Company shall pay Consultant thirty days (30) after receipt of invoice.

(a) Should a bona fide dispute arise with respect to a payment application submitted by Consultant, or to the extent reasonably necessary to protect Company from loss for which Consultant is responsible, Company shall pay the undisputed amount within the time period set forth herein, but shall withhold the disputed amount until the matter is resolved. Notwithstanding anything contained in this Agreement to the contrary, no compensation shall be paid to or claimed by Consultant for services required to correct deficiencies in any documents or materials prepared by or on behalf of Consultant, or attributable to defaults, failures, errors, or omissions of Consultant, any Subconsultant, or anyone for whom Consultant may be liable, or changes in the Project requested by Consultant, any Subconsultant, or anyone for whom Consultant may be liable, unless previously approved in writing by Company. Consultant shall pay its own income taxes, federal, state, or city, and self-employment taxes. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant's performance of the Services required by this Agreement. Consultant will continue to perform its obligations hereunder and pursue prosecution of the Services during any claim, dispute, or proceeding between the parties hereto as if such claim, dispute, or proceeding had not been instituted, provided that Company continues to make payments to Consultant as required under this Agreement for Services that are not the subject of any dispute.

3. PROJECT SCHEDULE.

Consultant shall commence its Services hereunder within five (5) days of the receipt of an authorization to proceed from Company; provided, however, that no such Services shall be commenced until Company has approved the insurance required to be obtained by Consultant pursuant to Section 4.1. Attached hereto and incorporated herein as Exhibit B is a schedule ("Schedule") for the performance of the Basic Services, which may be adjusted as the Project proceeds. This Schedule may include allowances for periods of time required for Company's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this Schedule shall not, except for reasonable cause, be exceeded by Consultant or Company. Consultant understands and agrees that time is of the essence with respect to Consultant's obligation to provide its Services under this Agreement in a timely manner; it being understood that delays by Consultant in the performance of its duties hereunder may cause substantial damages to Company.

4. INSURANCE AND INDEMNIFICATION.

4.1 Insurance. Prior to commencing the Services, Consultant shall, at its sole cost and expense, fully comply with the terms and requirements of this Section. Consultant shall maintain in full force and effect during the entire term of this Agreement the following policies of

insurance written by insurance companies satisfactory to Company. Consultant shall require each of its Subconsultants to purchase and maintain in full force and effect during the entire term of this Agreement all insurance coverages as provided in this Section 4.1, with the same waivers with respect to Company and the Company Parties (as defined in subsection (e) below):

(a) Professional Liability Insurance. Professional liability insurance covering Consultant's professional liability for the Services, including prior acts coverage sufficient to cover any and all claims arising out of the Services, with limits not less than One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) annual aggregate, or limits carried, whichever are higher, with a deductible or self-insured retention amount not greater than Fifty Thousand Dollars (\$50,000) per claim. To the maximum extent commercially reasonably available, the professional liability insurance policy shall provide, without limitation, contractual liability coverage for the indemnification provided by Consultant hereunder. The professional liability insurance shall be maintained continuously during the term of this Agreement and, so long as the insurance is commercially reasonably available, for a period of ten (10) years after completion of the Services or completion of the Project, whichever is later. For purposes of this paragraph, it shall be agreed that the required insurance is commercially reasonably available if: (a) any insurer is willing to issue the coverage to Consultant; and (b) the required insurance or substantially similar insurance is available to a reasonable number of professionals in the same discipline in the geographic area of the Project during the same period. Consultant shall be responsible for proving to the reasonable satisfaction of Company if at any time Consultant contends that such insurance is not commercially reasonably available.

If Company so elects, in its sole discretion, and Company agrees to pay the cost of such additional insurance, with such coverage available to Consultant, then Consultant shall procure and maintain in effect an additional professional liability insurance policy covering this Project, and this Project only, of the same kind and for the same duration set forth above, and the additional cost of such insurance policy shall be paid by Company.

(b) Workers' Compensation and Employers' Insurance. To the extent Consultant has employees, workers' compensation insurance in an amount required by the laws of the state in which the Project is located and employer's liability insurance with limits of liability of not less than One Million Dollars (\$1,000,000) bodily injury by accident (each accident), One Million Dollars (\$1,000,000) bodily injury by disease (policy limit), and One Million Dollars (\$1,000,000) bodily injury by disease (each employee), or limits carried, whichever are higher, with a waiver of subrogation endorsement by the insurance carrier(s) with respect to the Company Parties.

(c) Other Insurance. Such other policies and amounts of insurance, including, but not limited to, casualty insurance, umbrella insurance, business interruption insurance, and fidelity insurance, as may be reasonably required by Company ("Additional Insurance"). Consultant's cost of such Additional Insurance shall be a reimbursable expense.

(d) Evidence of Insurance. Upon execution of this Agreement, or prior to commencing the Services, whichever is earlier, Consultant shall provide Company with certificates of insurance and endorsements reasonably acceptable to Company, evidencing the insurance coverages required herein. Consultant shall perform no Services, pursuant to this Agreement or otherwise, prior to providing Company with acceptable proof of the insurance coverages required above. Upon Company's request, Consultant shall promptly provide Company with a certified copy of any of the insurance policies described above. Each insurance policy shall provide or be endorsed to provide that such policy shall not be canceled or non-renewed without giving at least thirty (30) days' notice in writing to be delivered by registered mail to Company. Consultant shall immediately provide Company with a copy of any notice of cancellation, non-renewal or rescission received from any insurer providing coverage required herein.

(e) Waiver. To the fullest extent permitted by law and without voiding or impairing the coverage afforded by the insurance required hereunder, Consultant, on its own behalf and on behalf of its Subconsultants, hereby waives against Company and the Company Parties, as well as any and all other professionals, consultants, subcontractors, sub-subcontractors, suppliers, and other individuals and entities performing work or rendering services in connection with the Project, all rights of recovery, whether under subrogation or otherwise, for loss, damage and/or liability to the extent covered by the insurance policies required to be maintained by Consultant hereunder. Consultant shall require that all such insurance policies shall contain an express written waiver of all rights of recovery, whether under subrogation or otherwise, against Company and the Company Parties, and shall require similar express written waivers and insurance clauses from each of its Subconsultants. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

(f) Subconsultants. Consultant shall not allow any Subconsultant to perform any portion of the Services until Consultant obtains from such Subconsultant, and provides to Company, proof of insurance in form and substance identical to that required to be carried by the Consultant pursuant to this Section 4.1, and reasonably acceptable to Company. Consultant shall in writing bind each such Subconsultant to all of the insurance requirements of this Section 4.1. Consultant shall also obtain from all Subconsultants an indemnification in form and substance identical to the indemnity set forth in Section 4.2, below, with the modification that such indemnity from such Subconsultant shall also be for the benefit of the Indemnitee, as defined in Section 4.2, below.

Neither receipt nor acceptance of policies, endorsements, or certificates, whether indicating reduced or different coverages than required herein, nor any other forbearance or omission by Company with regard to these insurance requirements, shall be deemed a waiver of, or estoppel to assert, any right on the part of Company regarding these insurance requirements. The insurance requirements set forth herein are independent of Consultant's indemnification obligations and other obligations hereunder. Nothing

herein shall be construed to limit or alter any of other obligations of Consultant, under this Agreement or otherwise, including, without limitation, Consultant's indemnification obligations pursuant to Section 4.2, below.

4.2 Indemnification. To the fullest extent permitted by law, Consultant shall indemnify, defend (with counsel reasonable acceptable to Company), and hold harmless Company and its parent, affiliated, and subsidiary entities and their respective principals, agents, employees, partners, directors, officers, and anyone else acting at the discretion of any of them (collectively, the "Indemnitee") from and against any and all claims, demands, actions, liabilities, damages, losses, and costs (including, but not limited to, attorneys' fees, expert fees, and costs) (each, a "Claim" and collectively, "Claims"), directly or indirectly arising out of or connected with: (i) the acts, errors; or omissions of Consultant or any of its officers, employees, Subconsultants, invitees, licensees, independent contractors, agents, anyone employed directly or indirectly by any of them, or for whose acts they may be liable or any or all of them (collectively, the "Indemnitor"); (ii) the willful misconduct of an Indemnitor or negligent performance of any Services; (iii) the breach of any provision of this Agreement by Consultant; or (iv) the failure of any Indemnitor to comply with the laws, statutes, ordinances; or regulations of any governmental or quasi-governmental authority in effect at the time any Services are rendered. Consultant shall not be obligated hereunder to indemnify the Indemnitee for any Claim arising from the sole negligence or willful misconduct of any Indemnitee or any Indemnitee's agents, servants, or independent contractors (excluding Consultant and its Subconsultants) who are directly responsible to such Indemnitee, or for any defects in design furnished by the party to be indemnified or any of such party's agents, servants, or independent contractors who are directly responsible to such party. In addition, Consultant shall not be obligated to indemnify the Company to the extent liability is caused by the active negligence of the Company, including that of Company's employees. Consultant's obligation to defend a Claim brought or threatened against Indemnitee is immediate following written notice of such Claim which states that the Claim arises out of or is related to the work of Consultant, but is not contingent on an actual finding of fault on the part of Consultant. Notwithstanding the foregoing, for Claims covered by Consultant's professional errors and omissions policy referenced in Section 4.1(a): (A) Consultant's obligations pursuant to this Section 4.2 shall only apply to the extent the applicable Claim is "caused by" any of the events set forth in subsections (i) through (iv) of this Section 4.2 set forth above; and (B) Indemnitee shall reimburse Consultant the proportionate share of defense costs determined by settlement or judgment (arbitration or court) to have been caused by or attributable to Indemnitee's negligence or fault related to such Claims.

Indemnitee's rights of indemnification under this Section 4.2 shall not in any way be limited by, reduced, altered, or diminished as a result of Consultant's obligations to procure and maintain insurance as set forth in Section 4.1, or as the result of the existence or non-existence of any type of insurance coverage benefiting Consultant, or any of Indemnitee. The provisions of this Section 4.2 shall survive termination or expiration of this Agreement.

5. RIGHTS AND REMEDIES.

5.1 Default by Consultant. In the event (i) Consultant fails to expeditiously perform the Services in a skilled and expeditious manner; or (ii) Consultant, or any employee,

Subconsultant, or agent of Consultant, shall wrongfully file or record a lien against any property of Company or any agent or employee of Company; or (iii) any representation or certification made by Consultant to Company shall prove to be false or misleading on the date said representation or certification is made; or (iv) material breach of this Agreement shall be made in the observance or performance of any covenant, agreement, or condition contained in this Agreement required to be kept, performed or observed by Consultant; or (v) Consultant violates any laws, ordinances, rules, regulations, or orders of any governmental agencies or courts in the performance of its duties hereunder; or (vi) Consultant suffers bankruptcy; then, provided the event as described above is not cured within thirty (30) days after written notice from Company to Consultant, Company may declare Consultant to be in default hereunder. If Consultant commits any acts of default specified in this Section, Company may, by giving notice in writing to Consultant, without prejudice to any other rights or remedies given Company by law or by this Agreement, (i) terminate the services of Consultant under this Agreement; (ii) take possession of all materials and (iii) complete the Basis Services (and Additional Services, if any) by whatever method Company may deem expedient. "Bankruptcy" shall be deemed to occur when Consultant makes an assignment for the benefit of creditor, files a petition in bankruptcy court, voluntarily takes advantage of any bankruptcy or insolvency laws, or is adjudicated bankrupt or judicially insolvent, or if a petition or an answer is filed proposing the adjudication of such Consultant as bankrupt.

5.2 Default by Company. In the event Company shall fail to perform its obligations pursuant to this Agreement after thirty (30) days' written notice from Consultant to Company, Consultant may declare Company to be in default hereunder and exercise any remedies available to it. Should Company default in its obligations hereunder, Consultant may terminate this Agreement. Upon such a termination, Consultant may recover from Company full payment for all Services performed to the date of such termination and for all reimbursable amounts. Notwithstanding the foregoing, Company shall not be responsible for delays or damages or declared to be in default by reason of delays in performance or by reason of strikes, lockouts, accidents, acts of God, and other delays unavoidable or beyond Company's reasonable control, delays in approval by governmental agencies, or delays in work of other consultants performing services on behalf of Company.

5.3 Termination by Company Without Fault of Consultant. Company shall have the right to cancel and terminate this Agreement upon providing thirty (30) days' written notice whether or not a default exists hereunder, and Company shall incur no liability to Consultant or any other person by reason of such cancellation. If the cancellation is for no fault of Consultant hereunder, Company shall pay to Consultant all amounts due under this Agreement for Services rendered by Consultant as of the date of termination, plus approved reimbursable expenses consistent with this Agreement.

5.4 Transfers on Termination. In the event of termination of this Agreement, Consultant and Company shall forthwith return to the other all papers, materials, and other properties of the other held by each for purposes of execution of this Agreement. In addition, each party will assist the other party in orderly termination of this Agreement and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each party.

6. DISPUTE RESOLUTION.

6.1 Mediation. At Company's sole election, any action, dispute, claim, or controversy between the parties, whether sounding in contract, tort, or otherwise, including all disputes arising out of or in connection with this Agreement and any related agreements or instruments and any transaction contemplated hereby ("Dispute" or "Disputes") shall be attempted to be settled in good faith by nonbinding mediation as a condition precedent to arbitration by either party. The parties shall endeavor to resolve the Dispute by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Rules of the Judicial Arbitration and Mediation Service ("JAMS") currently in effect. In the event of any inconsistency between such rules and these mediation provisions, these provisions shall supersede such rules. All statutes of limitation that would otherwise be applicable shall apply to any mediation proceeding under this Section. Request for mediation shall be filed in writing with the other party to the Agreement and with JAMS. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 30 (thirty) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. Any mediator selected under this Section shall be knowledgeable in the subject matter of the Dispute. Qualified retired judges with at least five (5) years mediation experience shall be selected through panels maintained by JAMS or any private organization providing such services. The mediation shall be held within thirty (30) days of the date the demand for mediation is served on a party, unless the parties agree otherwise. The parties understand and agree that a representative from each side with full settlement authority will be present at the mediation conference. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views, and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation, arbitration, or other proceeding involving the parties. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the County of Alameda, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Where applicable to a mediation, the provisions of Section 6.2 below shall also apply to the mediation.

6.2 Arbitration. If the Dispute is not resolved by agreement or mediation pursuant to Section 6.1 above, the Dispute shall be resolved by arbitration as set forth in this Section. Such disputes shall be resolved by binding arbitration in accordance with Title 9 of the California Code of Civil Procedure, Section 1280 *et seq.* In the event of any inconsistency between such rules and these arbitration provisions, these provisions shall supersede such rules. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Section. In any arbitration proceeding subject to these provisions, the arbitrator is specifically empowered to decide (by documents only, or with a hearing, at the arbitrator's sole discretion) pre-hearing motions that are substantially similar to pre-hearing motions to dismiss and motions for summary adjudication. Judgment upon the award rendered may be entered in any court having jurisdiction. Qualified retired judges with at least five (5) years arbitration experience shall be selected through panels maintained by the JAMS or any private organization providing

such services. If the parties are unable to mutually agree upon a retired judge to hear their arbitration, the arbitration service shall provide a list of three (3) available judges and each party may strike one (1). The remaining judge will serve as the arbitrator. Notices of demand for arbitration shall be served in writing by registered or certified mail to all parties to this Agreement. Demand will be made within a reasonable time after the dispute or other matter in question has arisen. In no event shall a demand for arbitration be made after the date when the institution of legal proceedings based on such dispute or other matter in question would be barred by the applicable statute of limitations. The applicable statute of limitation shall be tolled during the period such arbitration proceedings are pending. Except as otherwise provided herein, the California Code of Civil Procedure and California Evidence Code shall apply to and govern the conduct of discovery. The arbitrator shall issue a statement of decision not later than twenty (20) days after the testimony is closed. Judgment may be entered into in accordance with a statement of decision as provided in the California Code of Civil Procedure. Any memorandum of costs shall be submitted to the arbitrator and the arbitrator shall determine the amount of the costs to be awarded to any prevailing party. Any motion for attorneys' fees as an element of costs under California Civil Code section 1717 shall be served and filed with the arbitrator before or at the time the memorandum of costs is served and filed. Except as otherwise provided in Section 7.19 below, the arbitrator's fees and charges shall be born equally by the parties to the dispute. Notwithstanding anything contained herein to the contrary, if a third person or entity not a party to this Agreement brings an action in which Consultant and Company become a party, by cross-claim or otherwise, and said party or entity is not bound by the provisions of this Section regarding arbitration, the provisions of this Section shall not be applicable to such dispute.

6.3 Survival; Applicability. The provisions of this Article shall survive any termination, amendment, or expiration of this Agreement in which this Section is contained, unless the parties otherwise expressly agree in writing. Should an action, dispute, claim, or controversy be brought against Company and/or Consultant by a third party who is not bound by a mediation or binding arbitration provision similar to the mediation and arbitration provisions contained herein, the terms of this Article shall not apply to such action, dispute, claim, or controversy.

7. MISCELLANEOUS.

7.1 Certifications. Consultant shall, from time to time, make such certifications and statements to Company and to others as Company shall reasonably request provided that Consultant determines that such certifications are true and correct based upon the Services performed by Consultant hereunder.

7.2 Liens. Provided Company has paid Consultant the amounts owing hereunder when such sums are owed to Consultant, should Consultant or any Subconsultant, employee, supplier, or vendor of Consultant make, record or file, or maintain any action on or respecting a claim of mechanic's or materialmen's lien, stop-notice, equitable lien, payment or performance bond, or *lis pendens*, Consultant shall immediately and at its own expense procure, furnish, and record appropriate statutory release bonds of bonding companies acceptable to Company which will extinguish or expunge said claim, stop-notice, or *lis pendens*. If Consultant fails to do so, Company will have the right to cause such lien to be removed and Consultant shall indemnify,

defend, and hold harmless Company against all liability, cost, and expense incurred by Company in causing such lien to be removed. Company may retain out of any payment due Consultant amounts sufficient to reimburse Company for any such liability, cost, and expense.

7.3 Independent Contractor. Neither Company nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of Company and shall remain at all times as to Company a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of Company. Company shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venture or a member of any joint enterprise with Consultant. Consultant is free to pursue and accept other business opportunities so long as Consultant's business ventures do not conflict with the provisions of this Agreement.

7.4 Assignment. The experience, knowledge, capability, and reputation of Consultant, its principals and employees were a substantial inducement for Company to enter into this Agreement. Therefore, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered, voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Company. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, this Agreement shall be void. No approved transfer shall release Consultant of any liability hereunder without the express consent of Company. Company, in its sole and absolute discretion, may assign this Agreement to any of its Affiliates. "Affiliates" means (a) Company's partners, co-members, or joint venturers, (b) any corporation or other entity that is a parent or subsidiary of Company, or (c) any corporation or other entity that is controlled by or under common control of any of the parties listed in (a) or (b). Upon any such assignment by Company, Company shall be released from all obligations and liability under this Agreement that accrue after the effective date of such assignment.

7.5 Information. Company shall provide information regarding its requirements for the Services to be provided by Consultant. Consultant shall notify Company immediately in writing if Consultant is aware or becomes aware of any omissions or deficiencies in the data or information supplied to Consultant in its performance of its Services pursuant to this Agreement.

7.6 Company's Approval. Whenever provision is made herein for the approval or consent of Company, or that any matter be to Company's satisfaction, unless specifically stated to the contrary, such approval or consent shall be made by Company in its sole discretion and determination.

7.7 Notices. Any notice which either party may desire to give to the other party must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a

reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case, postage fully prepaid and addressed to the respective parties as set forth on the first page of this Agreement or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto.

If notice to Company:

If notice to Consultant:

Alameda Alliance for Health
Attn: Chief Executive Officer
1240 South Loop Rd.
Alameda, CA 94502

Copy to:

Alameda Alliance for Health
Attn: General Counsel
1240 South Loop Rd.
Alameda, CA 94502

Via Email: Legal@alamedaalliance.org

7.8 Books and Records. Consultant shall keep complete and detailed books and records relating to reimbursable expenses, and Services performed on the basis of a fixed rate on the basis of generally recognized accounting principles, consistently applied. These books and records shall be retained by Consultant at its head office for a period of at least ten (10) years after the date of completion of the performance of this Agreement. Company shall have the right at all reasonable times to audit the books and records. If such audit discloses that Consultant has charged and received more than it was entitled hereunder, Consultant shall immediately reimburse to Company the excess amount received together with interest thereon at ten percent (10%) per annum from the date such excess amount was received until repayment thereof.

7.9 Confidentiality. Consultant, for itself and its employees and personnel, acknowledges, confirms, and agrees that all information learned in the course of the performance of Service under this Agreement and all data furnished by Company, all plans, drawings, computer programs, specifications, and other documents relating to the Project, Company's business, and the terms of this Agreement are and shall remain of a confidential nature. Any publicity or press releases with respect to the Project or the services hereunder shall be under the sole discretion and control of Company. Consultant shall not divulge to any unauthorized person any confidential information concerning observations, conversations, discussions, correspondence, personnel records, business records, or proprietary records. All matters concerning Company and its business operations, including, but not limited to, the identity of persons with whom it conducts business such as customers, vendors, manufacturers and suppliers, its research and development, its projects and contemplated projects, its financial affairs, its pricing structure and strategies and its procedures and practices shall be considered

confidential. Such information remains the property of Company. Moreover, Consultant shall not employ confidential business information in performing Services for Company that it has obtained by virtue of its relationship with any other company or entity.

7.10 Conflict of Interest. Consultant shall not have any business or financial interest outside Company which in any way conflicts with the interests of Company or places Consultant in a position where it can use the association with Company for direct or indirect gain to the possible detriment or embarrassment of Company. A conflict of interest may arise in a wide variety of circumstances and may be direct or indirect. A conflict of interest arises whenever Consultant's outside interests might affect or might reasonably be thought by others to affect Consultant's judgment or conduct in matters which involve Company. Consultant agrees not to engage in such activity. Consultant assumes any and all liability should any allegation of conflict of interest arise from the conduct of Consultant and Consultant agrees to indemnify Company for any allegation of conflict of interest arising from the conduct of Consultant.

7.11 Waiver. No waiver of any default hereunder shall be construed as a waiver of any subsequent breach.

7.12 Successors and Assigns. Company and Consultant each binds itself, its partners, successors, permitted assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement.

7.13 Governing Law. This Agreement shall be construed in accordance with the laws of California.

7.14 Full Agreement. Each party acknowledges its full understanding of this Agreement and that there are no verbal promises, undertakings or agreements in connection herewith and that this Agreement may be modified only by a written agreement signed by all parties hereto. All previous negotiations and agreements between the parties hereto, with respect to the transaction set forth herein, are merged in this instrument which fully and completely express the parties' rights and obligations, and the covenants herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

7.15 Partial Invalidity; Counterparts. If any term or provision of this Agreement shall be found to be illegal, unenforceable or in violation of the laws, statutes, ordinances, or regulations of any governmental agency having jurisdiction thereof by a court of competent jurisdiction, then, notwithstanding such term or provision, this Agreement shall be and remain in full force and effect and such term shall be deemed stricken; provided, however, this Agreement shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. In order to facilitate the transaction contemplated herein, electronically mailed or facsimile signatures may be used in place of original signatures on this Agreement. Each party intends to be bound by the signatures on the electronically mailed or facsimiled document, are

aware that the other party will rely on such signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

7.16 Survival. The terms, provisions, representations, and certification contained in this Agreement, or inferable therefrom, shall survive the termination of this Agreement and the payment of the remuneration hereinabove provided.

7.17 Attorneys' Fees and Expenses. In any action between the parties hereto seeking enforcement of any of the terms and provisions of this Agreement or in connection with the performance of the Services hereunder, the prevailing party in such action shall be entitled to have and to recover from the other party its reasonable attorneys' fees, expert witness fees, arbitrator's fees, statutory costs, court costs, and other expenses (including cost of collection) in connection with such action or proceeding.

7.18 Authority. Each individual executing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the party to this Agreement.

7.19 Exhibits. Exhibit A and Exhibit B attached hereto, are incorporated herein by this reference for the sole purposes of setting forth the scope of the Basic Services, the terms of payment for Basic Services and Additional Services and any schedule of performance of the Services. All other terms and conditions set forth in Exhibit A and Exhibit B shall not be incorporated into this Agreement. In the event of any conflict or inconsistency between the terms and conditions of the body of this Agreement and the Exhibits attached hereto, the terms and conditions contained in the body of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ALAMEDA ALLIANCE FOR HEALTH

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES

[attached hereto]

EXHIBIT B

SCHEDULE

Consultant's Services will be performed in a timely manner consistent with good professional practice and the desire that the Project proceed as expeditiously as practical. Any mutually approved performance schedule may be attached hereto.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “**Agreement**”) is entered into as of [_____, ____] (the “**Effective Date**”) by and among ALAMEDA ALLIANCE FOR HEALTH, a public entity organized under the laws of the State of California, its joint powers authority, ALAMEDA ALLIANCE JOINT POWERS AUTHORITY (both hereinafter individually and collectively referred to as “**Covered Entity**”), and _____ (“**Business Associate**”). Covered Entity and Business Associate are sometimes hereinafter referred to collectively as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA, the Privacy Rule, the Security Rule and the HITECH Standards, and is permitted to use or disclose such information only in accordance with such laws and regulations;

WHEREAS, Business Associate may receive such information from Covered Entity or create and receive such information on behalf of Covered Entity relating to the Covered Entity’s members in connection with the Parties’ evaluation of a contemplated services agreement (the “**Services Agreement**”) whereby Business Associate would provide services to or on behalf of Covered Entity; and

WHEREAS, Covered Entity and Business Associate wish to ensure that such information is appropriately safeguarded;

NOW THEREFORE, in consideration of the mutual promises and other consideration contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions.

The Parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in the Privacy Rule, the Security Rule and the HITECH Standards. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the Privacy Rule, the Security Rule and the HITECH Standards.

- a. “**Breach**” has the same meaning as provided in 45 C.F.R. § 164.402.
- b. “**Electronic Protected Health Information**” or “**Electronic PHI**” means Protected Health Information that is transmitted by or maintained in electronic media as defined in the Security Rule.
- c. “**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

d. **“HITECH Standards”** means the privacy, security and security breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act (**“HITECH”**), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.

e. **“HHS”** means the U.S. Department of Health and Human Services.

f. **“Individually Identifiable Health Information”** means information that is a subset of health information, including demographic information collected from an individual, and:

- (i) is created or received by a health care provider, health plan, employer or health care clearinghouse; and
- (ii) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and:
 - (A) that identifies the individual; or
 - (B) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

g. **“Privacy Rule”** means the regulations promulgated under HIPAA by HHS to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E.

h. **“Protected Health Information”** or **“PHI”** means Individually Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity, (ii) Business Associate creates for its own purposes from Individually Identifiable Health Information that Business Associate received from Covered Entity, or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g, records described at 20 U.S.C. § 1232g(a)(4)(B)(iv) and employment records held by the Covered Entity in its role as an employer.

i. **“Security Rule”** means the regulations promulgated under HIPAA by HHS to protect the security of Electronic Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and C.

j. **“Security Incident”** shall mean any Security Incident (as defined in 45 CFR 164.304) but shall not include incidental incidents that occur on a daily basis such as scans,

“pings,” or routine unsuccessful attempts to penetrate computer networks or servers maintained or utilized by Business Associate.

k. **“Unsecured Protected Health Information”** shall have the meaning set forth at 45 CFR 164.402.

2. Status of Parties.

The Parties hereby acknowledge and agree that Covered Entity is a “Covered Entity” and that Business Associate is a “Business Associate” of Covered Entity, as such terms are defined in HIPAA and the Privacy and Security Rule.

3. Permitted Uses and Disclosures.

a. Performance of Services. Business Associate may access, use and/or disclose Covered Entity’s PHI and/or ePHI in connection with the performance of its obligations under the Service Agreement if such use or disclosure of PHI would not violate HIPAA, the Privacy Rule or the HITECH Standards if done by Covered Entity, or such use or disclosure is expressly permitted under Section 3 of this Agreement.

b. Minimum Necessary. Except where the minimum necessary standard does not apply (as set forth at 45 CFR 164.502(b) (2)), with respect to the use, access, or disclosure of PHI by Business Associate as permitted under this Agreement, Business Associate shall limit such use access, or disclosure, to the extent practicable, to the minimum necessary to accomplish the intended purpose of such use, access, or disclosure. Business Associate shall determine what constitutes the minimum necessary to accomplish the intended purpose in accord with HIPAA, HIPAA Regulations and any applicable guidance issued by the Secretary of HHS.

c. Modification of PHI. Except as permitted under Section 5(b) below, Business Associate shall not modify any existing data to which it is granted access other than to correct errors, or derive new data from such existing data. Business Associate shall record any modification of data and retain such record for a period of ten (10) years.

d. Other Permitted Uses and Disclosures of PHI. Business Associate may, if necessary and only to the extent necessary, use and/or disclose PHI (i) for the proper management and administration of Business Associate's business, (ii) to provide data aggregation and/or de-identification services relating to the health care operations of Covered Entity, or (iii) to carry out Business Associate's legal responsibilities, subject to the limitation in Section 3(f), below. Business Associate shall obtain reasonable assurances from the person to whom the PHI is being disclosed that, as required under this Agreement, the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed. Business Associate shall require that any Breaches or Security Incidents be immediately reported to Business Associate. Business Associate shall then report the Breach or Security Incident to Covered Entity in accordance with Section 4(b) hereof.

e. Nondisclosure of PHI. Business Associate is not authorized and shall not use or further disclose Covered Entity's PHI other than as permitted or required under this Agreement, or as required by law or regulation.

- (i) Disclosures Required By Law. Business Associate shall not, without the prior written consent of Covered Entity, disclose any PHI on the basis that such disclosure is Required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. Business Associate shall notify Covered Entity at least five (5) days prior to making a disclosure of PHI pursuant to this subsection.
- (ii) Legal Process. In the event Business Associate is served with legal process or request from a governmental agency that may potentially require the disclosure of PHI, Business Associate shall promptly, and in any case within two (2) business days of its receipt of such legal process or request, notify Covered Entity. Business Associate shall not disclose the PHI without Covered Entity's consent unless pursuant to a valid and specific court order or to comply with a requirement for review of documents by a governmental regulatory agency under its statutory or regulatory authority to regulate the activities of either party.

f. State Law Requirements. Business Associate shall comply with applicable state law confidentiality, privacy, security, document retention and breach notification requirements. To the extent that state law is more stringent than the HIPAA Regulations, any safeguard, use or disclosure of PHI or ePHI by Business Associate or its agents or subcontractors shall be made in accordance with state law.

g. Subcontractors. Business Associate shall ensure that each subcontractor of Business Associate that creates, receives, transmits, or stores any PHI agrees to be bound in a written agreement by the same restrictions and conditions that apply to Business Associate pursuant to this Agreement, with respect to such PHI (or to restrictions that may be even more restrictive in favor of Business Associate), and that acknowledges that the subcontractor is directly subject to the HIPAA Privacy and Security Rules to the same extent as Business Associate.

h. Notification of Investigation or Lawsuit. Business Associate shall notify Covered Entity immediately upon receipt of notice of an investigation or of a lawsuit filed against Business Associate related to or arising from the use or disclosure of PHI by Business Associate pursuant to the Services Agreement or this Agreement.

i. Additional Restrictions. Covered Entity shall provide Business Associate with written notice of any restriction, changes in, or revocation of, permission by individuals to use or disclose PHI, to the extent that such changes affect Business Associate's use or disclosure of PHI under this Agreement. If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to

HIPAA, the Privacy Rule or the HITECH Standards, Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions. Such notice shall be provided no less than five (5) days prior to the implementation of such restrictions.

4. Safeguards, Reporting, Mitigation and Enforcement.

a. Safeguards. Business Associate shall use appropriate administrative, physical, and technical safeguards, including, among others, policies and procedures regarding the protection of PHI and/or ePHI and the provision of training on such policies and procedures to applicable employees and agents and subcontractors that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and/or ePHI that Business Associate accesses, uses, discloses, creates maintains or transmits on behalf of Covered Entity, and to prevent uses or disclosures of PHI not permitted by this Agreement. Business Associate further agrees to use appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of any Electronic PHI (ePHI) in accordance with the Security Rule and the HITECH Standards. Business Associate agrees to retain all business records containing PHI or ePHI, in accordance with Covered Entity's record retention policy, for at least ten (10) years, or as otherwise specified by Covered Entity.

b. Notification. Business Associate shall notify Covered Entity in writing as soon as possible, but in no event more than two (2) calendar days, after Business Associate becomes aware of any unauthorized use or disclosure of, or Security Incident involving, Covered Entity's PHI. Business Associate shall be deemed to be aware of any unauthorized use or disclosure of PHI or Security Incident as of the first day on which such unauthorized use or disclosure of PHI or Security Incident is known or reasonably should have been known to its officers, employees, agents or subcontractors. In addition, in the event any such previously reported unauthorized use or disclosure of PHI is later determined to also constitute a Breach, Business Associate shall notify Covered Entity in accordance with 45 CFR 164.410. Business Associate shall identify as soon as practicable each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach or Security Incident. Business Associate shall cooperate in good faith with Covered Entity in the investigation of any Breach or Security Incident.

c. Prompt Corrective Actions. In addition to the notification requirements in Section 4(b) above, Business Associate shall take (i) prompt corrective action to remedy any Breach or Security Incident, (ii) mitigate, to the extent practicable, any harmful effect known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement, and (iii) take any other action required by applicable federal and state laws and regulations pertaining to such Breach or Security Incident. In order to document compliance with this provision, Business Associate will provide written notice to Covered Entity as soon as possible but no later than twenty (20) calendar days of following the initial report, that shall, at a minimum:

- (i) Identify (if known) each individual whose PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Breach;

- (ii) Identify the nature of the non-permitted access, use or disclosure, including the date of the Breach and the date of discovery of the Breach;
- (iii) Identify PHI accessed, used, or disclosed as part of the Breach (e.g., full name, social security number, date of birth, etc.);
- (iv) Identify who made the non-permitted access, use or disclosure and who received the non-permitted disclosure;
- (v) Identify what corrective action Business Associate took or will take to prevent further non-permitted uses or disclosures;
- (vi) Identify what Business Associate has done or will do to mitigate any deleterious effect of the non-permitted access, use or disclosure and the corrective action Business Associate has taken or shall take to prevent future similar Breaches or Security Incidents;
- (vii) Indicate if a law enforcement official has stated that notification would impede a criminal investigation or cause damage to national security, and if so, whether such statement was made orally or in writing and the length of time for any delay in notification warranted by such statement; and
- (viii) Provide such other information, including a written report, as Covered Entity may reasonably request.

d. Duty to Cooperate. In the event of any Breach or Security Incident, Business Associate shall cooperate with Covered Entity and shall provide such assistance as Covered Entity may reasonably request so that Covered Entity or its Client may comply with any obligations either of them has to investigate, remediate, mitigate, report, and or otherwise notify third parties of such Breach. This duty shall require Business Associate to assist Covered Entity with the provision of any applicable required notices (to Persons other than Covered Entity, including individuals, HHS, and others) in accordance with the HITECH Act. Business Associate shall not give any such notice absent Covered Entity's request.

e. Costs Related to Inappropriate Use, Access or Disclosure of PHI. If Business Associate fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth in this Agreement or if there is a Breach or Security Incident of PHI in Business Associate's possession and, as a result, PHI or any other confidential information is unlawfully accessed, used or disclosed, it agrees to pay and reimburse Covered Entity for any and all reasonable costs, direct or indirect, incurred by Covered Entity associated with any Security Incident or Breach notification obligations. Business Associate also agrees to pay for any and all fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting if it fails to notify the Covered Entity of the Breach or Security Incident as required by this Agreement.

f. Mitigation. Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect known to Business Associate from any use or disclosure of PHI in violation of this Agreement or applicable law.

g. Sanctions. Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses PHI in violation of this Agreement or applicable law.

h. Covered Entity's Rights of Access and Inspection. From time to time, upon reasonable notice or upon a reasonable determination by Covered Entity that Business Associate has materially breached this Agreement, Covered Entity may reasonably inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. The fact that Covered Entity inspects, fails to inspect or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Covered Entity's (i) failure to detect or (ii) detection of, but failure to notify Business Associate or require Business Associate's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this Agreement. The Parties' respective rights and obligations under this Section 4(h) shall survive termination of this Agreement.

i. U.S. Department of Health and Human Services. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI, and the security of Electronic PHI, available to HHS for purposes of determining Covered Entity's compliance with the Privacy Rule, the Security Rule and the HITECH Standards after the compliance dates, respectively, of these regulations and standards; provided, however, that Business Associate shall immediately notify Covered Entity upon receipt by Business Associate of any such request for access by the Secretary of HHS and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto. The Parties' respective rights and obligations under this Section 4(i) shall survive termination of this Agreement.

j. Standard Transactions. To the extent Business Associate conducts Standard Transaction(s) on behalf of Covered Entity, Business Associate shall, without limitation, comply with the HIPAA Regulations, "Administrative Requirements for Transactions," 45 C.F.R. § 162.100 et seq., and shall not: (a) Change the definition, data condition or use of a data element or segment in a standard; (b) Add any data elements or segments to the maximum defined data set; (c) Use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification(s); or (d) Change the meaning or intent of the standard's implementation specifications.

5. Obligation to Provide Access, Amendment and Accounting of PHI.

a. Access to PHI. Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, and copies of, PHI in accordance with HIPAA, the Privacy Rule and the HITECH Standards.

b. Amendment of PHI. Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to amend

PHI in accordance with HIPAA, the Privacy Rule and the HITECH Standards. In addition, Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such information maintained by Business Associate.

c. Accounting of Disclosures of PHI.

- (i) Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide an accounting of disclosures with respect to PHI in accordance with HIPAA, the Privacy Rule and the HITECH Standards.
- (ii) Business Associate agrees to maintain a process that allows for such accountings to be provided to Covered Entity upon request. Such accountings shall include (1) the date of disclosure, (2) the name of the entity or person who received PHI and, if known, the address of the entity or person, (3) a brief description of PHI disclosed, and (4) a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or a copy of the written request for disclosure.
- (iii) Upon termination or expiration of the Service Agreement, Business Associate shall provide to Covered Entity an accounting of all such disclosures made during the existence of the Service Agreement.

d. Forwarding Requests from Individuals. In the event that any individual requests access to, amendment of or accounting of PHI directly from Business Associate, Business Associate shall within two (2) days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or Business Associate to violate HIPAA, the Privacy Rule or the HITECH Standards, Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.

6. Material Breach, Enforcement and Termination.

a. Term. This Agreement shall be effective as of the Effective Date and shall continue until the Agreement is terminated in accordance with the provisions of Section 6(b) hereof.

b. Termination. Business Associate may terminate this Agreement pursuant to Section 6(c) hereof. Covered Entity may terminate this Agreement:

- (i) immediately if Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the Privacy Rule, the Security Rule or the HITECH Standards; or
- (ii) immediately if a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, HITECH or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined.

c. Remedies. If Business Associate determines that Covered Entity has materially breached any term of this Agreement, Business Associate may pursue any or all of the following remedies:

- (i) take any reasonable steps that Business Associate deems necessary to cure such breach or end such violation; and
- (ii) terminate this Agreement immediately.

If Covered Entity determines that Business Associate has materially breached any term of this Agreement, Covered Entity may pursue any or all of the following remedies:

- (iii) exercise any of its rights of access and inspection under Section 4(h) of this Agreement;
- (iv) take any reasonable steps that Covered Entity deems necessary to cure such breach or end such violation; and
- (v) terminate this Agreement and the Service Agreement immediately if cure is not possible.

d. Knowledge of Non-Compliance. Any material non-compliance by Business Associate with HIPAA, the Privacy Rule, the Security Rule or the HITECH Standards will be considered a material breach of this Agreement if Business Associate knew or reasonably should have known of such non-compliance and failed to take reasonable steps to cure such non-compliance.

e. Reporting to HHS.

- (i) If Covered Entity's efforts to cure any material breach by Business Associate of this Agreement are unsuccessful and if termination of this Agreement is not feasible, Covered Entity may report the breach to the Secretary of HHS, and Business Associate agrees that it will not make any claims, whether at law, in equity or under this Agreement, against Covered Entity with respect to such report.
- (ii) If Business Associate' efforts to cure any material breach by Covered Entity of this Agreement are unsuccessful and if termination of this Agreement is not feasible, Business Associate may report the breach to the Secretary of HHS, and Covered Entity agrees that it will not make any claims, whether at law, in equity or under this Agreement, against Business Associate with respect to such report.

f. Effects of Termination. Upon termination of this Agreement, Business Associate shall return or destroy, as specified by Covered Entity, all PHI that Business Associate maintains in any form and shall retain no copies of such PHI. If Covered Entity requests that Business Associate destroy any or all PHI, Business Associate shall certify to Covered Entity that such PHI has been destroyed. If return or destruction is not feasible, including if return is inconsistent with any legal obligation related to the retention of documents, Business Associate shall inform Covered Entity of the reason it is not feasible and shall continue to extend the protections of this

Agreement to such information and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. The Parties' respective rights and obligations under this Section 6(f) shall survive termination of this Agreement.

g. Indemnification. Each Party agrees to indemnify and hold harmless the other Party, its affiliates and its respective officers, directors, shareholders, employees and agents from and against any and all liability, loss, fines, penalties, damage, claims or causes of action and expenses associated therewith (including, without limitation, court costs and attorneys' fees) caused directly or indirectly by such Party's breach of its obligations under this Agreement. The non-defaulting Party may enforce the defaulting Party's obligations hereunder by seeking equitable relief, without bond or other security being required, which remedy shall be nonexclusive. The Parties' respective rights and obligations under this Section 6(g) shall survive termination of this Agreement.

7. Miscellaneous Terms.

a. State Law. Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI without a written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

b. Assistance in Litigation or Administrative Proceedings. Each Party shall make itself, and its employees or agents assisting it in the performance of its obligations under this Agreement, available to the other Party at no cost to testify as witnesses or otherwise, in the event of litigation or administrative proceedings being commenced against such Party, its directors, officers or employees based upon a claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, except where a Party or its employee or agent is a named adverse party. The Parties' respective rights and obligations under this Section 7(b) shall survive termination of this Agreement.

c. Amendment. Covered Entity and Business Associate agree that amendment of this Agreement may be required to ensure that Covered Entity and Business Associate comply with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of PHI, including, but not limited to, changes under the Privacy Rule, the Security Rule and the HITECH Standards. Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between both Parties.

d. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be deemed to confer any rights, obligations, remedies or liabilities upon any person other than the Parties and their respective successors and assigns.

e. Disclaimer. Each Party makes no warranty or representation that compliance by the other Party with this Agreement, HIPAA, the Privacy Rule, the Security Rule and the HITECH Standards will be adequate or satisfactory for such other Party's own purposes.

f. Interpretation. The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and/or Business Associate, as applicable, to comply with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, HIPAA, the Privacy Rule, the Security Rule and the HITECH Standards.

g. Effect on Other Agreements. To the extent that any provisions of this Agreement conflict with the provisions of the Service and/or Licensing Agreement or any other agreement or understanding between the Parties, this Agreement shall control with respect to the subject matter of this Agreement.

h. Survival. The Parties' respective rights and obligations under Sections 5(h), 5(i), 6(f), 6(g) and 7(b) and others which by their nature are intended to survive the termination of this Agreement shall survive termination of this Agreement. All provisions of this Agreement shall survive the termination or expiration of the Services Agreement.

i. Governing Law. This Agreement shall be construed in accordance with the laws of California.

j. Notices. All notices required or permitted under this Agreement shall be in writing and sent to the other Party as directed by such Party, from time to time, by written notice to the other. All such notices shall be deemed validly given upon receipt of such notice by certified mail, postage prepaid, facsimile transmission or personal or courier delivery to:

If to Covered Entity:

Alameda Alliance for Health
1240 S. Loop Road
Alameda, CA 94502
Attn: Legal Department
Phone: (510) 747-4500
Fax: (877) 667-4286
Email: Legal@alamedaalliance.org

If to Business Associate:

Attn: _____
Phone: _____
Fax: _____
Email: _____

k. Facsimile and Counterparts. This Agreement may be signed by facsimile and executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

l. Entire Agreement. This Agreement – consisting of the signature page, these terms and conditions and any attachments – constitute the entire agreement between Business Associate and Covered Entity with respect to its subject matter and merges, integrates and supersedes all prior and contemporaneous agreements, addenda and understandings between them, whether written or oral, concerning its subject matter.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed effective as of the date first written above.

COVERED ENTITY

By: _____
Name: Click here to enter text.
Title: Click here to enter text.

BUSINESS ASSOCIATE

By: _____
Name: Click here to enter text.
Title: Click here to enter text.