



Contract Number

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Contractor	Relatient, Inc.
Contractor Representative	Lee Taylor
Telephone Number	On File
Contract Term	September 14, 2021 to September 13, 2026
Original Contract Amount	NTE\$280,000
Amendment Amount	
Total Contract Amount	NTE \$280,000
Cost Center	

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the San Bernardino County (County) desires to obtain an automated appointment reminder system that is cost effective and efficient, provides multi-lingual capabilities, will support current call center efforts to consolidate and streamline business processes and be compliant with all applicable laws and regulations; and

WHEREAS, the County conducted a competitive process to find Relatient, Inc. (Contractor) to provide these services, and

WHEREAS, the County finds Contractor qualified to provide an automated patient communication solution for patients; and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

A. DEFINITIONS

- A.1** ARMC: A department of the County denominated San Bernardino County Medical Center, also known as Arrowhead Regional Medical Center.
- A.2** Board: San Bernardino County Board of Supervisors
- A.3** Contract: This agreement between County and Contractor
- A.4** EHR: Electronic healthcare record system
- A.5** Epic: Epic Systems Corporation, which is in the process of implementing a new cloud based EHR to be used by ARMC
- A.6** HITECH: Health Information Technology for Economic and Clinical Health Act enacted as part of the American Recovery and Reinvestment Act of 2009, and signed into law on February 17, 2009, to promote the adoption and meaningful use of health information technology, as amended.
- A.7** HIPAA: Health Insurance Portability and Accountability Act of 1996, a federal law designed to provide privacy and information security standard to protect patients' medical records and other health information provided to health plans, doctors, hospitals, and other health care providers (45 C.F.R. Parts 160 and 164), as amended.
- A.8** PHI: Protected Health Information as defined by HIPAA
- A.9** RFP: Request for Proposal. The request for an offer from Proposers interested in providing the identified services sought to be procured by the County. The RFP specifies the evaluation factors to be used and contains or incorporates by reference contractual terms and conditions applicable to the procurement.
- A.10** Services: The request services described in the Recitals, and as may be further set forth in an SOW.
- A.11** SOW: Statement of Work, Attachments A through X, as attached hereto and incorporated herein
- A.12** Subcontractor: An individual, company, firm, corporation, partnership or other organization not in the employment of or owned by Contractor who is performing services on behalf of Contractor under the Contract or under a separate contract with or on behalf of Contractor.

B. CONTRACTOR RESPONSIBILITIES

Contractor shall:

- B.1** Provide services as outlined in the attached SOWs
- B.2** Provide an Epic compatible software/system for automated appointment reminder messages, which includes various contact methods (e.g., voicemail, email, and text/SMS messaging).
- B.3** Incorporate sufficient security measures for all products offered and provide a plan which addresses the following:
- B.3.1** Encryption methods for data at motion and at rest throughout its lifecycle
- B.3.2** Data Integrity Controls used (methods or functionality that ensures the accuracy of information throughout its lifecycle)
- B.3.3** Access and Activity Monitoring including retention and notification
- B.3.4** Access Controls and Authentication methods or functionality

- B.3.5** Strict adherence to HIPAA and HITECH standards for security
- B.3.6** Support of remote access through virtual private network (VPN) token for support
- B.3.7** Integration to Active Directory and the methods used to connect
- B.3.8** Security and encryption methods for wireless connections
- B.3.9** Any security methods for wireless devices such as PDAs, tablets, etc.
- B.3.10** System's ability to backup information in the event there is a loss of power
- B.4** Furnish all user manuals, technical manuals, operating manuals, service manuals, and other functional documentation relevant to the proposed solution. Online access to manuals is highly desirable.
- B.5** Provide updated documentation with each new release/upgrade within a reasonable amount of time following implementation, so as to not impact client operations. Any critical releases/upgrades shall be disseminated as soon as possible upon implementation.
- B.6** Contractor must be able to create and provide daily, monthly and Ad-Hoc reports as requested. Ability to provide key data, which includes, at a minimum, call volumes, failed call reports, and status of calls made.
- B.7** Ensure system feeds information back to the scheduling module and automatically return reports to specified departments (e.g., update phone number, unable to contact) including return reports on status of calls made (e.g., left a message, wrong number).
- B.8** Provide end users with customer service and system support for issues, inquiries, and technical support during Contractor's normal business hours of 7am to 7pm Central time on week days, excluding holidays. After business hours, County may submit urgent request by email at support@relatient.net, and Contractor shall use reasonable efforts to respond to any such urgent request within 1 hour. Contractor is not obligated to correct any errors or provide any other support to the extent such errors or need for support was created in whole or in part by: (i) the acts, omissions, negligence or willful misconduct of County or its users, including any unauthorized modifications of the Services or its operating environment; (ii) any failure or defect of County's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of Contractor's or its managed services provider's point of presence); (iii) County's use of the Services other than in accordance with the documentation.
- B.9** Be responsible for the implementation of upgrades, fixes, and new software releases. The County shall be notified within one (1) month prior to the implementation.
- B.10** Provide the necessary initial and ongoing training for end users. This training must ensure users will be capable of the successful use of the system. Training materials will be provided at no additional costs and may be duplicated for internal use.

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

C.2 Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

C.3 Contract Assignability

Neither party shall assign any of its rights under this Contract, except with the prior written consent of the other party. Notwithstanding the foregoing, upon written notice, Contractor may assign this Contract (i) to another entity that it controls, that it is controlled by, or with which it is under common control, or (ii) to a buyer of all of substantially all of its assets comprising the business unit to which this Contract relates, including by means of an asset sale, merger, stock sale, or any other similar change of control transaction, provided, in either case, that the assignee (x) is not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, and (y) has the financial and technical means to continue to perform under this Contract without any material degradation in the Services. Any purported assignment of rights in violation of this Section is void.

C.4 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

C.5 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

C.6 Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County, and not in violation of applicable law Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

C.7 Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

C.8 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C.9 Compliance with County Policy

While at any County facilities in connection with performing the Services, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and

controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

C.10 Confidentiality

Pursuant to the HIPAA and HITECH regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. Contractor shall execute and comply with the attached Business Associate Agreement (Attachment A). Contractor further agrees to comply with the requirements of other federal and state law that applies to the information collected and maintained by Contractor for Services performed pursuant to Contract.

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

C.11 Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

C.12 County Internship Initiative

Contractor agrees to be contacted by the County to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by Contractor's business. Contractor is encouraged, and agrees to make good faith efforts, to utilize the County's program to aid the ***County's Vision for a skilled workforce and jobs that create countywide prosperity***, and its ***goal to Create, Maintain and Grow Jobs and Economic Value in the County***. The County's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the County's internship initiative, the Contractor remains an independent contractor and shall not be construed as agents, officers, or employees of the County. More information about the County's GenerationGo! Career Pathways Program can be located at <http://wp.sbcounty.gov/workforce/career-pathways/>.

C.13 County Representative

The Hospital Director or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

C.14 Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

C.15 Debarment and Suspension

Contractor certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

C.16 Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

C.16.1 Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

C.16.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.

C.16.3 Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

C.17 Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

C.18 Employment Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250,

13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

C.19 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

C.20 Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

C.21 Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

C.22 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

C.23 Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

C.24 Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

C.25 Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation in this Contract or the RFP or that materially inaccurate information has been provided to the County in this Contract or the RFP, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

C.26 Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of “good faith” and “fair dealing”.

C.27 Nondisclosure

This Contract is subject to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 6250) (collectively, “Regulations”). All information, including detailed price and cost information, is public information. If Contractor believes that any portion of this Agreement (including any attachments, amendments, SOWs, and SLAs), materials, or work product provided to the County is exempt from public disclosure, Contractor must clearly mark that portion “Confidential” or “Proprietary”. Contractor also must include a brief description that identifies the recognized exemption from disclosure under the Regulations. County will use reasonable means to ensure that such information is safeguarded, but will not be held liable for inadvertent disclosure of the information. Information marked “Confidential” or “Proprietary” in its entirety will not be honored, and the County will not deny public disclosure of any information so marked. Contractor represents that it has a good faith belief that such portions are exempt from disclosure under the Regulations and agrees to reimburse County for, and to indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including without limitation, attorneys’ fees, expenses, and court costs of any nature arising from or relating to County’s non-disclosure of any such information. If the receiving Party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the other Party, it will, to the extent legally permissible, promptly notify the other Party and if requested by the other Party, tender to the other Party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the receiving Party will then be entitled to comply with the request to the extent permitted by law.

C.28 Force Majeure

If either Party is prevented, hindered or delayed from the performance of any act required hereunder by reason of contingencies beyond its control, including without limitation, strike, lock-out, or other labor or industrial disturbances, fire, accidents to equipment, acts of God, legal process, injunctions or compliance with laws, regulations, guidelines or orders of any governmental body or instrumentality thereof, failure of power or any other similar reason not directly the fault of such party, or by reason of the other Party or its agents, then performance of such act (other than payment of any amount when due hereunder) shall be excused for the period of delay and the Parties may mutually agree that the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Irrespective of any extension

of time, if an event of Force Majeure occurs and its effect continues for a period of sixty (60) days, County may, in its sole discretion, terminate this Agreement without any further obligation.

C.29 RESERVED

C.30 RESERVED

C.31 Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

C.32 Records

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

C.33 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

C.34 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

C.35 Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of San Bernardino County.

C.36 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

C.37 Subcontracting

Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions and inactions of its subcontractors to the same extent as if the actions of inactions were performed by Contractor directly.

For any subcontractor, Contractor shall:

C.37.1 Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

C.37.2 Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County. Contractor shall notify County in writing (which may be via email) of any change in any subcontractor that performs a material part of the Services.

C.38 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

C.39 Termination

C.39.1 This Contract may be terminated by County upon thirty (30) days' prior written notice if County does not approve or otherwise receive funds sufficient to continue payments set forth in this Agreement. In the event of termination due to a lack of appropriations, County will pay Contractor for all undisputed fees and expenses related to the software and/or services received prior to the effective date of termination.

C.39.2 Either Party can terminate this Contract for cause upon written notice to the other Party: (i) if the other Party has committed any material breach of its obligations under this Contract and has failed to cure such breach within 30 days of written notice by the non-breaching Party specifying in reasonable detail the nature of the breach (or, if such breach is not reasonably curable within 30 days, has failed to begin and continue to work diligently and in good faith to cure such breach); or (ii) upon the institution of bankruptcy or state law insolvency proceedings against the other Party, if such proceedings are not dismissed within 30 days of commencement.

C.39.3 Upon termination or expiration of this Contract for any reason, County shall discontinue any and all use of the Services, and Contractor shall provide to County a copy of its customer data in a standard machine-readable format within 30 days after termination, provided that County has paid all undisputed amounts owed to Contractor.

C.40 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

C.41 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

C.42 Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

C.43 Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

C.44 Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

C.45 RESERVED

C.46 RESERVED

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C.49 RESERVED

D. TERM OF CONTRACT

This Contract is effective as of September 14, 2021 and expires September 13, 2026 but may be terminated earlier in accordance with provisions of this Contract.

E. COUNTY RESPONSIBILITIES

E.1 Use restrictions. County shall not, directly, indirectly, alone, or with another party:

E.1.1 transfer or otherwise grant any rights in the Services in any form to any other party,

E.1.2 use the Services in a manner contrary to applicable law, including, but not limited to, laws governing robocalls or healthcare fraud;

E.1.3 use the Service in any manner that disrupts Contractor's operations or any other users' use of the Services;

E.1.4 use the Services to contact someone with whom County does not have a pre-existing or assigned commercial relationship;

E.1.5 use services in any way that violates applicable law, including Telephone Consumer Protection Act (TCPA) and Children's Online Privacy Protection Act (COPPA).

E.2 Patient Opt-In. County shall include language substantially similar to the following in its patient intake form:

By supplying my home phone number, mobile phone number, email address, and any other personal contact information, I authorize the practice and my health care provider, or a business associate of theirs, to contact me at any of the numbers or email addresses using an automatic telephone dialing system, using a pre-recorded voice or other third-party automated outreach and messaging system as well as to use my protected health information, or other personal or identifying information, during such contact for any administrative or healthcare matter. I consent to the practice, my provider, or their business associate contacting me via unencrypted email and text messages. I also agree that they may leave detailed messages on my voice mail, answering system, or with another individual, if I am unavailable at the number provided by me. By requesting a ride, I also consent to be contacted on my phone number on file (including by autodialer) about my trip.

E.3 Users and Security. County is solely responsible for maintaining the security of all user names and passwords granted to it, for the security of its information systems used to access the Services, and for its users' compliance with the terms of this Contract. Contractor has the right at any time to suspend access to any user or to County if Contractor reasonably believes that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the Services, Contractor, or Contractor's other customers. County shall notify Contractor promptly in writing of any noncompliance with this Contract by its users.

F. FISCAL PROVISIONS

F.1 The maximum amount of payment under this Contract shall not exceed \$280,000 and shall be subject to availability of other funds to the County. The consideration to be paid to Contractor, as

provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.

- F.2** Invoices shall be issued with a net forty-five (45) day payment term with corresponding Purchase Order number stated on the invoice.
- F.3** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- F.4** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- F.5** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- F.6** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- F.7** Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.
- F.8** If County is delinquent in payment of any portion of an invoice that it has not disputed in good faith, Contractor may, in addition to other remedies it may have, including termination, suspend access to the Services. County agrees to pay late fees on delinquent amounts at the rate of 0.5% per month (or, if lower, the maximum amount permitted by law) that a payment is overdue. If Contractor takes any legal action to collect on undisputed delinquent amounts, County shall reimburse Contractor for its costs incurred in pursuing such action, including but not limited to legal fees and court costs.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS; DISCLAIMERS AND LIMITATIONS OF LIABILITY

G.1 Indemnification

Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services provided by Contractor hereunder. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Contractor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Contractor of its obligations only if and to the extent that such delay or failure materially prejudices Contractor's ability to defend such lawsuit or claim. County will give Contractor sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Contractor may not settle the

claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the goods or services that are the subject of the claim. In the event that Contractor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Contractor, then Contractor shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Contractor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Contractor's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in Contractor's opinion, any goods or services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Contractor may, at its option: (i) procure for County the right to continue using the goods or receiving the services; (ii) replace or modify the goods or services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Contractor, County shall cease use of the goods or services upon written notice from Contractor, and Contractor shall provide County with a pro-rata refund of the unearned fees paid by County to Contractor for such goods or services.

G.2 RESERVED

G.3 Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

G.4 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

G.5 Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

G.6 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

G.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

G.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

G.9 Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

G.10 Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee may request that Contractor change the above insurance requirements.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by mutually-agreed amendment to this contract.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

G.11 The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

G.11.1 Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

G.11.2 Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

G.11.3 Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

G.11.4 Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

G.11.5 Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

G.11.6 Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

G.12 Disclaimer of Warranties. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CONTRACTOR MAKES NO, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE OF THE SERVICES. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, CONTRACTOR DISCLAIMS ANY WARRANTY THAT THE SERVICES OR THE OPERATION OF THE SERVICES ARE OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED. RELATIENT MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

G.13 Disclaimer of Consequential Damages. EXCEPT CLAIMS ARISING FROM CONTRACTOR'S INDEMNIFICATION AND INSURANCE OBLIGATIONS, OR FROM CONTRACTOR'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR VIOLATION OF LAW, NEITHER PARTY HAS ANY LIABILITY WITH RESPECT TO THE SERVICES OR ITS OTHER OBLIGATIONS UNDER THIS

AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND THE COST OF COVER) EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- G.14** Limitations of Remedies and Liability. EXCEPT CLAIMS ARISING FROM CONTRACTOR'S INDEMNIFICATION AND INSURANCE OBLIGATIONS, OR FROM CONTRACTOR'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR VIOLATION OF LAW, CONTRACTOR'S TOTAL LIABILITY TO COUNTY FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, IS LIMITED TO \$60,000, EXCEPT FOR A CLAIM RELATED TO A USE OR DISCLOSURE OF PHI IN VIOLATION OF APPLICABLE LAW OR THE BAA, IN WHICH CASE THE LIMITATION IS \$300,000.

H. RIGHT TO MONITOR AND AUDIT

- H.1** To the extent required by applicable law, the County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. To the extent required by law, Contractor shall give full cooperation in any auditing or monitoring conducted. Contractor shall reasonably cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County to the extent required by applicable law.

- H.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

I. CORRECTION OF PERFORMANCE DEFICIENCIES

- I.1** In the event of a material breach by Contractor that is not cured in accordance with Section C.39.2, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- I.1.1** Afford Contractor thereafter an additional time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
 - I.1.2** Withhold funds pending duration of the breach, which funds will be paid one the breach is remedied, less the amount of damages incurred by the County as a direct result of the breach, which amount will be mutually agreed by the parties.

J. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*County of San Bernardino
Arrowhead Regional Medical Center
400 North Pepper Avenue
Colton, CA 92324*

*Relatient, Inc.
320 Liberty Pike, Suite 115
Franklin, TN 37064*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

K. ELECTRONIC SIGNATURES

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same agreement.

The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

L. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

IN WITNESS WHEREOF, the County of San Bernardino and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

RELATIENT, INC.

(Print or type name of corporation, company, contractor, etc.)

►

Curt Hagman, Chairman, Board of Supervisors

By ►

(Authorized signature - sign in blue ink)

Dated: _____

Name _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

(Print or type name of person signing contract)

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

Title _____

(Print or Type)

By _____
Deputy

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

►
Bonnie Uphold, Deputy County Counsel

►

►
William L. Gilbert, Director

Date _____

Date _____

Date _____

ATTACHMENT A BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the contract to which it is attached (Contract) by and between San Bernardino County (hereinafter Covered Entity) and Relatent, Inc. (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

RECITALS

WHEREAS, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

WHEREAS, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

WHEREAS, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

WHEREAS, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements) in the same manner as they apply to a CE under HIPAA and 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule) as a business associate;

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

A. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

1. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
2. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103, and, in this Agreement, shall mean Relatent.
3. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103 and, in this Agreement, shall mean San Bernardino County.
4. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
5. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
6. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
7. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.

8. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
9. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
10. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and 45 CFR § 164.402.

B. Obligations and Activities of BA

1. Permitted Uses and Disclosures

BA may use PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Health Care Operations (TPO); (iv) as required by law; (v) as necessary to perform its obligations under the Contract; (vi) to de-identify PHI in accordance with the standards set forth under HIPAA; or (vii) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other uses, BA must obtain written approval from CE.

BA may disclose PHI (i) as necessary to perform its obligations under the Contract; (ii) for the proper business management and administration of BA or to carry out its legal responsibilities, if Required By Law or if BA obtains, prior to making any such disclosure, (a) reasonable written assurances from such third party recipient that such (1) PHI will be held confidential as provided pursuant to this Agreement, and (2) only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (3) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach; and (iii) as otherwise Required by Law. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

2. Prohibited Uses and Disclosures

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, and CE shall provide only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if Covered Entity notifies BA that the patient has requested this special restriction and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract or this Agreement.

3. Appropriate Safeguards

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the Electronic PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.

- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI. Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

4. Subcontractors

BA shall enter into written agreements with agents and Subcontractors to whom BA provides CE's PHI that impose substantially the same restrictions and conditions on such agents and Subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

5. Reporting of Improper Access, Use or Disclosure or Breach

BA shall report to CE in writing any Security Incident involving Electronic PHI, other than a Security Incident that involves an Unauthorized Use or Disclosure (as defined below), within 30 days of BA's discovery thereof. The parties acknowledge and agree that this section constitutes notice by BA to CE of the ongoing occurrence of events that may constitute Security Incidents but that are trivial, routine, do not constitute a material threat to the security of PHI, and do not result in unauthorized access to or use or disclosure of PHI (such as typical pings and port scans), for which no additional notice to CE shall be required.

Every use or disclosure of PHI not provided for by this Agreement of which BA becomes aware, including a Breach of PHI that is Unsecured PHI (each, an "Unauthorized Use or Disclosure"), shall be reported as soon as practicable, but no later than three (3) calendar days after discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of an Unauthorized Use or Disclosure, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to the extent available:
 - a) Date the Breach or suspected Breach occurred;
 - b) Date the Breach or suspected Breach was discovered;
 - c) Number of potentially affected Individual(s) with contact information; and
 - d) Brief description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach the following:
 - a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 - b) The unauthorized person who had access to the PHI;
 - c) Whether the PHI was actually acquired or viewed; and
 - d) The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
 - a) If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
 - b) If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
- iv. To the extent required by law and subject to any applicable privileges, make available to governing State and Federal agencies in a time and manner designated or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit.

6. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall promptly forward such request to CE.

7. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner reasonably designated by the CE.

8. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. To the extent permitted by law and subject to any applicable privileges, any documentation provided to the Secretary under this section shall also be provided to the CE upon request.

9. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

10. Termination

This Agreement shall become effective on the Effective Date and shall continue in effect until the earlier to occur of (i) the expiration or termination of the Contract, or (ii) termination pursuant to this section. CE may immediately terminate this agreement, and the Contract, if CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time reasonably specified by the CE.

11. Return of PHI

Upon termination of this Agreement, BA shall if feasible return or destroy all PHI maintained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event BA determines that returning or destroying the PHI is not feasible, BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

12. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if

the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

13. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

14. Direct Liability

BA acknowledges that it may be held directly liable by HHS under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

15. [Reserved]

16. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

17. [Reserved]

18. [Reserved]

C. Obligations of CE

1. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
 - i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
 - ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
 - iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.
2. CE shall obtain any authorization or consents as may be Required by Law for any of the uses or disclosures of PHI necessary for BA to perform its obligations under the Agreement.

D. General Provisions

1. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

2. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

3. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

4. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

6. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

7. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

8. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement for so long as BA maintains any PHI on behalf of CE.

Business Associate Agreement Addendum for Cloud Services

Software as a Service (SaaS)

This Business Associate Addendum for Cloud Services is entered into by and between San Bernardino County (County) and Business Associate (Contractor) for the purposes of establishing terms and conditions applicable to the provision of services by Business Associate to the County involving the use of hosted cloud computing services. County and Business Associate agree that the following terms and conditions will apply to the services provided under this addendum and the associated Business Associate Agreement as applicable.

1. DEFINITIONS:

- a) **"Software as a Service (SaaS)"** - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser or application. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- b) **"Data"** - means any information, formulae, algorithms, or other content that the County, the County's employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information, Protected Health Information (as defined by the Health Insurance Portability and Accountability Act (HIPAA)) and metadata which may contain Data or from which the Data may be ascertainable.
- c) **"Data Breach"** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.

2. SaaS AVAILABILITY: Unless otherwise stated in the Statement of Work (SOW),

- a) The SaaS shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SOW.
- c) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the County may terminate the contract for material breach.
- d) Contractor shall provide advance written notice to the County in the manner set forth in the SOW of any major upgrades or changes that will affect the SaaS availability.

3. DATA AVAILABILITY: Unless otherwise stated in the SOW,

- a) The Data shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SOW if the County is unable to access the Data as a result of:
 - 1) Acts or omissions of Contractor;
 - 2) Acts or omissions of third parties working on behalf of Contractor;
 - 3) Network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Contractor's

- server, to the extent such attack would have been prevented by Contractor taking reasonable industry standard precautions;
- 4) Power outages or other telecommunications or Internet failures, to the extent such outages were within Contractor's direct or express control.
- c) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the County may terminate the contract for material breach.

4. DATA SECURITY:

- a) In addition to the provisions set forth in the Business Associate Agreement, Contractor shall certify to the County:
 - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
 - 2) Compliance with the following:
 - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
 - ii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) 16 Service Organization Control (SOC) 2 Type II audit. Audit results and Contractor's plan to correct any negative findings shall be made available to the County within thirty (30) business days of Contractor's receipt of such results.
- b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Addendum to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the County's access to its Data.
- c) Contractor shall allow the County reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Addendum and the County's Data, at no cost to the County.
- d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
- e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Addendum period without prior written notice to and written approval by the County.
- f) Contractor shall provide access to Data only to those employees, contractors and subcontractors who need to access the Data to fulfill Contractor's obligations under this Agreement. Contractor will ensure that, prior to being granted access to Data, staff who perform work under this agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Addendum and the associated Business Associate Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

5. ENCRYPTION: Contractor warrants that all Data will be encrypted in transmission (including via web interface) using Transport Layer Security (TLS) version 1.2 or equivalent and in storage at a level equivalent to or stronger than Advanced Encryption Standard (AES) 128-bit level encryption.

6. DATA LOCATION: All Data will be stored on servers located solely within the Continental United States.

7. RIGHTS TO DATA: The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the County, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license

or right to the Data, including user tracking and exception Data within the system, by implication, or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

8. TRANSITION PERIOD:

- a) For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Contractor shall assist the County in extracting and/or transitioning all Data in the format determined by the County ("Transition Period").
- b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, SaaS and Data access shall continue to be made available to the County without alteration.
- d) Unless otherwise stated in the SOW, the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, Contractor shall issue a written statement to the County confirming the destruction or inaccessibility of the County's Data.
- e) The County at its option, may purchase additional transition services as agreed upon in the SOW.

9. DISASTER RECOVERY/BUSINESS CONTINUITY: Unless otherwise stated in the Statement of Work,

- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the County by the fastest means available and also in writing. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the County of:
 - 1) The scale and quantity of the Data loss;
 - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
 - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
- b) If Contractor fails to respond immediately and remedy the failure, the County may exercise its options for assessing damages or other remedies.
- c) Contractor shall restore continuity of SaaS, restore Data, restore accessibility of Data, and repair SaaS as needed to meet the Data and SaaS Availability requirements under this Addendum. Failure to do so may result in the County exercising its options for assessing damages or other remedies.
- d) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the County. The County and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the County, its agents and law enforcement.

10. [Reserved]

11. DISCOVERY: Contractor shall promptly notify the County upon receipt of any requests which in any way might reasonably require access to the Data of the County or the County's use of the SaaS. Contractor shall notify the County by the fastest means available and also in writing, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of

process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the County unless prohibited by law from providing such notification. Contractor shall not respond to legal requests directed at the County unless authorized in writing to do so by the County.

13. [Reserved]

14. DATA SEPARATION: Data must be partitioned from other data in such a manner that access to it will not be impacted or forfeited due to e-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain Service Provider's records, information or data for reasons or activities that are not directly related to Customer's business.