MASTER SOFTWARE-AS-A-SERVICE SUBSCRIPTION AGREEMENT

This Master Software-as-a-Service Subscription Agreement (this "Agreement"), is effective as of December 1, 2020 (the "Effective Date") by and between Secure Exchange Solutions, Inc., a Delaware corporation having its principal place of business at 9600 Blackwell Road, Suite 250, Rockville, Maryland 20850 ("SES") and the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital with its principal place of business at 1441 Constitution Blvd. Salinas, CA 93906 ("Subscriber").

RECITALS

A.   SES has developed certain computer software application products, proprietary databases, and related services and documentation as more fully described on Exhibit A attached hereto, made available for subscription as a service (collectively, the "Services").

B.   Subscriber desires to subscribe for the Services in accordance with the terms and conditions set forth in this Agreement to provide certain functionality to its customers, including, without limitation, the secure electronic exchange of certain data.

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained herein and other good and valuable consideration, including the rights and licenses granted in this Agreement, the receipt of which is acknowledged as legally sufficient and deemed legally binding, SES and Subscriber hereby agree as follows.

1.   **Subscription for Services**. Subscriber shall subscribe for the Services in accordance with this Agreement. SES shall provide the Services in a professional and workmanlike manner in accordance with this Agreement. With respect to performance and delivery of the Services, SES is acting as an independent contractor of Subscriber. SES, in its sole discretion, shall determine the manner in which the Services shall be performed and the specific hours to be worked by its personnel in providing and delivering the Services all as contemplated by this Agreement. Neither SES nor the employees or contractors of SES performing any part of the Services shall be considered an employee or agent of Subscriber. Nothing contained in this Agreement or otherwise shall be construed to imply a partnership, agency, or any other fiduciary relationship between Subscriber and SES. Notwithstanding the generality of any other provision of this Section 1, nothing in this Agreement or otherwise shall result in any of the Services or any work product resulting from the Services, including, without limitation, any databases, report templates, or training materials, whether or not including "Data" as defined by this Agreement (collectively, "SES IP") being deemed a "work-made-for-hire" or otherwise being deemed the property of Subscriber.

2.   **Specifications**. The parties agree that the specifications for the functionality provided by the Services are fully set forth on Exhibit A attached hereto and hereby made a part hereof (the "Specification Sheet"). Subscriber acknowledges that the Specification Sheet shall be amended by any revised Specification Sheet included with any Upgrade (as defined herein) of the Services provided in accordance with this Agreement without any action required of Subscriber provided that no Upgrade or applicable Specification Sheet shall result in a degradation of reduction of performance or functionality of the Services unless the elimination of functionality is required for compliance with applicable protocols, industry standards, or regulations. The Services shall be deemed to include all of the functionality described in (a) the Specification Sheet; and (b) set forth on (i) the Order Form attached hereto as Exhibit B; and (ii) any and all Upgrades (as defined herein) to any Services.

3.   **Provision of Services and Support Services; Payment**. (a) SES shall provide Subscriber with the Services set forth on the Order Form attached hereto as Exhibit B and provide Support Services described in Section 12 of this Agreement (the "Support Services"). (b) Subscriber agrees to pay SES all amounts related to (i) subscription for and provision of the Service as set forth on the Order Form; and (ii) Support Services provided under Section 12 of this Agreement for all such Services (collectively, "Subscription Fees") within thirty (30) days of receipt of an invoice certified for payment by the County of Monterey Auditor-Controller for the applicable Subscription Fees or as otherwise provided under Exhibit B, it being agreed that all invoices submitted by SES shall be deemed certified for payment if not disputed in writing with reasonable specificity as to what amounts, if any, are disputed, within ninety (90) days of the date of any invoice.

4.   **License Grant**. SES hereby grants Subscriber in accordance with the terms and conditions of this Agreement, a non-exclusive, non-transferable (except as otherwise permitted under this Agreement) license to access and use the Services, the SES IP, and run-time versions of the computer software applications embodied in the Services enabling the functionality provided by the Services (the "Software") for Subscriber's use in accordance with the intended purpose of the Services, SES IP and such Software (collectively, the "Licensed Intellectual Property") and as set forth on Exhibit B (the "License"). The License with respect to the Software is solely for use concurrent with access to and use of the Services.

5.   **Term**. Subject to the terms and conditions of this Agreement, Subscriber shall have all rights under the License for a period of three (3) years commencing on the Effective Date (the "Term").

6. **Termination.** (a) The License shall immediately terminate upon the earlier of (i) the receipt of any refund by Subscriber under Section 12(c) or Section 18 of this Agreement; (ii) at the election of SES, in the event that Subscriber shall fail to pay any applicable Subscription Fees in full within ninety (90) days following the date of the invoice for such Subscription Fees; (iii) in accordance with the BAA (as defined in this Agreement); or (iv) Subscriber may terminate this Agreement in its entirety at any time, without cause or further obligation, on thirty (30) days prior written notice to SES. (b) Upon any termination of the License provided under this Agreement, Subscriber shall have no further right to make use of the Licensed Intellectual Property in any manner whatsoever and shall immediately cease and desist from any use (whether for production or archival purposes) of the any and all of the Licensed Intellectual Property unless otherwise expressly authorized in writing by SES. (c) Upon any termination or expiration of this Agreement, SES shall afford Subscriber, at no additional charge, thirty days to download a complete copy of the Data in a format supported by the Services or as otherwise agreed by the Parties in writing. Upon download of the Data, the license granted herein to the Data shall immediately terminate and SES shall securely remove all copies of the Data from its systems and records using industry best practices (i.e., at least as protective as the DoD 5220-22-M Standard, NIST Special Publication 800-88, Guidelines for Media Sanitization, or NAID standards).

7. **Copy, Use and Transfer Restrictions; Authorized Users.** (a) The Licensed Intellectual Property is copyrighted to SES and is the sole and exclusive property of SES. Subscriber shall not give, sell, or otherwise distribute copies of and Licensed Intellectual Property or permit access to any of the Licensed Intellectual Property to third parties, except as permitted by the License. (b) The Licensed Intellectual Property shall only be used by (i) persons employed by Subscriber, (ii) third parties authorized by Subscriber to have access to the Services solely through use of Subscriber's own products and services ("Subscriber Customers") and shall have no other access to the Services; or (iii) authorized agents or contractors (including consultants) of Subscriber acting in the ordinary course of business (collectively, the "Authorized Users"). (c) Subscriber shall insure that only Authorized Users shall access and use the Licensed Intellectual Property and such use and access shall be only in accordance with the License. (d) Subscriber agrees (i) that it is acting as a "Trusted Agent" of SES for the purpose of registering and verifying the identities of its Authorized Users; and (ii) to comply with the required level of assurance in verifying such identities and registering Authorized Users to use the Services all in accordance with Subscriber's internal HIPAA-compliant process for identity proofing and verification and to maintain documentation evidencing such processes for the Authorized Users. (e) No copies of any Licensed Intellectual Property may be permissibly made by Subscriber or any Authorized User except as otherwise authorized in writing by SES.

8. **Data.** (a) Subscriber represents and warrants that any and all data input into the Software or otherwise provided by Subscriber or any Authorized User through use of the Services (collectively, the "Data") are the sole and exclusive property of Subscriber or Subscriber has secured any and all authorizations and rights to grant the license to use the Data as provided below, as applicable, under all applicable federal, state and local laws, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended, and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and all applicable regulations promulgated thereunder concerning the privacy and security of such data (collectively, "HIPAA"). Subscriber grants SES a non-transferable, non-assignable, terminable at-will license to use the Data during the Term (and thereafter with respect to Data subject to the Data Use License with respect to Routing Data as defined in Section 10 of this Agreement)solely as necessary to perform the Services for Subscriber's benefit or otherwise in accordance with the Data Use License. For the avoidance of doubt, SES may not use the Data for the purpose of machine learning, augmented human intelligence development, algorithm improvement, or similar data aggregation activities without the express written consent of Subscriber. Such uses shall not be deemed related to the performance of this Agreement and expressly prohibited. All Data shall be deemed the Confidential Information of Subscriber. Any Data constituting PHI shall be subject to the BAA, as defined below. (b) Subscriber is responsible for adopting reasonable measures to limit the impact of such problems, and to advise and require Authorized Users to do the same, including backing up Data and adopting procedures to ensure the accuracy of input Data; examining and confirming results prior to use; and adopting procedures to identify and correct errors and omissions, replace lost or damaged media, and reconstruct Data. (c) SES is and at all times shall be and remain a Business Associate of Subscriber and every Authorized User and agrees to comply with the terms and conditions of the Business Associate Agreement set forth in Exhibit C to this Agreement (the "BAA"). In the event of a conflict between the BAA and the body of this Agreement, the more protective provision shall govern. (f) The functionality provided by the Services permits the Subscriber and its Authorized Users to perform certain processes to Data among and between various data formats and standards (the "Data Services"), however, under no circumstances under this Agreement is SES performing any Data Services for or on behalf of Subscriber or any Authorized User, nor shall SES be a clearinghouse, service bureau or other such similar entity or organization otherwise defined under HIPAA as a Covered Entity. (g) SES shall not be liable for any errors in or loss of the Data as input into the Services by Subscriber; but SES will be responsible for errors or losses caused the Services failing to operate in accordance with the applicable Specification Sheet.

9. **Use of Protected Health Information; Confidentiality.** (a) SES may use Data which is PHI, as defined in the BAA, or which is any form of de-identified PHI ("Restricted Data") as provided in Section 8 and this Section 9 only strictly in accordance with the privacy rules under HIPAA and for the purposes of the providing the Services to Subscriber and no Restricted Data shall be disclosed to any person or party other than Subscriber, patient or other individual otherwise permitted access to such Restricted Data under HIPAA, including, among others, any Authorized User providing such Restricted Data.

(b) During the course of this Agreement, each party may disclose to the other certain non-public information or materials relating to a party's products, intellectual property, business, marketing programs and efforts, and other confidential information and trade secrets ("Confidential Information"). Notwithstanding the foregoing, Confidential Information does not include information that: (a) is or becomes publicly available through no breach by the receiving party of this Agreement; (b) was previously known to the receiving party prior to the date of disclosure, as evidenced by contemporaneous written records; (c) was acquired from a third party without any breach of any obligation of confidentiality; (d) was independently developed by a party hereto without reference to Confidential Information of the other party; or (e) is required to be disclosed pursuant to a subpoena or other similar order of any court or government agency, provided, however, that party receiving such subpoena or order shall promptly inform the other party in writing and provide a copy thereof, and shall only disclose that Confidential Information necessary to comply with such subpoena or order. Except as expressly provided herein, the receiving party will not use or disclose any Confidential Information of the disclosing party without the disclosing party's prior written consent, except disclosure to and subsequent uses by the receiving party's employees or consultants on a need-to-know basis, provided that such employees or consultants have executed written agreements restricting use or disclosure of such Confidential Information that are at least as restrictive as the receiving party's obligations under this Section. Subject to the foregoing nondisclosure and non-use obligations, the receiving party agrees to use at least the same care and precaution in protecting such Confidential Information as the receiving party uses to protect the receiving party's own Confidential Information and trade secrets, and in no event less than reasonable care. Each party acknowledges that due to the unique nature of the other party's Confidential Information, the disclosing party will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure. Neither party shall remove or alter any proprietary markings (e.g., copyright and trademark notices) on the other party's Confidential Information. Restriction on non-disclosure of Confidential Information provided by this Section shall not apply to permissible disclosures of Confidential Information necessary for performance of a party's performance obligations under this Agreement.

10. **Use of Routing Data; Use of Other Data.** (a) Included in the license to use Data provided in Section 8(a) of this Agreement above, is the right for SES to use Data which are any of the (i) electronic mail address generated by the Services for Subscriber or any Authorized User to use the Services (a "Direct Address"); (ii) administrative electronic mail address provided by any Authorized User upon registering for use of the Services (the "Administrative Address"); (iii) the postal zip code and state jurisdiction of Subscriber and any Authorized User receiving or using the Services (the "Zip and State"); (iv) the administrative telephone number for Subscriber and any Authorized User receiving or using the Services (the "Phone Number"); (v) the National Provider Identification Number issued by the United States Department of Health and Human Services (or any successor agency of the United States federal government) of any Authorized User, or Subscriber, as applicable. (the "NPI,"); of (vi) any alphanumeric identifier provided by Subscriber for any Authorized User (the "Identifier", together with the Direct Address, the Administrative Address, the Zip and State, the Phone Number, and NPI collectively, the "Routing Data") for reporting, monitoring and other uses of SES in connection with the provision of the Services (the "Data Use License"). (b) Subscriber agrees that the rights of SES to use Routing Data under the Data Use License shall survive any termination or expiration of this Agreement solely to permit SES to continue to use such Routing Data to permit third parties to transmit and receive electronic messages to and from Authorized Users generally in accordance with the Applicability Statement for Secure Health Transport as identified at 45 C.F.R. 170.202 or any applicable successor or coincident protocol (the "Direct Protocol") and subject to and in accordance with all applicable regulations. (c) Any and all Data input into, or otherwise provided by Subscriber or any Authorized User through use of, the Services which is none of any of PHI, Restricted Data, or Routing Data shall be used by SES only to provide the Services or the Support Services as defined by this Agreement.

11. **Disclaimer of Warranty and Limited Warranty.** (a) The Licensed Intellectual Property is licensed in accordance with the limited warranty described in this Section 11 as to their performance or to the results that may be obtained by using the Licensed Intellectual Property. Subscriber, and each Authorized User, as applicable, not SES, is responsible for ensuring the correctness of any Data entered during use of the Licensed Intellectual Property except if any of the Licensed Intellectual Property cause the Services or Software, as applicable, to materially fail to perform according to the applicable Specification Sheet.

(b) SES warrants that (i) in providing the Services and handling and processing the Data pursuant to this Agreement SES shall comply with the applicable provisions of HIPAA and all applicable local, state, federal, and international privacy and data security laws and regulations; (ii) the Licensed Intellectual Property will permit the Services to materially operate according to the applicable Specification Sheet at all times commencing on the date Subscriber or any Authorized User first accesses the Services through the termination or expiration of the Term provided Subscriber has paid in full all Subscription Fees and when the Licensed Intellectual Property is used for the proposes identified on the applicable Specification Sheet.; (iii) SES shall comply with such other representations and warrantys otherwise expressly set forth in this Agreement; and (iv) it shall not transmit or make available any unencrypted Data to any entity or individual outside the United States without Subscriber's prior written authorization (collectively, the "Limited Warranty"). Except as expressly provided under the Limited Warranty, SES does not warrant, and Subscriber acknowledges, that any of the Licensed Intellectual Property, including, without limitation, any of the

Services, will be error-free, or will operate without interruption, or that the Licensed Intellectual Property will perform in the manner intended by Subscriber or the Services will meet the requirements of Subscriber or any Authorized User.

(c) The Limited Warranty defined in this <u>Section 11</u> shall not apply if any Licensed Intellectual Property is modified by (i) a party other than SES without SES's written consent which may be withheld for any reason at SES's sole discretion; or (ii) improperly used, including, without limitation, used in a manner not consistent with the Specification Sheet or other than for the intended purpose of the Services. However, SES does warrant that in the event that if any of the Licensed Intellectual Property fails to conform to the Limited Warranty, Subscriber shall be entitled to the remedies set forth in <u>Section 12</u> of this Agreement or such other applicable remedies otherwise provided in this Agreement.

(d) EXCEPT FOR THE LIMITED WARRANTY DEFINED IN THIS <u>SECTION 10</u>, SES MAKES NO OTHER WARRANTY, OF ANY KIND EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT BY ANYONE SHALL BE DEEMED TO BE OR CREATE A WARRANTY FROM SES OR BY ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PROVISION, OR DELIVERY OF THE SERVICES OR ANY OTHER LICENSED INTELLECTUAL PROPERTY.

(e) Subscriber acknowledges that no use of any Licensed Intellectual Property shall make them consumer goods for purposes of federal or state warranty laws, and agrees that they are not consumer goods for such purposes.

12. **Software and Media Remedy**. (a) If the Licensed Intellectual Property causes the Services to materially fail to operate according to the applicable Specification Sheet, SES agrees at no cost to Subscriber to: (i) promptly repair or replace any defective Licensed Intellectual Property; (ii) provide a comparable alternative means with the same or similar functionality for the Subscriber; and (iii) correct any errors in future Upgrades. As used in this Agreement, "Upgrades" means any improvements to the Services, whether or not enabled by improvements to any SES IP or any Software (such as bug fixes and/or new features, new functionality, increased efficiency or other modifications) released by SES as an "Upgrade;" it does not include other computer software applications released by SES under other product names, or other services or solutions offerings made available generally by SES from time-to-time or at any time which may have features or functionality similar to that of the Services.

(b) Upon receipt by SES of written notice by Subscriber, that SES has failed to conform to any of the limited warranties specified in <u>Section 11</u> of this Agreement (the "Warranty Notice"), SES shall be entitled to thirty (30) days from date of such Warranty Notice to cure said failure. If SES does not cure said failure within 30 days after the date of such Warranty Notice, SES shall promptly continue to modify, replace or repair the Licensed Intellectual Property to cause the Services to conform to the warranty provided under this Agreement. Subscriber shall have the right to request in writing a refund of the Subscription Fees paid to SES at any time after 30 days from date of the Warranty Notice if SES has not cured said failure (the "Refund Request").

(c) SES shall refund within sixty (60) days after receipt of any Refund Request from Subscriber the amount of Subscription Fees paid for the nonconforming Services following the date upon which the Services became non-conforming, such date being no earlier than the date of the Warranty Notice applicable to such non-conformity. In the event Subscriber pre-paid the Subscription Fees for the period during which the non-conformity occurs, such refund shall equal the unamortized portion of such Subscription Fee stated on a 12-month straight-line amortization schedule commencing on the dates of the applicable annual period and ending on the date of the Warranty Notice. The License shall be terminated immediately upon Subscriber's receipt of any refund under this <u>Section 12</u>.

13. **Support Services**. Provided Subscriber is at all times in compliance with the License and timely pays all Subscription Fees, Support Services, as described in paragraphs (a) and (b) of this <u>Section 13</u>, will be provided in accordance with the Service Level Agreement described in <u>Exhibit D</u> attached hereto (the "Service Level Agreement").

(a) **Upgrade Service**. Upgrades to the Services including Upgrades, will be provided for as part of the Support Services, provided Subscriber pays all applicable Subscription Fees. SES shall provide Upgrades as they become generally available for release in the manner set forth in this Agreement or the Service Level Agreement, provided Subscriber has timely paid all applicable Subscription Fees.

(b) **Additional Support Services**. Support Services, (as set forth in <u>Exhibit D</u> of this Agreement) including telephone support for Authorized Users which are not Subscriber Customers, will be provided to Subscriber provided Subscriber timely pays all applicable Subscription Fees.

(c) **Disaster Recovery**. SES shall maintain an appropriate Disaster Recovery Plan in accordance with applicable provisions of the Service Level Agreement.

14. **Work Orders**. Subscriber may request additional services from SES with respect to the integration, configuration and operation of the Services and any other Licensed Intellectual Property by the execution of one or more work orders in the form attached hereto as Exhibit E ("Work Orders"). Under no circumstances shall any Work Order be deemed to create a work-made-for-hire on behalf of Subscriber and all work product, results, deliverables or other intellectual property arising from any Work Orders is and shall remain the sole and exclusive property of SES and shall when made available to Subscriber be deemed to have been included among and within the Licensed Intellectual Property as of the Effective Date of this Agreement. Subscriber shall pay all amounts due under each Work Order otherwise in accordance with the terms of each applicable Work Order and this Agreement.

15. **Ownership of the Licensed Intellectual Property**. The Subscriber acknowledges that the Services and all other Licensed Intellectual Property are the property of SES, and that the entire right, title, and interest (including any interest arising out of copyright laws) in the Services and all other Licensed Intellectual Property and all materials relating to the Licensed Intellectual property belong to SES, subject to the License. Unless otherwise expressly agreed, all changes, modifications or improvements made or developed with regard to any of the Licensed Intellectual Property by SES, whether or not made or developed at Subscriber's request, whether pursuant to a Work Order or otherwise, shall remain the property of SES and, upon delivery, disclosure, provision or availability to Subscriber, shall be deemed to have been part of the Services and all other Licensed Intellectual Property as of the Effective Date. Subscriber acknowledges and agrees that (i) the Licensed Intellectual Property may include applications, products, materials, systems, data, techniques, processes, information, methodologies and the other information and services that are proprietary to third-party suppliers and vendors of SES (the "Third Party IP"); (ii) SES holds valid licenses for all Third Party IP sufficient to permit SES to provide the Services pursuant to the License and to permit Subscriber to use the Services and all other Licensed Intellectual Property in accordance with the License; and (iii) Subscriber shall neither have nor obtain any rights in any Third Party IP under this Agreement except coincident to the License.

16. **Transfer of License**. The Subscriber does not have the right to sell, assign or otherwise transfer copies of any Licensed Intellectual Property or the License, or permit any third party access to the Services (other than to Subscriber Customers as part of use of the Services in accordance with this Agreement and the License) except in connection with the merger, corporate reorganization or the sale of all or substantially all of its assets or to a parent or wholly owned subsidiary or successor to the business of the Subscriber. Any permitted successor shall notify SES of its succession to the Subscriber's rights and shall agree in writing to be bound by this Agreement.

17. **Damages; Injunctive Relief**. The Subscriber agrees that, if any unauthorized copies of the Software are made, or if the Software are used in violation of this Agreement, SES shall have the right to seek an injunction by application or petition to any court of competent jurisdiction against that unauthorized copying or use, in addition to any other rights to which SES may be entitled and notwithstanding the general applicability of Section 17 of this Agreement. Similarly, SES agrees that, if any unauthorized copies of the Data are made, or if the Data is used in violation of this Agreement, Subscriber shall have the right to seek an injunction by application or petition to any court of competent jurisdiction against that unauthorized copying or use, in addition to any other rights to which Subscriber may be entitled and notwithstanding the general applicability of Section 17 of this Agreement..

18. **Limitation of Liability; Indemnification**. (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EACH PARTY'S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION OR THEORY OF LIABILITY (INCLUDING CONTRACT, TORT, OR WARRANTY), SHALL BE LIMITED TO ACTUAL DAMAGES INCURRED BY THE PARTY NOT TO EXCEED THE AMOUNT OF SUBSCRIPTION FEES PAID. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY HAVE ANY LIABILITY TO SUBSCRIBER FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR COSTS, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF GOODWILL, RESULTING FROM ANY VIOLATION OF THIS AGREEMENT EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY THEREOF. THE FOREGOING LIMITATIONS AND EXCLUSIONS OF LIABILITY SHALL NOT APPLY TO NOR LIMIT SES' INDEMNITY OBLIGATIONS IN THIS SECTION OR EITHER PARTY'S LIABILITY FOR INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHT (FOR THE AVOIDANCE OF DOUBT, USE OF DATA OR INTELLECTUAL PROPERTY IN BREACH OF AN EXPRESS LICENSE SHALL BE DEEMED INFRINGEMENT), BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, BREACH OF THE BAA, OR GROSS NEGLIGENCE, WILLFUL MISCONDUCT, AND VIOLATION OF APPLICABLE LAW.

(b) At SES's expense as provided herein, SES agrees to defend, indemnify, and hold harmless Subscriber and its directors, officers, agents, employees, members, subsidiaries and successors in interest from and against any claim, action, proceeding, liability, loss, damage, cost, or expense, including, without limitation, attorneys' fees, experts' fees and court costs, arising out

of any claim by a third party (i) related to SES' use of the Data in violation of the express license granted herein or in breach of the BAA (a "Data Claim"); and (ii) alleging that the Licensed Intellectual Property provided pursuant to this Agreement infringes any patent, copyright, trademark, trade secret or other intellectual property right of any third party (an "IP Claim, together with any Data Claim, collectively, "Claims"); provided, however, that (A) Subscriber promptly notify SES in writing by personal delivery, courier, or registered mail agent of any such Claim; (B) Subscriber permits SES, at its expense, to direct and control all defense, settlement or compromise negotiations; (C) Subscriber provides SES with full information and assistance as may be reasonably required to defend any such Claim; and (D) that to the extent that SES has control over the defense and settlement of any such Claim, SES shall not enter into any settlement or other arrangement that admits liability of the Subscriber without Subscriber's prior written consent.

(c) SES shall have no obligation or liability with respect to any IP Claim based upon any Licensed Intellectual Property which has been altered by any party other than SES without the written consent of SES, or the combination, operation or use of the Licensed Intellectual Property with products not furnished by SES when such combination is a part of any allegedly infringing process.

(d) If any of the Licensed Intellectual Property becomes, or in SES's opinion is likely to become, the subject of an IP Claim, SES may either (i) procure for Subscriber the right to continue using the affected Licensed Intellectual Property; or (ii) replace or modify such Licensed Intellectual Property so as to make it non-infringing.

(e) If neither of the alternatives set forth in Section 18(c) or Section 18(d) is reasonably available to SES, then SES may terminate the License provided in Section 4 of this Agreement upon written notice to Subscriber and refund the unamortized portion of the Subscription Fees paid for the nonconforming Licensed Intellectual Property based on a straight line twelve (12) month amortization for the year in which Subscriber discontinues the use of the nonconforming Licensed Intellectual Property.

(f) The License for the applicable non-conforming Licensed Intellectual Property shall be terminated immediately upon Subscriber's receipt of any refund under this Section 18 and this Section 18 states the entire liability of SES with respect to indemnification for patent, trademark, copyright, trade secret, or other intellectual property right infringement covered by any IP Claims.

19. **No Use of Names; Publicity; Trademarks and Logos**.   (a) Neither party will use the names or trademarks of the other party in any marketing or promotional materials or make any public announcement or engage in communication with the general public or in public forums (including but not limited to Twitter, Facebook, Linked-In, Blogging, or other social media) concerning the existence or substance of the Agreement or about the other party's business practices, services, or support activities before obtaining the written consent of the other party. This restriction will not apply, however, to any announcement or written statement required to be made by law or the regulations of any national, provincial or state governmental agency. (b) Subscriber hereby grants SES a fully-paid, non-exclusive right to use the name, logo, trademarks, trade dress and other collateral graphic materials and images on any web site or world wide web page providing access to the Services by any Authorized User and in identity certificates required for operation of the Services in accordance with the Direct Protocol at all times during the Term.

20. **Miscellaneous**. This Agreement represents the entire agreement between the parties as to its subject matter and shall be governed by and construed in accordance with the laws of the State of Maryland without regard to the conflicts of laws provisions thereof. The parties hereto agree that all applicable actions or proceedings arising from or relating to this Agreement shall be tried and litigated exclusively in the Circuit Court for Montgomery County, Maryland. Neither the Uniform Computer Information Transactions Act ("UCITA") (if and to the extent enacted in Maryland or any other state), nor the United Nations Convention on Contracts for the International Sale of Goods shall apply to this Agreement. To the extent UCITA is applicable notwithstanding the foregoing, SES and Subscriber agree to opt out of the applicability of UCITA pursuant to the "opt out" provisions contained therein. This Agreement may be modified only in a writing signed by both parties. In the event of any conflict between the terms and conditions of this Agreement or Work Order, the terms and conditions of this Agreement shall control. In particular, no shrink-wrap, click-wrap, or other terms and conditions, privacy policies, or agreements ("Additional Terms") provided with any products, services, documentation or software, including any maintenance and support updates thereto, hereunder shall be binding on Subscriber, even if use of such items requires an affirmative "acceptance" of those Additional Terms before access is permitted. All such Additional Terms shall be of no force or effect and shall be deemed rejected by Subscriber in their entirety. If any provision of this Agreement is alleged to be invalid or unenforceable, that provision shall be construed to have the broadest interpretation that would make it valid and enforceable. Invalidity or unenforceability of one provision shall not affect any other provision of this Agreement. Failure or delay by either party in exercising any right or power under this Agreement shall not operate as a waiver of that right or power. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

21. **Insurance**.

(a)   Evidence of Coverage:

Prior to commencement of this Agreement, SES shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, SES upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to SUBSCRIBER's Contracts/Purchasing Department, unless otherwise directed. SES shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and SUBSCRIBER has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of SES.

(b)   Qualifying Insurers: All coverage's except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by SUBSCRIBER's Contracts/Purchasing Director.

(c)   Insurance Coverage Requirements: Without limiting SES's duty to indemnify, SES shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

(d)   Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent SESs, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than $1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

☐   Exemption/Modification (Justification attached; subject to approval)

(e)   Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than $500,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

☐   Exemption/Modification (Justification attached; subject to approval)

(f)   Workers' Compensation Insurance. If SES employs other in the performance of this Agreement, in accordance with the applicable statutory minimums for the jurisdiction where such persons are employed with Employer's Liability limits not less than $500,000 each person, $500,000 each accident and $500,000 each disease.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

☐   Exemption/Modification (Justification attached; subject to approval)

(g)   Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than $1,000,000 per claim and $2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, SES shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

☐   Exemption/Modification (Justification attached; subject to approval)

(h)   Other Insurance Requirements.

a. All insurance required by this Agreement shall be with a company acceptable to Subscriber and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date SES completes its performance of services under this Agreement.

b. Each liability policy shall provide that Subscriber shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof, provided, however, that the failure to provide such notice shall not be a default under or breach of this Agreement so long as the required insurance is maintained as provided in this Section 21 with no break in coverage. Each policy shall provide coverage for SES and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor, if any, showing identical insurance coverage to the above requirements.

c. Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of SES's work, including ongoing and completed operations, if applicable, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by SES's insurance.

d. Prior to the execution of this Agreement by Subscriber, SES shall file certificates of insurance with Subscriber's Contracts/Purchasing Department, showing that SES has in effect the insurance required by this Agreement. SES shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file, provided, however, that the failure to timely file shall not be a default under or breach of this Agreement so long as the required insurance is maintained as provided in this Section 21 with no break in coverage. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

e. SES shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by Subscriber, annual certificates to Subscriber's Contracts/Purchasing Department. If the certificate is not received by the expiration date, Subscriber shall notify SES and SES shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by SES to maintain such insurance is a default of this Agreement, which entitles Subscriber, at its sole discretion, to terminate the Agreement immediately.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Secure Exchange Solutions, Inc. and Subscriber have caused this Master Software-as-a-Service Subscription Agreement to be executed by their duly authorized representative as of the Effective Date.

Secure Exchange Solutions, Inc.

The County of Monterey on behalf of Natividad Medical Center

Dan Kazzaz

Dan Kazzaz

By: _____

Title: CEO

Dated: 11/23/2020

By: _____

Title: _____

Dated: _____

Reviewed and approved as to form.

Stacy L Saetta

Deputy County Counsel
February 4, 2021

Approved For Fiscal Provisions

Gary Giboney

Chief-Deputy Auditor-Controller
2-4-2021

Exhibit A

Specification Sheet

SES will provide products and services as further described in this Exhibit A.

1. **SES Direct:** The following sets forth the features and functions of SES Direct platform service, a software-as-a-service Direct Secure Messaging solution to provided secure, point-to-point messaging in accordance with the specifications set forth in the Direct Protocol.

   1. Direct Messaging Support/Security
      a. Available integration tools (SES Connect) that allow for automated transport of messages and attachments according to the Direct Protocol
      b. Cryptographic services platform to support advanced encryption/decryption and digital signature methods as well as S/MIME packaging and envelope handling
      c. Full end-to-end encryption, including all server data, transaction/transport of data, and administrative access
      d. HISP to HISP message routing (inbound and outbound), including negotiation of trust
      e. Support for TLS with access permitted with a valid certificate (TLS v.1.2 or higher)
      f. SES HISP Platform (SES Direct) accredited by DirectTrust in accordance with Direct Trusted Agent Accreditation Program (DTAAP)
      g.
      h. SES HISP Platform (SES Direct) certified as ONC-HIT 2015 ed. 170.315(d)(1)-(3), g(4),-(5), and (h)(2) Compliant to support Meaningful Use Stages 1-3 compliance.

   2. SES Direct Online Web Application
      a. Browser based administrative and webmail portal that provides access to secure messages and reports
      b. Supports all standard web browsers current version (Google Chrome v.69 or higher, Microsoft Edge v.40 or higher, Internet Explorer v.11 or higher, Mozilla Firefoxv.60 or higher, or Apple Safari v.12 or higher)
      c. Contact list synchronization and download

   3. Domain Management
      a. Concierge domain hosting for Subscriber-named domain (if applicable).
      b. Directory Service for look-up of recipient Direct addresses in accordance with applicable DirectTrust rules

   4. Certificate Authority
      a. Certificate management service - Issue (create), renew and revoke PKI (X.509) certificates used for encryption of messages and digital signing
         i. Certificate provisioning for signing and encryption
         ii. Certificate management (including issuance, discovery, renewal, and validation)
         iii. DNS service for certificate publication and discovery
      b. Trust anchors repository
         i. Maintain storage and delivery of certificates used in the exchange, manage trust anchors
         ii. Scalable and expandable security and trust framework
      c. SES Certificate Authority accredited by EHNAC/DirectTrust in accordance with Direct Trusted Agent Accreditation Program (DTAAP)

   5. Registration Service
      a. Registration and enrollment of Authorized Users
         i. Pre-load and Assisted Registration for large batch upload
         ii. Web registration via web portal
         iii. Automated through SES Connect Registration API (if applicable).

      b. Subscriber to have primary responsibility for establishing Authorized User identity to required level of assurance and to maintain documentation evidencing such processes for all Authorized Users.

      c. Registration services provided via SES Registration Authority accredited by EHNAC/DirectTrust in accordance with Direct Trusted Agent Accreditation Program (DTAAP) with Subscriber as Trusted Agent for identity verification of Authorized Users.

6. Audit/Reporting
   a. Browser-based administrative portal and reporting mechanism (SES Direct Online)
   b. Audit logging mechanism for the messaging and account lifecycles that includes message date time stamp, message ID, sender / receiver, message status, size of message, account creation date time stamp

7. Security
   a. All data is encrypted at rest and in motion
   b. Data encryption is implemented using the Advanced Encryption Standard (AES) algorithm specified by Federal Information Processing Standard 197 encrypted with AES128 cipher and 2048 bit key
   c. User access over TLS v.1.2
   d. Password strength is enforced by policy in accordance with NIST Pub. No. 800-63-3 guidelines
   e. Separate databases for encrypted messages and private keys with different access privileges
   f. Administrative access controlled with two-factor authentication

8. SES Connect (Version 2.1 or latest release): Web Service API toolkit including the follow methods for integration
   a. Method Name: GetMessageNumber
   b. Method Name: GetReadMessageNumber
   c. Method Name: GetMessageList
   d. Method Name: GetMessageHeader
   e. Method Name: GetMessageHeaderList
   f. Method Name: GetMessage
   g. Method Name: DeleteMessage
   h. Method Name: SendMessage
   i. Method Name: UpdateMessageStatus
   j. Method Name: SentMessageStatus
   k. Method Name: SendMDN
   l. Method Name: Register
   m. Method Name: SearchRegistration
   n. Method Name: UpdateRegisteredAccount
   o. Method Name: DeleteRegisteredAccount
   p. Method Name: PublicDirectorySearch
   q. Method Name: ExternalDirectorySearch

2. **SES XDR**: Support for Direct Messaging Specification Version 1.0 for push exchange with the Subscriber

3. **SES Online Webmail**: Browser based administrative and webmail portal that provides access to secure messages and reports. Supports all standard web browsers (Google Chrome v.69 or higher, Microsoft Edge v.40 or higher, Internet Explorer v.11 or higher, Mozilla Firefox v.60 or higher, or Apple Safari v.12 or higher). Includes contact list synchronization and download.

Exhibit B

Order Form

(attached)

secure ➤
exchange
solutions

Exhibit B

Subscriber Name:	**Natividad Medical Center**		Billing Address:	Natividad Medical Center
Subscriber Address:	ATTN: Tim Fitzgerald,PMP			ATTN: Accounts Payable
	Information Technology			1441 Constitution Blvd.
	1441 Constitution Blvd.			Salinas, CA 93906
	Salinas, CA 93906			
phone:	831.783.2716		phone:	831.783.2716
email:	fitzgeraldTR@natividad.com		email:	fitzgeraldTR@natividad.com

Unless this Order Form and the HISP Agreement are executed by such date, this pricing will expire: 11/30/2020

CODE	ITEMS	No. of Units	Price per Unit	Discount Applied	Total
	PRODUCTS AND SUBSCRIPTION SERVICES				
1500-100	**SES Direct (Annual Subscription) - Hospital Bundle**	1	$30,000	$ 10,500	$ 19,500
	Direct HISP/CA Subscription:	10			included
	DirectTrust Accredited HISP, CA and RA platform for Direct Professional and Organization Accounts. SES Online webmail application to support registrations, internal testing, administrative portal and MU reporting. ONC Certified Direct Tranport / Modular EHR Program. Includes 10 Direct Accounts (Organization or Professional), address, certificate, 100 GB message store, and DirectTrust directory listing.				
1200-100	**Concierge Domain (CA Direct domain)**	1			included
	Maintenance of Concierge Domain (Production) Access to shared test domain (1 Shared Test)				
1200-100	**SES Online Web Application**	1			included
	Webmail application with administrative management functions and reporting				
1200-400	**C-CDA and XDM Viewer**	1			included
	View structured data easily for providers and long-term care facilities that access Direct messaging through the SES Online web application.				
1500-100	**Directory Services**	1			included
	Access to search national directory including Direct accounts provisioned by SES and third party HISPs where SES has a Directory Exchange relationship. Directory Information shared via Directory Exchange program and accessible through SES Connect web services API or SES Online web portal interface.				
1500-500	**XDR Bi-directional interface to Meditech**	2			included
	Ongoing maintenance and support for bi-directional Meditech XDR interface. Testing and integration support up to 8 hours annually.				
	TOTAL ORDER				$ 19,500

Note 1: This Order Form is subject to the terms and conditions of the Master Software-as-a-Service Subscription Agreement by and between SES and Subscriber dated as of the Effective Date, including any and all attachments, exhibits, or addendums thereto (the "MSSA ") and to which this Order Form is attached as an Exhibit B, together with the applicable Service Level Agreement and/or Work Order (if any) effective between the parties. Any capitalized term on this Order Form not otherwise defined herein shall have the meaning set forth in the MSSA.

Note 2: Subscription period shall be the Term as defined in the MSSA commencing December 1, 2020 through December 1, 2023. The Total Order amount set forth on this Order Form for the first annual subscription during the Term from December 1, 2020 through December 1, 2021 shall be invoiced as of the Effective Date. Payment terms: $19,500 Net 30 from receipt of invoice. The total value of the 3 (three) year subscription Term is $58,500. SES will invoice the remainder of the Subscription as follows: $19,500 as of December 1, 2021, and $19,500 as of December 1, 2022.

Note 3: Concierge domain includes up to 350 GB storage in total for combined test and production environment.

Note 4: Subscriber shall be responsible for any applicable sales and use tax. Subscriber shall provide a tax exemption certificate to SES annually during the Term and upon request, if applicable.

Secure Exchange Solutions, 9600 Blackwell Road, Suite 250, Rockville, MD 20850, 888-470-9913 toll-free
Federal Tax ID 27-3649378

<u>**Exhibit C**</u>

Business Associate Agreement

(attached)

Exhibit D

Service Level Agreement

1. PURPOSE. These purpose of this Service Level Agreement ("SLA") is to outline the policies and procedures established by Secure Exchange Solutions ("SES") to deliver Support Services, Upgrades and other services pursuant to the HISP Subscription Agreement to which this SLA is attached (the "Agreement"). Subscriber must comply with this SLA in requesting support from SES and in requesting SES to provide Support Services provided pursuant to the License.

2. CERTAIN DEFINITIONS. All capitalized terms in this SLA not otherwise defined herein shall have the meaning prescribed to them in the Agreement. In addition to the terms defined in the Agreement, the following named terms shall have the following meaning in this SLA:

    a. "Error(s)" shall mean a failure of the Licensed Intellectual Property to operate in the manner described by SES.
    b. "Maintenance" means activities of SES to provide normal software operation through updates, bug patches, fixes and work-arounds. "Maintenance" does not include enhancements or additions to the Licensed Intellectual Property that provide new functionality.
    c. "Problems" means Errors, defects, malfunction or any nonconformity to any applicable Specification Sheet for the Services
    d. "Service Outage" means any interruption in the availability of the Licensed Intellectual Property to Subscriber (excluding Scheduled Maintenance or Emergency Maintenance) and only if such interruption is due to an Error, and specifically excludes any Non-Standard Services.
    e. "Support Hours" means the daytime hours during which SES provides Support Services for the Licensed Intellectual Property. SES's Support Center Hours of Operation shall be Monday through Friday, excluding federal holidays, from 8:00 AM to 8:00 PM, Eastern Standard Time. SES's Help Desk Hours of Operation shall be Monday through Friday, excluding federal holidays, from 8:00 AM to 8:00 PM, Eastern Standard Time.
    f. "Support Services" shall have the meaning set forth in the Agreement and in this SLA.

3. SUPPORT SERVICES PROVIDED.
    a. During the term of this SLA, SES agrees to provide Support Services under the terms set forth in this SLA, which may include Maintenance, and Non-Standard Services, as defined herein.
    b. All Support Services performed by SES under this SLA shall be performed in a professional and workman like manner in accordance with general industry standards.
    c. SES does not warrant that the Support Services or Licensed Intellectual Property will be uninterrupted or error free.
    d. All Support Services shall be provided only to Authorized Subscriber Contact(s).

4. SUPPORT SERVICE REQUESTS.
    a. Problem Reporting and Logging. SES will provide Subscriber with an e-mail address for Authorized Subscriber Contact(s) (as defined herein) to use when requesting Support Services, including Maintenance. If a problem is reported outside of the Support Hours, the time window for expected problem resolution of a Problem will begin when the SES support center re-opens for business during the Support Hours.
    b. Severity Level and Response to Support Service Requests. SES shall specify the severity level (each, a "Severity Level") of each Support Service request, including Maintenance, per the following procedures:
        i. Severity 1 (Highest):
            A. CHARACTERISTIC: Produces an emergency in which the Licensed Intellectual Property are rendered unusable or fail catastrophically, and there is no known workaround (implies the need to resolve the emergency immediately for Subscriber to resume standard business operations).
            B. RESPONSE: SES will provide acknowledgement, if requested, by email to the Authorized Subscriber Contact(s) by a qualified member of the SES staff within two (2) working hours of logging the Problem. SES will use reasonable commercial efforts to provide a patch, bypass or workaround within two (2) business days from the time the Problem was logged by SES. The delivery of the work-around or emergency software fix will drop the severity classification to a Severity Level of 3.

        ii. Severity 2 (Normal):
            A. CHARACTERISTIC: Produces a failure of at most a single function or causes intermittent errors, or impairs the usability of a system component. A Severity Level of 2 implies the need to resolve the Problem in the normal course of development activities.

        B.   RESPONSE: SES will provide acknowledgement, if requested, by e-mail to the Authorized Subscriber Contact(s) by a qualified member of the SES staff within eight (8) working hours of logging the Problem. SES will use reasonable commercial efforts to provide a patch, bypass or workaround within five (5) business days from the time the Problem was logged by SES. The delivery of this work-around or emergency software fix will drop the severity classification to a Severity Level of 3.

     iii. Severity 3 (Low):
        A.   CHARACTERISTIC: Produces a situation in which the Licensed Intellectual Property are usable, but there is an effect on the functionality of the Licensed Intellectual Property.
        B.   RESPONSE: SES will provide acknowledgement, if requested, by e-mail to the Authorized Subscriber Contact(s) by a qualified member of its staff within eight (8) working hours of logging the Problem. SES will exercise reasonable commercial efforts to address Problems with a classification of a Severity Level of 3 in a future release of the applicable Software.

5.   UPGRADES. SES shall provide Upgrades to the Licensed Intellectual Property on an "as available" basis as set forth in the Agreement. Upgrades may include defect fixes and standard enhancements to existing features of the Licensed Intellectual Property produced at SES's discretion through SES's standard development and/or via Work Order.

6.   SUPPORT SERVICES. SES will provide Support Services as requested by Subscriber and as described in this SLA, the Agreement, or any applicable Work Order, including, among others, Maintenance, Help Desk during Support Hours, Upgrades, Problem resolution and Non-Standard Services.

7.   NON-STANDARD SERVICES. Subscriber may request SES to perform additional tasks such as specific software development, non-Program specific consulting and other services (collectively, the "Non-Standard Services"). If SES agrees to perform any Non-Standard Services, such Non-Standard Services will be documented in a Work Order.

8.   SCHEDULED MAINTENANCE. SES reserves one (1) regularly scheduled maintenance window per month, of up to four (4) hours duration outside of the Support Hours in order to maintain the Software and provide and install as available, any Upgrades (the "Scheduled Maintenance"). Subscriber and SES will agree to available adequate windows for Scheduled Maintenance for the integration of third party data or applications (other than Third Party Software) with the Licensed Intellectual Property, or other integration as may be appropriate and SES will provide periodic advance notification of windows for Scheduled Maintenance and consult periodically with Subscriber on preferred windows for such Scheduled Maintenance outside of Support Hours. Scheduled Maintenance may result in system and Program unavailability or performance degradation.

9.   EMERGENCY MAINTENANCE NOTIFICATIONS. On rare occasions, SES may experience the need for emergency maintenance, during which time the Licensed Intellectual Property will be unavailable to Subscriber ("Emergency Maintenance"). Except in extraordinary circumstances, SES will notify Subscriber a minimum of thirty (30) minutes prior to any Emergency Maintenance. Where practicable, SES will commence Emergency Maintenance during off-peak hours.

10. SERVICE LEVEL COMMITMENTS. During the term of the Agreement, SES shall use commercially reasonable efforts to provide 24 hours, 7 days a week access to the Services with a 99.9% availability, excluding Scheduled Maintenance and Emergency Maintenance. SES will provide the Authorized Subscriber Contact(s) with notice of any Service Outage of the Licensed Intellectual Property promptly after SES becomes aware of such Service Outage. SES will also provide frequent updates to Subscriber until the Service Outage is corrected. Such notification or updates shall include a description of the Service Outage, SES's current understanding of the cause, and SES's estimated resolution time. Upon learning of any Service Outage, SES will devote all reasonably available resources to correcting the Service Outage and restoring system availability.

11. REMEDIES. Subscriber's sole remedy for interruption in service caused by a Service Outage is for SES to undertake its applicable Maintenance obligations herein. In the event of a Service Outage that exceeds allotted downtime provided under this SLA and associated DRP, Subscriber's sole and exclusive remedy and SES's sole and exclusive liability to Subscriber shall be to credit future prorated Subscription Fees for the affected Licensed Intellectual Property provided Subscriber has notified SES of said Service Outage in accordance with this SLA or the Agreement, as applicable (unless SES has already notified Subscriber of the Service Outage) and has requested credits in writing within ten (10) days from SES's resolution of the Service Outage. Service Outage credit shall be calculated on a cumulative monthly (calendar month) basis from the time of SES's notification of the Service Outage to SES or Subscriber's notification of the Service Outage during the Support Hours (or if after hours from the time SES reopens for business) and reimbursement shall be calculated based on full fifteen (15) minute increments of Service Outage for any portion thereof and such calculation

shall be based upon the fees paid by Subscriber to SES for the affected Licensed Intellectual Property as set forth in the Agreement.

12. DISASTER RECOVERY. Throughout the Term and any Extended Term, SES shall maintain a commercially reasonable data back-up and disaster recovery plan to restore operations in the event of an outage at SES's primary hosting facility (the "DRP"). SES shall provide a copy of the DRP to Subscriber upon request and meet with Subscriber (and any applicable regulatory agency or accrediting body) to discuss and address and comments and concerns, provided such requests and meetings occur no more frequently than one per calendar quarter during the Term and any Extended Term. SES shall not degrade or reduce the level of service or protection set forth in the DRP at any time during the Term or any Extended Term. SES shall segregate all Data from data received by SES outside the scope of the Agreement to which this Service Level Agreement is attached.

13. SECURITY AUDIT. SES will complete an internal security audit assessment and penetration test on their technology infrastructure and provide both detailed and summary audit assessment reports upon request. The security audit assessment and penetration test must be repeated at least annually. Such an assessment should include an analysis of systems in regards to current patches, antivirus software and definitions, functioning firewalls, an internal vulnerability scan, and other similar commercially reasonable security best practices performed by a third party using commercially-reasonable industry recognized standards.

14. LIMITATION ON SUPPORT SERVICES. Notwithstanding any other provisions in this SLA, SES shall provide Support Services, including Maintenance, only with respect to the currently-released versions of the Licensed Intellectual Property.

15. DESIGNATED SUBSCRIBER PERSONNEL. The Subscriber shall identify by name and location all Subscriber personnel who may contact SES representatives (each, an "Authorized Subscriber Contact"). The personnel identified as an Authorized Subscriber Contact shall have authority to authorize an investigation of Problems, have knowledge of the rules of engagement for Support Services, including Maintenance, and the authority to accept proposed resolutions to any Problems and instruct SES to take action on resolutions to such Problems. SES may, in its sole discretion, rely on the direction and instruction of any Authorized Subscriber Contact without penalty. Subscriber shall provide SES with an Authorized Subscriber Contact List once per calendar year. Upon written request by SES to Subscriber, Subscriber shall, within thirty (30) days of such request, deliver to SES a current Authorized Subscriber Contact List, provided, however, that SES shall not make such request any more frequently than once per calendar quarter and shall not make such request within ninety (90) days of receipt of the annual Authorized Subscriber Contact List.

<u>Exhibit E</u>

Work Order
(for additional services)

This Work Order by and between Secure Exchange Solutions, Inc. ("SES") and [SUBSCRIBER NAME] ("Subscriber") is dated _____ 201___ (the "Work Order Date") for additional services pursuant to the certain Master Software-as-a-Service Subscription Agreement by and between SES and Subscriber dated [DATE OF MASTER SOFTWARE SUBSCRIPTION AGREEMENT] (the "Master Agreement").

PROJECT NAME / TITLE OF ENGAGEMENT:

PERIOD OF PERFORMANCE:

DELIVERABLES:

KEY PERSONNEL:

PRICING:

INVOICING: Invoices shall be mailed to:

OTHER TERMS:

This Work Order and the services provided hereunder are subject to the terms and conditions of <u>Section 13</u> of the Master Agreement, to which the form of this Work Order is attached as an Exhibit. Any capitalized term on this Work Order not otherwise defined herein shall have the meaning prescribed to them in the Master Agreement and in the event of any conflict between the terms and conditions of this Work Order and the Master Agreement, the terms of the Master Agreement shall control unless such terms provided in this Work Order specifically provide that this Work Order shall control.

Secure Exchange Solutions, Inc.   [SUBSCRIBER NAME]

BY: _____   BY: _____
Title: _____   Title: _____

Dated: _____   Dated: _____