

eSOLUTIONS SERVICES AGREEMENT

This **Services Agreement** (the "Agreement") is effective January 15, 2019 (the "Effective Date"), by and between eSolutions, Inc. ("eSolutions"), a Kansas corporation, with its principal business address at 8215 West 108th Terrace, Overland Park, Kansas 66210, and the party identified below.

Entity Name: County of Monterey Health Department, "Client"
State of Incorporation or Registration: California
Address of principal office: 1270 Natividad Road, Salinas, CA 93906
Authorized officer (name & title): Elsa M. Jimenez, Director of Health

eSolutions is an e-commerce-enabling organization specializing in automating business processes via the use of technology and the Internet. eSolutions wishes to provide the Client access to eSolutions e-commerce services (collectively, the "Services"). In consideration of the foregoing, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, eSolutions and Client agree as follows:

I. Term, Termination and Cancellation.

- A. **Term.** This Agreement shall remain in effect for an initial term of two (2) years from the Effective Date and shall automatically renew for consecutive terms of one (1) year each unless either party gives written notice of non-renewal at least ninety (90) days prior to the end of the initial term or any renewal term. Following such notice and expiration of at least ninety (90) days, this Agreement shall terminate at the end of the then-current term. During any renewal term, this Agreement may be terminated upon ninety (90) days' written notice. Following receipt of such notice and expiration of at least ninety (90) days, the Agreement shall terminate at the end of the then-current month. Additionally, Client's payments under this Agreement are funded by local, state, and/or federal governments. If funds from local, state and/or federal sources are not obtained and continued, during any renewal term, at a level sufficient to allow for the Client's purchase of the services set forth in this Agreement, then the Client may give written notice of this fact to eSolutions, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter as the Client may specify in its notice. This provision does not limit either party's right to exercise any other legal or equitable right that it may have.
- B. **Termination.** Either party may terminate this Agreement upon written notice if the other party materially breaches this Agreement and does not cure the breach within thirty (30) days of receipt of written notice of the alleged breach from the non-breaching party, except that the cure period will be ten (10) days for a failure to pay amounts due. Either party may also terminate this Agreement if (i) the other party has a receiver appointed for it or its property; (ii) the other party makes an assignment for the benefit of creditors; (iii) any proceedings are commenced by, for or against the other party under any bankruptcy, insolvency or debtor's relief law, or (iv) the other party is liquidated or dissolved.
- C. **Effect of Termination.** Upon termination of this Agreement by either party and for any reason, (i) Client's right to access and use the Services shall cease and all access to the Services shall terminate, (ii) Client must cease accessing and using the Services and eSolutions may take all actions to preclude Client's access and use, and (iii) Client must pay the balance of all amounts owed to eSolutions. eSolutions will not be liable to Client or any third party for eSolutions' suspension or termination of this Agreement or of Client's access to, or right to use, the Services where the termination or suspension is authorized by this Agreement.
- D. **Survival.** The duties and obligations relating to the protection of Protected Health Information (PHI), mandates of law or regulation, and obligations imposed by this Agreement, which, by their nature or by definition, survive

expiration or termination of this Agreement shall survive the termination of this Agreement by any means and for any reason.

II. Payment.

- A. Fees.** Fees for services (the "Service Fees") are set forth in Exhibit A hereto. All Service Fees are quoted in United States currency, are non-refundable and will not be prorated or adjusted for non-usage of the Services. In the event Client subscribes to additional services after the Effective Date of this Agreement, eSolutions will provide Client with a revised Services Agreement and Exhibit A outlining the Service Fees associated with each active service. Upon execution of the new Services Agreement, or payment of Service Fees associated with the newest services, the term for all services shall be established based upon the Effective Date of the most current agreement and shall be governed by Section I.A above. Any service added after the effective date of this Agreement shall have an initial term equal to the initial term of this Agreement.
- B. Invoicing and Payments.** All invoices issued under this Agreement shall be sent to the address designated in writing by Client and shall identify the service types, period of service, volumes and applicable total charge represented by the amount invoiced. Payment shall be due within thirty (30) days of the date of invoice, except as otherwise provided in this Agreement. eSolutions reserves the right to suspend use of the eSolutions Services at any time that any past-due invoice is not paid within thirty (30) days following email notification by eSolutions of such past due amount. Should Client's payment in any form be dishonored, eSolutions reserves the right to charge Client a non-sufficient funds fee to reimburse its cost related to the specific transaction. Client agrees to pay to eSolutions any cost of collection, including reasonable attorneys' fees.
- C. Payment Terms.** Client agrees and acknowledges that the fees due and owing under this Agreement are directly related to certain information (providers, sites, transaction volumes, etc.) provided to eSolutions. eSolutions reserves the right to perform routine audits to verify that provided information is consistent with utilization of the Services and adjust billing in accordance with findings. Client's failure to comply with this section shall be considered a material breach of the Agreement.
- D. Rate Increase.** The foregoing fees and any other charge or financial term of this Agreement are subject to an automatic rate increase of two and one-half percent (2.5%) annually, to be applied to the Service Fees and to be enacted at the start of each contract year, provided however that such rate increase does not apply to clearinghouse transactions. This provision shall not limit eSolutions' ability to increase fees at any time that the Client's use of the Services increases beyond the levels originally anticipated in Exhibit A.
- E. Taxes.** Client shall be responsible for all fees, taxes, duties, tariffs or other charges however called (excluding any taxes imposed on eSolutions' income) imposed by any federal, state, or local government or any regulatory authority or third party with respect to this Agreement, even if such imposition occurs after Client's receipt of any applicable service, product or material, the invoicing for such service, product or material, or the termination of this Agreement. In the event that Client documents its status as a tax-exempt entity, eSolutions shall honor any valid exemption as applicable to the Services.
- F. Professional Services.** Technical support, software customization, training or other service requested in writing by Client which is not required to be performed by eSolutions hereunder shall be subject to the availability of eSolutions' staff. Such services shall be billed at eSolutions' then current time and material rates plus reasonable travel and out-of-pocket expenses, and subject to any other term or condition which may be agreed upon in writing by the parties before such services are performed.
- G. Additional Services and Features.** Any option enhancement, modification, feature, module, product or service that may from time to time be announced by eSolutions with respect to the eSolutions Services will be offered to Client. If Client elects to utilize such enhancement, modification, feature, module or product, Client shall pay any additional fee imposed by eSolutions. Any service or product not included in the standard fee shall be identified in advance to Client as requiring an additional fee.

H. Pass-Through Fees. Notwithstanding any other provision of this Agreement, eSolutions shall have the right to increase the fees paid by Client to offset any increases in rates, charges or other costs from third-party suppliers and state or federal governmental entities, including without limitation Medicaid or Medicare administrators, communications common carriers and/or network timesharing suppliers, or to offset any increase in costs of providing services hereunder resulting from rules, regulations and operating procedures of any financial institution, federal, state or local agency or regulatory authority, which fees are not subject to approval by eSolutions or Client. For the avoidance of doubt, Client agrees and acknowledges that the fees due and owing under this Agreement are subject to increase in the event of an increased communications costs/fees and/or any other access fees imposed upon eSolutions. eSolutions will provide Client with sixty (60) days' written notice before any fee increase related to this subsection shall take effect. If Client is unable to obtain Board of Supervisors' approval for a fee increase during that sixty (60) day notice period, or if Client otherwise elects to reject the fee increase, Client shall provide written notice of such a rejection to eSolutions. If Client rejects a fee increase, then eSolutions shall have the right to terminate this Agreement. If Client rejects a fee increase under this section, and eSolutions then elects to terminate this Agreement, then Client shall have the option to continue the Agreement at the increased fee level for up to ninety (90) days while seeking a replacement vendor.

III. eSolutions Obligations.

A. Scope. The Client acknowledges that eSolutions offers many services. The scope of Services to be provided under this Agreement shall be those agreed upon Services and documentation described in Exhibit A, attached hereto and incorporated by reference.

B. Support. eSolutions shall provide reasonable ongoing routine technical support through its web site, electronic mail and telephone consultations with respect to the Services. Technical support hours will be 7:00 AM through 6:00 PM Monday through Friday Central Time, or as otherwise published, excluding all holidays observed by the Centers for Medicare and Medicaid Services (CMS). eSolutions reserves the right to change the hours and availability of Support upon reasonable notice to Client.

C. Professional Services. eSolutions shall provide on-site visits to Client to assist the use by Client of the eSolutions services as determined by eSolutions to be necessary. eSolutions shall not charge for such visits unless the visit is requested by Client and not determined by eSolutions to be necessary. In all instances, such visits shall be subject to the availability of eSolutions' support staff and, if applicable, may be charged to Client at eSolutions' then time and material rates for such support, plus reasonable out-of-pocket expenses. All applicable fees and expenses shall be mutually agreed upon, in writing, prior to the authorization of any on-site visit.

D. Aggregated Data. eSolutions may use anonymous, de-identified statistical data in aggregated form, as derived from the Services provided under this Agreement, to formulate statistical samplings and summaries, including industry comparisons, in any manner permitted by and not in contravention of the Privacy Rule. eSolutions shall not (i) attempt to re-identify any individual whose data is included within Client data; (ii) correlate any Client data to any person in violation of any applicable Laws; (iii) sell or license Client data in violation of the Privacy Rule, or (iv) distribute or disclose the data in any way that might allow for identification of a patient or information about a specific patient, including PHI about a patient.

IV. Client Obligations.

A. Payment and Coordination. Client shall pay eSolutions the fees and charges due hereunder in a timely fashion according to the terms of this Agreement. Client shall abide by the terms of this Agreement and provide on a timely basis the data or information necessary for eSolutions to provide the Services. Failure to do so shall relieve eSolutions of its obligations hereunder.

B. Users. Client shall request that eSolutions assign a unique user ID for each person utilizing eSolutions services. Such user IDs will not be shared among staff members without the written consent of eSolutions. Client shall further limit the use of eSolutions Services to staff members only and not an automated, computerized, process without the written consent of eSolutions. Client is responsible for maintaining the confidentiality of all user identification and passwords for access to the Solutions and for ensuring that each is used only by the user to which it was issued. Client is also responsible for any and all activities that occur under Client's user identification

numbers, passwords and account. Client must restrict its users from sharing passwords. Client shall promptly notify eSolutions of any unauthorized use of Client's account, any user identification number and/or password, or any other breach of security known to Client. eSolutions is not liable for any loss or damage arising from a failure to comply with this Section.

C. Environment. Client shall procure, deploy and maintain the computer hardware, software, communications equipment and Internet connection necessary to access and use the Services. eSolutions is not required to supply any hardware, software or equipment to Client under this Agreement. Client shall utilize such security devices, mechanisms, processes and technology as may be necessary to maintain the confidentiality, integrity and availability of all data and protected health information.

D. Authorization. Client shall secure all consents and authorizations necessary to enable eSolutions to use, upload into, process and store Client data using the Services. Client shall authorize eSolutions electronic access to Client's Healthcare Payers Patient Eligibility and Claim information as needed and provide sign-ons and passwords as requested by eSolutions. Client shall guarantee that all transactions submitted through eSolutions by Client will be on behalf of providers, physicians or suppliers that have executed appropriate written authorizations for such submission, and Client shall maintain such authorization during the term of this Agreement and for two (2) years thereafter. Copies shall be furnished to eSolutions upon request. Client shall provide eSolutions with advance notice of any changes regarding providers, physicians or suppliers whose transactions are submitted by Client through the eSolutions Services, including but not limited to name and address changes and/or any change in unique identifiers.

E. Integrity of Use. Client shall not (a) send or store data on or to the Services which violates the rights of any individual or entity established in any jurisdiction; (b) upload any information or content that contains viruses, worms, Trojan horses, corrupted files, or any other similar software or programs, harmful code or data that may damage the operation of the Solutions or another's computer or mobile device; (c) use the Services for illegal, fraudulent, unethical or inappropriate purposes; (d) interfere or disrupt networks connected to the Services or interfere with other ability to access or use the Solutions; or (e) use the Solutions in any manner that impairs the Services, including, without limitation, the servers and networks on which the Services are provided.

V. Conditions for Use of and Access to Data.

A. Subscription. Subject to the terms and conditions of this Agreement, eSolutions grants to Client a subscription to utilize eSolutions Services and support services as specified herein. This subscription is valid for use of the Services only at the physical site(s) owned or managed by or under the control of Client as specified in this Agreement, and solely for transactions generated by Client. eSolutions reserves the right from time to time in its sole discretion, and upon reasonable notice, to suspend, revise, modify or update any part of the eSolutions service, without any liability to Client therefor.

B. Ownership. eSolutions owns all right, title and interest in and to the Services, intellectual property, documentation and any materials furnished to Client, including all modifications and enhancements, and all suggestions, ideas and feedback proposed by Client. Client acquires no rights of ownership by entering into this Agreement and shall not take any action that is inconsistent with eSolutions' exclusive rights of ownership. All rights not granted in this Agreement are reserved by eSolutions. For avoidance of doubt, Client expressly agrees not to (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the Solutions; (ii) create derivative works based on any element of the Solutions; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use Services; (iv) use the Solutions for timesharing, service bureau or any other purpose for the benefit of any person or entity other than Client; (v) remove any proprietary notices from eSolutions materials furnished or made available to Client; (vi) publish or disclose to third parties any evaluation of the Solutions without eSolutions' prior written consent; or (vii) use the Solutions for any other than their intended purpose.

C. Statutory Compliance. Each party will comply with all applicable federal, state, local or other governmental laws, regulations or industry practices relating to their respective rights and obligations under this Agreement. In furtherance of such statement of compliance, Client understands that it is a Covered Entity and agrees to comply with all applicable Federal and State laws and regulations related to that role. Concurrent with the execution of this Agreement, the parties shall enter into a Business Associate Agreement ("BAA"), in the form of Exhibit B, governing the use, disclosure and security of PHI, which terms are incorporated herein by this reference.

D. Security. eSolutions shall deploy reasonable security precautions intended to protect against unauthorized access to any Client data to which eSolutions has access. eSolutions shall exercise reasonable efforts to deploy corrections within the Solutions for security breaches made known to eSolutions. Client may not circumvent or otherwise interfere with any user authentication or security of the Solutions. Client shall immediately notify eSolutions of any security breach or attempted breach.

E. License to Client Data. Subject to the terms and conditions of this Agreement, Client hereby grants eSolutions an irrevocable, limited, non-exclusive, right and license to use, reproduce, modify and aggregate the Client data for the purposes of (i) storing and processing such Client data in connection with the performance of the Solutions, (ii) expanding the features and functionality of eSolutions products and solutions, to create new tools or to add additional features or functions for end users of eSolutions products or solutions, (iii) developing, licensing and selling eSolutions solutions and products, (iv) aggregating the Client data where such aggregations do not identify any individual or any PHI, and (v) accumulating statistics about Client data in general as long as it contains no PHI or Client-identifiable data. Notwithstanding the foregoing, however, subject to the various rights granted in this Agreement, Client shall own all right, title, and interest in and to the Client data.

F. Submitted Data. eSolutions may verify any Client claims or transactions for accuracy and completeness. Any transactions that fail to satisfy the required technical specifications shall be rejected. Client also acknowledges that payers may also reject and/or append any transaction that fails to meet the criteria employed by the payer for such transaction. eSolutions shall have no responsibility for the accuracy of the Client data delivered by Client to eSolutions. eSolutions neither endorses the contents of any Client communications or Client data nor assumes any responsibility for any material contained therein, any infringement of third party privacy, intellectual property or other proprietary rights or any crime facilitated thereby. eSolutions does not and is not obligated to verify, authenticate, monitor or edit the Client data or any other information or data input into or stored through the Services. Client is solely responsible for the completeness, integrity, quality and accuracy of its data input into the Services.

VI. Warranties and Limitations of Liability

A. Services Warranties. eSolutions warrants to Client that the Services will be performed in a good and workmanlike manner, and that the features and functions of the Services will perform in all material respects as described in this Agreement and in a reasonable manner in accordance with the eSolutions documentation. eSolutions further warrants that it and each of its authorized personnel performing services hereunder is and shall be at all times eligible to participate in Medicare, Medicaid, CHAMPUS, CHAMPVA, and any other federal, state or local governmental reimbursement program for health care services. eSolutions will ensure that it will not employ or contract with individuals that have been sanctioned by the Office of Inspector General or barred from any federal procurement program.

B. Party Warranties. Each party represents to the other that (i) it is duly organized, validly existing and in good standing under the laws of its state of organization and is in good standing in each jurisdiction in which its activities require such qualifications; (ii) the execution, delivery and performance of this Agreement have been duly authorized by all necessary entity action; (iii) this Agreement constitutes the legal, valid and binding obligations of such party, enforceable in accordance with its terms against such party except as enforceability may be affected by bankruptcy, insolvency moratorium or laws affecting creditors' rights generally or by general principles of equity, and (iv) it has full entity power and authority to enter into this Agreement and to perform its obligations hereunder.

C. Limitation of Liabilities. THE SERVICES AND SOLUTIONS ARE PROVIDED "AS-IS" AND "AS AVAILABLE." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. eSOLUTIONS AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM AND EXCLUDE ALL OTHER WARRANTIES (WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE ARISING IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE), INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. IN NO EVENT SHALL eSOLUTIONS BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES EVEN IF eSOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. eSOLUTIONS DOES NOT WARRANT THAT THE SOLUTIONS OR SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SOLUTIONS WILL BE UNINTERRUPTED OR ERROR-FREE.

VII. Indemnity: Each party will defend, indemnify and hold the other, its subsidiaries, affiliates, directors, officers, employees and agents harmless from and against all costs (including reasonable attorney's fees), liabilities, claims, losses, lawsuits, settlements, demands, causes, judgments and expenses (collectively, "Liabilities") relating to or arising out of the use and provision of Services and the indemnifying party's breach of any obligation, duty, representation or warranty in this Agreement, except to the extent that Liabilities result from the gross negligence or knowing and willful misconduct of the other party. Each party agrees to:

- A. Promptly notify the other party in writing of any claim for indemnity and give the other party the opportunity to defend or settle any such claim at the other party's expense, and
- B. Cooperate fully with the other party, at the other party's expense, in defending or settling the claim.

VIII. Miscellaneous.

A. Relationship: The relationship of eSolutions and Client established by this Agreement is and at all times will remain one of independent contractors. Neither party will at any time or in any way represent itself as being an agent or other representative of the other party or as having authority to assume or create obligations or otherwise act in any manner on behalf of the other party.

B. Assignment. The parties agree that neither may assign its rights or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld, provided however that either party may assign this Agreement without consent when such assignment is to a parent, affiliate, subsidiary, successor in interest or relating to an acquisition, merger or sale of substantially all assets of the party. Any assignment in derogation of the foregoing is void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Notwithstanding the foregoing, eSolutions may, in its sole discretion, subcontract any or all of its obligations under this Agreement to a qualified third party.

C. Notices. Any written notice required or permitted to be sent under this Agreement will be addressed as follows or as from time to time directed in writing by either party by notice given in compliance with this section:

To Client:
County of Monterey Health Department
Attn: Elsa M. Jimenez, Director of Health
1270 Natividad Road
Salinas, Ca 93906

To eSolutions:
eSolutions, Inc.
Attn: Jacqueline Austin, Contract Manager
8215 West 108th Terrace
Overland Park, KS 66210
(866) 633-4726 Office
LegalNotices@eSolutionsInc.com
(913) 254-9358 Fax

Any notice sent pursuant to this Section shall be deemed given upon the date of personal delivery or two (2) business days after the date of deposit in the United States mail, postage fully prepaid, return receipt requested.

D. Force Majeure: Neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by an act or event beyond its control, including but not limited to the act of any federal, state, local or other governmental authority, act of God or nature, act of terrorism, delay of the other party or any third party, strike or other labor difficulty or shortage, civil disturbance, transportation problem, riot, fire, flood, lightning, interruption of power supply or communications, natural disaster or other similar cause beyond its control. Each party shall immediately provide written notice to the other of any such condition. The Parties agree to take reasonable steps and make reasonable effort to mitigate their damages and minimize the effect of any such act or event. The foregoing notwithstanding, either party may terminate this Agreement without liability to the other due to such termination if such *force majeure* event or condition continues for a period of more than thirty (30) days.

E. Governing Law and Choice of Forum. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Any dispute may be addressed only in a court of competent jurisdiction in the State of California.

F. Legal Construction. Should any provision of this Agreement, or the application of a provision to any person or circumstance, be held by a court of competent jurisdiction to be unenforceable for any reason, then such provision shall be deemed null and void. The remaining provisions shall nevertheless continue in full force, and the

application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected. This Agreement shall be construed in such a way as will serve the intention of the parties at the time of its execution. The parties acknowledge and agree that each has the benefit of counsel and has participated in the drafting of this Agreement. Therefore, no ambiguity shall be construed against either party due to their having drafted the Agreement. The sections, paragraphs and other headings contained in this Agreement are for reference purposes only and shall neither be deemed to be part of the context nor affect the meaning or interpretation of this Agreement

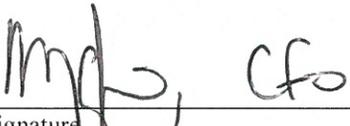
G. Subsequent Documents. The Parties agree to execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieving the purposes of this Agreement. Terms, conditions or provisions that may appear on any purchase or sales order or invoice issued pursuant to this Agreement shall, to the extent inconsistent with the terms and conditions of this Agreement, be of no force or effect, notwithstanding the fact that such order or invoice may have been executed subsequent to the date of this Agreement.

H. Public Announcements. The parties agree that either may make a public announcement relating to the signing of this Agreement. The Parties further agree that eSolutions may use Client's name as part of a general list of clients and may refer to Client as a user of the Services and client of eSolutions in general advertising and marketing materials. The foregoing notwithstanding, the Parties agree that neither shall disclose any pricing, rate information or other economic terms unless required to by law, regulation or any legitimate authority. Client shall also maintain the confidentiality of all proprietary information of eSolutions as provided under this Agreement.

I. Entire Agreement. This Agreement, including Exhibit A, the Business Associate Agreement, attached as Exhibit B and executed by the parties, and any addendum attached hereto, sets forth the entire understanding between the parties and supersedes all prior proposals, agreements, representations and understandings, whether written or oral. No waiver, modification or alteration of any provision of this Agreement shall be binding or valid unless executed in writing and signed by both parties. Furthermore, no waiver by eSolutions of any breach or remedy as to any provision of this Agreement shall operate or be construed as a waiver of any subsequent breach or remedy.

In witness whereof, the parties hereto have executed this Agreement as of the Effective Date first above written.

eSolutions, Inc.



Signature
Michael Coughlin

Typed or printed name
Chief Financial Officer

Title

County of Monterey

Client


Signature
Debra Wilson

Typed or printed name
C/P Supervisor

Title

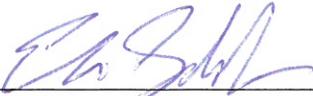
Reviewed as to fiscal provisions


Auditor-Controller
County of Monterey

11-15-18

COUNTY OF MONTEREY

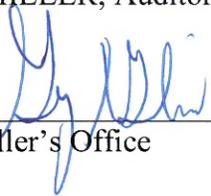
APPROVED AS TO LEGAL FORM:
CHARLES J. McKEE, County Counsel



Elias Salameh, Deputy County Counsel

Date: 11/15/18

APPROVED AS TO FISCAL PROVISIONS:
MICHAEL J. MILLER, Auditor-Controller



Auditor-Controller's Office

Date: 11-15-18

EXHIBIT A

SERVICES & FEE SCHEDULE

ClaimRemedi Base Services

Product Description		Fee Schedule	
<u>XX</u>	Complete Claim Lifecycle Management Service	<u>Initial Investment</u>	<u>Monthly Fee</u>
	<ul style="list-style-type: none">• Full integration package• Claim scrubbing• Claim history/status, response reporting• 835 ERA processing and integration• Analytics package• Eligibility services, including batch• Enhanced payer connectivity	\$300	\$95.00 per provider
	Basic Claim Lifecycle Management Service	<u>Initial Investment</u>	<u>Monthly Fee</u>
	<ul style="list-style-type: none">• Full integration package• Claim scrubbing• Claim history/status, response reporting• 835 ERA processing and integration• Analytics package• Enhanced payer connectivity	\$300	\$75 per provider
<u>1</u>	Minimum/Initial Number of Providers		

Note: Client shall pay eSolutions in accordance with the payment provisions set forth in the Agreement and above in this Exhibit A, subject to the limitations set forth in the Agreement. The total amount payable by Client to eSolutions under the Agreement is Not To Exceed the sum of \$1,440 during the first year, and \$1,140 during the second year of the Agreement, for a total of \$2,580 over the first two years of the Agreement. In the event of an additional provider, this Exhibit shall be amended to increase the contract amount and stated NTE.

Additional Services

Please mark if these services will be used:

Product	Description / Pricing
_____ Automated Appeal Letters	Initial Investment: \$TBD, Minimum Monthly Fee: \$TBD <i>Additional Providers: \$12 per provider per month</i>
_____ Patient Statements	\$0.67* first page, \$0.15 per additional page \$0.01 Color Paper / Ink per Page \$0.15 Undeliverable as addressed \$0.50 NCOALink (address correction) Minimum Monthly Fee: \$TBD
_____ Online payment Services**	ePAY – Online payments made patient to practice Fee Schedule Visa/MC/Disc: 2.86% + \$0.19/transaction AMEX & e-check: 2.86% + \$0.39/transaction
_____ Worker's Compensation Claims	\$.55* first page, \$.25 per additional page Minimum Monthly Fee: \$TBD
_____ Paper Claims	\$.35* per claim
_____ eChecker	Set-up Fee: TBD Minimum Monthly Fee: \$TBD
_____ EOB Max	\$0.45 per claim Minimum Monthly Fee: \$TBD
_____ Medicare Navigator	Initial Investment: \$TBD, Monthly Fee: \$50 for the first user (\$45 for each additional user) Provides access to the Medicare FISS/DDE systems Please indicate the number of user accounts: TBD

* Pricing may vary due to postal rates

**Available only if patient statements are used. If under \$1900 per month in total payments, a \$25 fee will be assessed. Return check fee for non-sufficient funds will be \$4 per check. Bank charge back will have a \$15 fee. Annual interchange or assessment increases by Visa/MasterCard or Discover may affect these rates. Rates and acceptance are subject to underwriting.

Other Notes:

- 1) Provider Definition
 - a. Claims: 350 claims submitted = 1 provider
 - b. Eligibility: 200 eligibility transactions submitted = 1 provider
 - c. In the event there is a discrepancy between the provider calculations using claim volumes versus the calculation using eligibility volumes the customer will pay \$20 for each additional eligibility-based provider.

Acknowledgement

I hereby accept this Exhibit:

 _____ Signature	12/18/2018 _____ Date	Ezequiel Vega _____ Print name
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Exhibit B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective January 15, 2019 (“Effective Date”), is entered into by and between the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department (“Covered Entity”) and eSolutions, Inc. (“Business Associate”) (each a “Party” and collectively the “Parties”).

Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

1. DEFINITIONS

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

2. PERMITTED USES AND DISCLOSURES OF PHI

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

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(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity, and other covered entities for which Business Associate serves in the capacity of business associate, as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), to permit data analyses that relate to Health Care Operations of such covered entities. Business Associate further agrees that said services shall not be provided in a manner that would result in any impermissible Disclosure of Protected Health Information to another covered entity who was not the originator and/or lawful possessor of said PHI and that all such services shall involve De-Identified PHI pursuant to the applicable provisions of the Privacy Rule and not susceptible to identification of any individual;

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for any purpose not prohibited by applicable law, statute or regulation, for the Permitted Uses listed above, including Data Aggregation services as permitted by 45 CFR §164.504(e)(2)(i)(B), as well as Data Aggregation services for others of Business Associates' clients to permit data analyses that relate to the health care operations of the covered entities, and for any other permissible Data Aggregation relating to the business services and purposes of Business Associate, provided however that any PHI used in this manner for any of the afore-mentioned purposes shall be de-identified and used in accordance with 45 C.F.R. § 164.502(d)(1) and pursuant to the applicable provisions of the Privacy Rule and not susceptible to identification of any individual.

3. **RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered

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Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

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(j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

(l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

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(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

(e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives

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of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

eSolutions, Inc.
8215 West 108th Terrace, Overland Park, KS 66210
Attn: Jacqueline Austin, Contract Manager
Tel: 913.815.6429
Fax: 913.254.9358

If to Covered Entity, to:

Monterey County Health Department/Behavioral Health Bureau
1270 Natividad Road, Salinas, CA 93906
Attn: Elsa M. Jimenez, Director of Health
Tel: (831) 755-4509
Fax: (831) 755-4980

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. Contractor shall indemnify, defend, and hold the County of Monterey (hereinafter County), its officers, agents, and employees harmless from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

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IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

**COUNTY OF MONTEREY, ON BEHALF OF
THE HEALTH DEPARTMENT**

eSOLUTIONS, INC.

By: 

Print Name: Elsa M. Jimenez

Print Title: Director of Health

Date: 12/18/2018

By: 

Print Name: Michael Coughlin

Print Title: Chief Financial Officer

Date: October 22, 2018