

**COUNTY OF MONTEREY STANDARD AGREEMENT
(MORE THAN \$100,000)**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

X2AI, Inc.

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide Access to Tess Services, an automated texting system that provides bilingual mental health services support to patients with mild to moderate behavioral health issues.

2.0 PAYMENT PROVISIONS.

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$ 442,900.

3.0 TERM OF AGREEMENT.

3.01 The term of this Agreement is from November 15, 2017 to November 30, 2019, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

MR X

CONTRACTOR 3.02 ~~The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.~~

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4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

County

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

- Exhibit A Scope of Services/Payment Provisions
- Exhibit B Project Plan Example
- Exhibit C Business Associate Agreement (BAA)

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided in this paragraph. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

MR ~~X~~ 7.01 ~~During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.~~

CONTRACTOR

_____ X

County

MR x

CONTRACTOR

7.02 ~~The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.~~

County

7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

8.01 CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

9.0 INSURANCE REQUIREMENTS.

9.01 Evidence of Coverage:
Prior to commencement of this Agreement, the Contractor 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, the Contractor upon request shall provide a certified copy of the policy or policies.

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

9.02 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 the County's Purchasing Manager.

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

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 Contractors, 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.)

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 \$1,000,000 per occurrence.

(Note: any proposed modifications to these auto 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.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation 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.)

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, the CONTRACTOR 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 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.)

9.04 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County 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 CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County 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. Each policy shall provide coverage for Contractor and additional insureds 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 showing each subcontractor has identical insurance coverage to the above requirements.

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 the CONTRACTOR'S work, including ongoing and completed operations, **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 the CONTRACTOR'S insurance.** The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR 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. 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.

CONTRACTOR 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 County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

~~10.0 RECORDS AND CONFIDENTIALITY.~~

MR

CONTRACTOR

County

- 10.01 Confidentiality. (SEE ATTACHMENT 1 - ADDENDUM gents, and subcontractors shall comply with ~~the~~ ~~confidentiality~~ of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal,

state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Elsa Jimenez, Director of Health	Michiel Rauws, CEO
Name and Title	Name and Title
1270 Natividad Road	995 Market Street, Unit 208
Salinas, CA 93906	San Francisco, CA 94103
Address	Address
831-755-4526	415-964-6874
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.

mk X

 CONTRACTOR

~~15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.~~

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 County

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16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

By: _____
Contracts/Purchasing Officer

Date: _____

By: _____
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors (if applicable)

Date: _____

Approved as to Form¹

By: Hayo Della
Deputy County Counsel

Date: 10/19/17

Approved as to Fiscal Provisions²

By: _____
Auditor/Controller

Date: 10/24/17

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

CONTRACTOR

X2AI, Inc.
Contractor's Business Name*

By: _____
(Signature of Chair, President, or Vice-President)*

Michiel Rawns CEO
Name and Title

Date: 10/16/17

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

ANGELA J GERIN, DIRECTOR OF PSYCHOLOGY
Name and Title

Date: 10/16/17

County Board of Supervisors' Agreement Number: _____, approved on (date): _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required

²Approval by Auditor-Controller is required

³Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9

ATTACHMENT 1
ADDENDUM to Agreement by and between
County of Monterey, a political subdivision of the State of California, hereinafter "County"
AND
X2AI, Inc., hereinafter referred to as "CONTRACTOR"

The County of Monterey Standard Agreement shall be modified as follows:

Section 3.02 is hereby amended to read in its entirety as follows:

3.02 Either party may cancel this Agreement, or any extension of this Agreement, without cause, with a thirty (30) day written notice, or with cause immediately.

Section 7.01 is hereby amended to read in its entirety as follows:

7.01 During the term of this Agreement, either party may terminate this Agreement for any reason by giving written notice of termination at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

Section 7.02 is hereby amended to read in its entirety as follows:

7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement, provided that CONTRACTOR has been given a three-day cure period to resolve the breach and has failed to do so.

Section 10.0 RECORDS AND CONFIDENTIALITY is hereby deleted in its entirety and replaced as follows:

10.0 RECORDS AND CONFIDENTIALITY

10.01 Confidentiality. CONTRACTOR and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall

not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligation under this Agreement.

- 10.02 County Records. When this Agreement expires, or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03. Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.
- 10.06 Scope of Confidential Information. In the performance of their respective responsibilities pursuant to this Agreement, the County and CONTRACTOR may come into possession of certain Confidential Information of the other. For the purposes hereof, "Confidential Information" means all trade secrets, business plans, marketing plans, know-how, data, contracts, documents, scientific and medical concepts, member and customer lists, costs, financial information, profits and billings, and referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives, and agreements of the County or CONTRACTOR, as the case may be, whether written or verbal, which are confidential in nature; provided, however, that Confidential Information shall not include this Agreement and shall not include any information that:
- (a) Is in the public domain;
 - (b) Is already known or obtained by any other party other than in the course of the other party's performance pursuant to the Agreement, and without

breach of any confidentiality, nondisclosure or other agreement by such other party;

- (c) Is independently developed by any other party; and/or
- (d) Becomes known from an independent source having the right to disclose such information and without similar restrictions as to disclosure and use and without breach of the Agreement, or any other confidentiality or nondisclosure agreement by such other party.

10.07 Nondisclosure of Confidential Information. The County and CONTRACTOR each (i) shall keep and maintain in strict confidence all Confidential Information received from the other, or from any of the other's employees, accountants, attorneys, consultants, or other agents and representatives, in connection with the performance of their respective obligations under the Agreement; (ii) shall not use, reproduce, distribute or disclose any such Confidential Information except as permitted by the Agreement; and (iii) shall prevent its employees, accountants, attorneys, consultants, and other agents and representatives from making any such use, reproduction, distribution, or disclosure. This provision shall not apply to information that is subject to disclosure in response to a request pursuant to the California Public Records Act. To the extent any Party is required to disclose Confidential Information pursuant to the California Public Records Act, a court order, subpoena or any other form of compelled disclosure, the disclosing Party must provide advance notice sufficient to allow the other party the opportunity to challenge the disclosure of information.

Section 15.17 Interpretation of Conflicting Provisions is hereby deleted in its entirety.

Section 15.18 LIMITATIONS OF LIABILITY is hereby added as follows:

15.18 LIMITATIONS OF LIABILITY

15.18.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE TESS SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

15.18.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT

MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE AGGREGATE LIMIT OF THE PARTY'S THEN CURRENT APPLICABLE INSURANCE COVERAGE, PROVIDED THAT CONTRACTOR'S INSURANCE IS AT ALL TIMES MAINTAINED IN ACCORDANCE WITH SECTION 9.0. INSURANCE REQUIREMENTS.

Section 15.19 FORCE MAJEURE is hereby added as follows:

15.19 FORCE MAJEURE.

15.19.1 No Breach or Default. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of sixty (60) days or more.

15.19.2 Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

EXHIBIT-A
To Agreement by and between
County of Monterey, a political subdivision of the State of California, hereinafter "County"
AND
X2AI, Inc., hereinafter referred to as "CONTRACTOR"

Scope of Services / Payment Provisions

ADDITIONAL DEFINITIONS

1. **"County Data"** means information, data and other content, in any form or medium, that is collected, disclosed or otherwise received from County or an Authorized User by or through use of the Tess Services, provided however that County Data does not include Resultant Data, yet may contain Personal Information.
2. **"Personal Information"** means any information that does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located. Personal Information includes "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996 ("PHI"), "Personal Data" as defined in the EU Data Protection Directive (Directive 95/46/EEC), and all rules and regulations issued under any of the foregoing.
3. **"Resultant Data"** means information, data and other content that is derived by or through the Tess Services from processing County Data and is sufficiently different from such County Data that such County Data and any Personal Information therein cannot be reverse engineered or otherwise identified from the inspection, analysis or further processing of such information, data or content.
4. **"Tess Services"** means an automated texting system that provides bilingual mental health services support to patients with mild to moderate behavioral health issues.
5. **"X2AI Materials"** means the Tess Services software, documentation and X2AI Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by CONTRACTOR in connection with the Tess Services or otherwise comprise or relate to the Tess Services. For the avoidance of doubt, X2AI Materials include Resultant Data (and any information, data or other content derived from CONTRACTOR's monitoring of Customer's access to or use of the Tess Services), but do not include any County Data.
6. **"X2AI Systems"** means the online psychological artificial intelligence service from X2AI that is capable of providing highly personalized emotional support conversations, psycho-education, and health-related reminders. This service consists of three parts: 1. a toll-free phone number which patients can send text messages to, in order to chat with the system 2. an administration platform 3. an integration with OCHIN EPIC EHR.

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A. SCOPE OF SERVICES

- A.1** CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Implementation, report development, software subscription services, training and technical consulting/support for a pilot program for Tess Services, an automated texting system that provides bilingual mental health services support to patients with mild to moderate behavioral health issues.

- A.2** CONTRACTOR shall produce the following deliverables as outlined below:

Implementation:

1. Service implementation deliverables – CONTRACTOR shall follow an implementation plan (Exhibit B – Project Plan Example).
2. CONTRACTOR shall provide Tess Services in languages based on patient preference to include, but not limited to English and Spanish.

Report Development:

1. CONTRACTOR shall provide a system that allows for the County to generate reports, which shall include visualization of the data on an individual and population level.
2. CONTRACTOR shall provide data extract in .csv, XML, or other format to enable County to perform internal analysis. Data extract will be provided on an as needed basis or automated recurring secure file transfer protocol (FTP).
3. CONTRACTOR shall provide technical assistance as needed.
4. All written reports required under this Agreement must be delivered to Clinic Services Bureau Chief, or designated contact.

Software Subscription Services:

1. CONTRACTOR shall provide a toll-free text message phone number for users to access Tess Services.
2. CONTRACTOR shall provide a 24/7 crisis text line for County patients.
3. CONTRACTOR shall grant access to designated County staff to login to the X2AI online platform to enroll patients.
4. CONTRACTOR shall host the application and database subscription with technical support/maintenance. This will include provision of online access by County for application management to include but not exclusive to customizing text messages, modify transmittal frequency, patient registration, and application administration such as County user access. This will include unlimited County user accounts to manage patient registration and outreach information.

Training, Technical Consultation / Support

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1. CONTRACTOR shall provide all necessary training and training resources to County staff on the implementation of the Tess Services per the rates listed in B.1.
2. To initiate training, County shall submit a request in writing within 24-hours of desired training session
3. CONTRACTOR shall provide all documentation and resources necessary to complete training.

A.3 CONTRACTOR shall meet the following services level requirements:

1. Tess Services shall be available 99.9%, measured monthly, excluding County holidays, weekends and scheduled maintenance.
2. If County requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance.
3. CONTRACTOR shall notify County of any scheduled maintenance within fifteen (15) business days of the start of scheduled maintenance
4. CONTRACTOR shall notify County in writing of any emergency maintenance.

A.3.1 DOWNTIME.

1. Any downtime resulting from outages of third party connections or utilities or other reasons beyond CONTRACTOR's control will also be excluded from any such calculation.
2. County's sole and exclusive remedy, and CONTRACTOR's entire liability, in connection with the Tess Services availability shall be that for each period of downtime lasting longer than 5 hours.
3. CONTRACTOR shall credit County 2% of Service fees for each period of 60 or more consecutive minutes of downtime ("Downtime Credit"); excluding County holiday, weekends and scheduled maintenance with notification provided to County, as specified in Section A.3.3 above.
4. Downtime shall begin to accrue as soon as County recognizes that downtime is taking place, and continues until the availability of the Tess Services is restored.
5. County must notify CONTRACTOR within twenty-four (24) hours (excluding holidays and weekends) from the time of downtime, and failure to provide such notice will forfeit the right to receive Downtime Credit.
6. Downtime Credits may not be redeemed for cash
7. CONTRACTOR will only apply a Downtime Credit to the month in which the incident occurred.
8. X2AI's blocking of data communications in accordance with its policies shall not be deemed to be a failure of X2AI to provide adequate service levels under this Agreement.
9. If communications are blocked due to inappropriate content, CONTRACTOR will immediately send an email and follow up with a notification letter. If County is not notified of the intended blocking of communications, the

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interruption will be considered an outage and subject to the terms specified for outages in Section A.3.1.

- A.4 County shall facilitate interface with its electronic health record (EHR) system for the purpose of integration with Tess Services.
- A.5 County shall be responsible for acquiring initial patient consent and the communication of Tess Services to patients.
- A.6 CONTRACTOR shall provide County with marketing information such as brochures, flyers if available.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

County shall pay an amount not to exceed **\$442,900** for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

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Term	Description	Cost per Unit / Subscription	Fixed Monthly Recurring Cost NTE	Yearly Cost NTE
Year 1	One-time Implementation Services and Fees (140 Hours)	\$225 per Hour		\$31,500
	One-time Epic integration development (160 Hours)	\$190 per Hour		\$30,400
	Fixed Monthly Subscription Services Costs for up to 12,000 Users*	\$4.15 Per Member Per Month	\$8,300 monthly rate caps upon exceeding 2,000 Users	\$99,600
	Monthly SMS Services	-	\$3,000	\$36,000
	Projected Annual Amount NTE:			\$197,500
Year 2	Fixed Monthly Subscription Services Costs for 3,000 Users* and higher	\$4.15 Per Member Per Month	\$12,450 monthly rate caps upon exceeding 3,000 Users	\$149,400
	Monthly SMS Services	-	\$3,000	\$36,000
	Projected Annual Amount NTE:			\$185,400
Miscellaneous Services and Fees**				Total Amount
	Training, Technical Consultation and other Implementation support	\$225 per Hour		
	Miscellaneous Services and Fees NTE:			\$60,000
	Total Contract Not to Exceed Amount			\$442,900
<p>*Users include enrolled Patients and County staff that log onto the system for patient registrations, reporting and other updates necessary to coordinate services and access.</p> <p>**Note this category is on an "as-requested" and "as-approved" by County.</p> <p>Monthly Recurring costs are a fixed flat fee per month.</p>				

County may submit a request for Miscellaneous Services, such as additional technical support, consultation, training or other services that are not otherwise covered under the existing services outlined in B.1. Contractor will provide a written quote and services may commence, upon written approval by County.

CONTRACTOR shall levy no additional fees nor surcharges of any kind during the term of this Agreement without first providing a quote per the rates outlined in B.1 and obtaining approval in writing from County.

County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.

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There shall be no travel reimbursement allowed during this Agreement.

CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.

B.2 CONTRACTORS BILLING PROCEDURES

NOTE: Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.

County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

CONTRACTOR shall submit invoices itemizing each billed item to the following mail or e-mail address listed below periodically or at the completion of services, as applicable, with signatures along with supporting documentation, as may be required by the COUNTY to the following:

Mail delivery:
Monterey County Health Department
FQHC Look-Alike Clinics
1441 Schilling Place – 1st Floor
Salinas, CA 93901
Attn: ACCOUNTING

Email delivery:
CS_Finance@co.monterey.ca.us

C. Transmission of Data. County understands that the technical processing and transmission of County's electronic communications is fundamentally necessary to use of the Tess Services. County expressly consents to CONTRACTOR's interception and storage of electronic communications and/or County Data solely during the term of the Agreement and to provide the Tess Services to County, and County acknowledges and understands that County's electronic communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by CONTRACTOR. County further acknowledges and understands that electronic communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other

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electronic means. Provided CONTRACTOR has otherwise complied with its obligations under the Agreement, CONTRACTOR is not responsible for any electronic communications and/or County Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by CONTRACTOR, including, but not limited to, the Internet and County's local network.

D. Representations and Warranties and Covenants. CONTRACTOR represents, warrants and covenants to County that: (i) the Tess Services will be performed by properly qualified and trained individuals in a professional, workman-like manner; (ii) during the term of this Agreement and during any term of support, the Tess Services Software shall materially conform to the requirements of this Agreement and the applicable specifications; (iii) its performance under this Agreement and the Tess Services Software shall at all times comply with all applicable federal, state and local laws and regulations; (iv) to the best of CONTRACTOR's knowledge, County's permitted use of the Tess Services and Tess Services Software provided hereunder shall not infringe the intellectual property rights of any third party; and (v) the Tess Services Software provided hereunder is and when delivered to County will be free from viruses, spyware, and other similar harmful and destructive code. CONTRACTOR will re-perform non-conforming Tess Services as long as County provides prompt written notice to X2AI. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, QUIET ENJOYMENT, OR TITLE/NONINFRINGEMENT AND ALL SUCH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED."

E. Intellectual Property Rights.

1. "Tess Services" and "X2AI Materials". As between County and CONTRACTOR, all rights, title and interest in and to the "Tess Services" and "X2AI Materials", including all intellectual property rights therein, are and will remain with CONTRACTOR. Customer has no right, license or authorization with respect to any of the "Tess Services" or "X2AI Materials" except as expressly set forth in the Agreement. County hereby assigns to CONTRACTOR all right, title and interest in and to the "Resultant Data".
2. "County Data". As between County and CONTRACTOR, County is and will remain the sole and exclusive owner of all right, title and interest in and to all "County Data", including all intellectual property rights relating thereto, subject to the rights and permissions granted in Section E.3.
3. Consent to Use County Data. County hereby irrevocably grants all such rights and permissions in or relating to County Data to CONTRACTOR that are necessary or useful to perform the Tess Services. Upon termination of this Agreement for any reason CONTRACTOR shall furnish all County Data to County as soon as reasonably practical in a mutually acceptable industry standard format within thirty (30) days of termination of this Agreement.

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EXHIBIT B - Monterey County Health Department (MCHD) Project Plan: Phase 2 Example

Example

OWNER	STAGE	TASK	STATUS	Evaluation and Full Implementation					All Systems Operational Month 14 +
				Month 10	Month 11	Month 12	Month 13	Month 14 +	
MCHD	Pilot Evaluation Period	Compilation of Initial Findings by MCHD research team							
MCHD	Pilot Evaluation Period	Create plan for larger scale roll-outs	X						
MCHD	Staff training	Schedule workshops or webinars with CONTRACTOR for staff training		X					
CONTRACTOR	Staff training	Facilitate workshops and webinars		X	X	X	X		
CONTRACTOR	Staff training	Provide updated training plan and training materials		X	X	X	X		
CONTRACTOR	Staff training	Launch technical support helpdesk		X	X	X	X		
CONTRACTOR	Full Implementation and Distribution	Increase capacity of server for larger scale roll-out		X	X	X	X		
CONTRACTOR	Full Implementation and Distribution	GOLIVE: make Tase Instance on CONTRACTOR server available on MCHD EMR, commencement of phase 2		X	X	X	X		
MCHD	Full Implementation and Distribution	Prepare promotional material - Internal communication, newsletter, Intranet, e-mail - Send phone numbers of potential users to CONTRACTOR		X	X	X	X		
CONTRACTOR	Full Implementation and Distribution	Distribution through patient's phone numbers		X	X	X	X		
MCHD	Full Implementation and Distribution	Distribution through staff-patient interaction		X	X	X	X		
MCHD	Full Implementation and Distribution	Distribution through other distribution channels		X	X	X	X		
MCHD	Ongoing Maintenance, Processing Feedback, Support and Training	Schedule workshops or webinars with CONTRACTOR for staff training						X	
CONTRACTOR	Ongoing Maintenance, Processing Feedback, Support and Training	Ongoing bi-monthly interviews with MCHD staff for feedback on Tase capabilities						X	
CONTRACTOR	Ongoing Maintenance, Processing Feedback, Support and Training	Ongoing maintenance of libraries						X	
CONTRACTOR	Ongoing Maintenance, Processing Feedback, Support and Training	Ongoing IT maintenance						X	
CONTRACTOR	Ongoing Maintenance, Processing Feedback, Support and Training	Ongoing training						X	
CONTRACTOR	Ongoing Maintenance, Processing Feedback, Support and Training	Ongoing technical support from helpdesk						X	
CONTRACTOR	Ongoing Maintenance, Processing Feedback, Support and Training	Monthly Check-in, discuss feedback						X	

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement"), effective 31st March, 2017 ("Effective Date"), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department ("Covered Entity") and X2AI 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;

(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 as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(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 further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

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 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;

(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;

(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 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:

399 Fremont Street #506, San Francisco, 94105, California, United States

Attn: Michiel Rauws
Tel: +1 (415) 964 6874
Fax: n/a

If to Covered Entity, to:

1270 Natividad Road
Salinas, CA 93906
Attn: Elsa Jimenez, Director of Health
Tel: 831 755-4526
Fax: _____

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 harmless the County of Monterey (hereinafter County), its officers, agents, and employees 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.

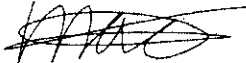
IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

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

[BUSINESS ASSOCIATE]

X2AI Inc.

By: _____

By:  _____

Print Name: _____

Print Name: Michiel Rauws _____

Print Title: _____

Print Title: CEO _____

Date: _____

Date: 31st of March, 2017 _____