



Hawk Data System
Indigenous Data Governance



SOFTWARE AS A SERVICE AGREEMENT

THIS AGREEMENT made the 15th day of January 2019

BETWEEN: **ECENTER RESEARCH INC.** a Canadian company, having its registered office at
101 High Street, Sutton, ON, L0E1R0

(the "**Contractor**")

AND: **NEVADA COUNTY**, with its registered office at 500 Crown Point Circle, Grass Valley
95945

(the "**Client**")

WHEREAS:

- A. The Contractor is the creator, developer and owner of a clinical information and population health analysis system "eInsight™" including customizations and modifications thereto (the "**Software**") as described in Schedule "A";
- B. The Client is a county/agency that provides health care services.
- C. The Client desires to have online access and rights to use a customized version of the Software (the "**Custom Software**") in accordance with this Agreement and the Contractor agrees to provide the Client with such access and rights in addition to consulting services in accordance with the terms and conditions of this Agreement;
- D. The Contractor is engaged as an independent contractor in information technology and software support and consulting.
- E. The parties hereto agree to govern their relationship in accordance with the terms and conditions of this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, it is agreed between the parties hereto as follows:

1. SERVICES

- 1.1 The Contractor shall develop and implement a customized version of the Software, the Custom Software, and to be used by the Client and its Authorized Users (the "**Permitted Purpose**"). For clarity, all references to Software in this Agreement shall include the term, Custom Software.
- 1.2 During the Term (as defined herein) the Contractor shall provide certain information technology consulting services (the "**Services**") in connection with certain deliverables under this Agreement (the "**Deliverables**"). For clarity, the development of the Custom Software is included as part of the Services delivered hereunder.
- 1.3 The Client may at any time request in writing (each, a "**Change Request**") changes to the Software Services or the Deliverables (each, a "**Change**"). Upon the Client's submission of a Change Request, the parties shall evaluate all Changes as soon as reasonably practicable, and in any case, within fifteen (15) days of receiving a Change Request, the Contractor shall provide the Client with a written proposal (a "**Change Proposal**") for implementing the requested Change setting forth:
 - a) a written description of the proposed Change to any Software Services or Deliverables;
 - a) any modifications to the schedule for completion of the Deliverables; and
 - b) any increase or decrease in Fees resulting from such proposed Changes.

Within five (5) days following the Client's receipt of the Change Proposal, the Client shall, by email (steve@ecenterresearch.com) to the Contractor, approve, reject or propose modifications to such Change Proposal. Upon the Client's approval of the Change Proposal, each of the parties shall execute such Change Proposal. An executed Change Proposal shall form part of this Agreement and the terms and conditions herein shall apply.

2. AUTHORIZED USERS AND ACCESS CODES

- 2.1 The Contractor permits the Client to grant access to the Software to the users set forth in Schedule "A" (the "**Authorized Users**"). For clarity, the Authorized Users include Counties within the State of California that use the Software for the specific purposes and in relation to the named projects set forth in Schedule "A". The parties acknowledge and agree that no Authorized User may utilize the Software for any other services or deliverables other than what is set forth under Schedule "A", unless agreed upon in writing by the Contractor. The Fees set forth hereunder are solely in relation to the Services and Deliverables, and any additional services offered to Authorized Users will be subject to separate fees as agreed upon between the parties by way of an amendment to this Agreement. The parties acknowledge and agree that upon request by the Contractor, the Client shall promptly submit an accurate, updated list of Authorized Users to the Contractor.
- 2.2 The Contractor will permit the Client to have access to and use the Software only over the Internet using access codes assigned by the Contractor. Access codes will be deemed Confidential Information (as defined herein) of both parties.

- 2.3 The Client shall be responsible for all actions of the Authorized Users in connection with the Software. The Client will ensure that its Authorized Users use the Services in accordance with the terms and conditions of this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement, and only use the Software for lawful purposes. The Client will be liable for any Authorized User's breach of this Agreement, be solely responsible for moderating any content posed by Authorized Users and advising Authorized Users what they may and may not post through the Software by means of the Client's own policies.
- 2.4 If the Client becomes aware of any actual or threatened activity by any party whatsoever, including without limitation, an Authorized User, prohibited by this Agreement, the Client shall, and shall cause any applicable Authorized Users to immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate and remedy its effects (including permanently erasing from the applicable systems and destroying any information and data to which they have gained unauthorized access); and (b) notify the Contractor of any such actual or threatened activity and take all measures as reasonably requested by the Contractor to stop such activity and mitigate and remedy its effects, including by resetting access credentials.
- 2.5 Without limiting the indemnification provisions set forth in Section 16 of this Agreement, the Client hereby acknowledges that responsibility for all communications with others or between Authorized Users using the Software is the sole and exclusive responsibility of the Client and that the Contractor will not be held responsible in any way for any copyright infringement or violation, or the violation of any other person's rights or the violation of any laws, including but not limited to the infringement or misappropriation of copyright, trademark, or other property rights of any person or entity arising or relating to the use of the Software. The Client agrees to indemnify and hold harmless the Contractor from and against any and all losses, damages, actions or causes of action, suits, claims, demands, penalties and interest arising in connection with any Authorized User's use of the Software not caused by the permissible use of Contractor's software in accordance with the terms of this Agreement.

3. SYSTEM REVISIONS

- 3.1 The Contractor may revise the Software features and functions at any time, with best efforts to maintain existing service levels for the client.

4. MONITORING OF CLIENT'S USE

- 4.1 The Contractor may internally monitor the Client's usage of the Software to ensure compliance with the terms of this Agreement.

5. TERM

- 5.1 The initial term of this Agreement will commence as of January 15, 2019 to June 30, 2019 unless terminated sooner or extended in accordance with the terms of the agreement. Thereafter, the term of Agreement may, at the option of the County and approval by the County's Board of Supervisors, be extended for up to two consecutive one-year terms by County providing Contractor a minimum of sixty (60) days' notice from the date of the then-ending term of its intent to exercise its option to renew the Agreement for an additional one-year term.

6. FEES AND PAYMENT TERMS

- 6.1 The Client will pay the Contractor the fees set forth and more particularly described in Schedule "A" to this Agreement (the "**Fees**") in accordance with the terms and conditions set forth herein. For clarity, the total Fees payable under this Agreement, subject to a Change Request, is set forth under Schedule "A".
- 6.2 The Contractor agrees to render to the Client an invoice on an annual basis for license and support fees. Up-front costs for project based tasks in Schedule "A" (i.e. non-license and Help Desk Support services) are one-time fees that will not be applied to any renewals authorized under this Agreement, and will be invoiced at the commencement of each task.
- 6.3 The Contractor shall provide the final Invoice for the term no less than 30 days prior to the renewal date. The Client shall pay the Fees under each Invoice within 30 days. Where the Client fails to pay the amounts owed under an Invoice in accordance with the instructions set forth therein by the due date set forth therein, the Contract may suspend the Services, in its sole discretion.
- 6.4 Each of the Invoices referenced in Section 6.2 must set forth in reasonable detail the following information, as applicable:
- a) description of the Fees payable under such invoice;
 - b) sufficient detail with respect to the hours worked in connection with the Deliverables.
- 6.5 Subject to the terms of a Change Proposal, or as otherwise agreed upon in writing between the parties by way of email, in the event that the Fees are increased as a result of a Change, such increase in Fees shall be allocated and payable in equal proportions under each remaining Invoice of the Term.

7. RESTRICTIONS AND RESPONSIBILITIES OF THE CLIENT

- 7.1 The Client shall comply with all applicable local, state and federal laws and regulations in connection with its use of the Software and provision of the Services.
- 7.2 The Client shall not, and shall not permit any other person to (except for its Authorized Users), access or use the Custom Software except as expressly permitted hereunder. For clarity, the Client shall not:
- a) copy, modify or create derivative works or improvements of the Software or any materials provided by the Contractor in connection therewith;
 - b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software, or any other aspect of the Services to any person, including on or in connection with any time-sharing, service bureau, software as a service, cloud or other technology or service;
 - c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Software including without limitation, or any other aspect of the Services or any part thereof;

- d) bypass or breach any security device or protection used in connection with the Software, other than by an Authorized User through the use of his or her own then-valid access credentials;
- e) input, upload, transmit or otherwise provide to or through the Software any information or material that are unlawful or injurious, or contain, transmit or activate any harmful code;
- f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Software, or any other aspect of the Services;
- g) remove; delete, alter or obscure any trade-marks, warranties or disclaimers of copyright, trade-mark, patent or other intellectual property or proprietary rights notices from the Software;
- h) access or use the Software or any aspect thereof in any manner or for any purpose outside the access or use permitted by this Agreement that infringes, misappropriates or otherwise violates any intellectual property rights or other rights of any third party, including by any unauthorized access to, misappropriation, use, alteration, destruction, or that violates any applicable law;
- i) otherwise access or use the Software or any other aspect thereof beyond the scope of the authorization granted under this Agreement; and
- j) without limiting the foregoing, provide access to the Software to any additional end-users without the Contractor's written consent, including without limitation, any Counties in any jurisdiction for any reason whatsoever.

8. CLIENT DATA & PRIVACY

8.1 Without limiting the foregoing, unless it receives the Client's prior written consent, the Contractor shall not:

- a) access, process, or otherwise use data in electronic form input or collected through the Software by the Client (the "**Client's Data**"); and
- b) intentionally grant any third party access to the Client's Data, except subcontractors or employees of the Contractor, as the case may be, that are subject to a non-disclosure agreement.

8.2 Notwithstanding the foregoing, the Contractor may disclose the Client's Data as required by applicable state or federal law or by proper legal or governmental authority. The Contractor shall give the Client prompt notice of any such legal or governmental demand.

8.3 Each of the parties agree to employ security measures in accordance with applicable industry practice and in compliance with all applicable laws and regulations to mitigate against unauthorized disclosure of any personal information of any party.

8.4 The Client recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the Software, the Client assumes such risks. The Contractor offers no representation, warranty, or guarantee that the Client's Data will not be exposed or disclosed through the actions of third parties.

8.5 Return, Transfer and Removal of Data and other Assets

- a) Upon termination of this Agreement, Contractor shall return to County all County-furnished assets in Contractor's possession.

- b) Upon termination of this Agreement, Contractor shall ensure that any and all of County's data maintained by Contractor is extracted in a commercially recognized format acceptable to County prior to the termination date or the completion of the Disentanglement period, whichever is later, and that said data is securely transmitted or delivered to County or County's designee.

9. **CONTRACTOR'S CONFIDENTIAL INFORMATION**

9.1 The "**Contractor's Confidential Information**" means:

- a) any information of a proprietary or confidential nature, including but not limited to, financial and business information relating to the Contractor which is communicated to the Client at any time;
- b) any business systems, methodologies or computer programs of the Contractor, including without limitation the Software; and,
- c) any other information or data received by the Client from the Contractor that is identified by the Contractor as proprietary or confidential.

9.2 The Client acknowledges that the Contractor's Confidential Information is confidential and constitutes a valuable asset of the Contractor. Unless otherwise provided under this Agreement, the Client shall:

- a) exercise at least the same degree of care and discretion with respect to the Contractor's Confidential Information as it exercises protecting its own confidential information;
- b) take all necessary steps including without limitation instruction of its employees, contractors and agents to ensure that the confidentiality of the Contractor's Confidential Information is maintained;
- c) not disclose, publish, display or otherwise make available to other persons any of the Contractor's Confidential Information, or copies thereof; and
- d) except as required or permitted in the performance of this Agreement, not duplicate, copy or reproduce any of the Contractor's Confidential Information without the Contractor's prior written consent.

9.3 This Section 9 does not apply to or include information that:

- a) is or becomes publicly available through no act or omission by the Client;
- b) is authorized to be disclosed by law, including, but not limited to, the California Public Records Act;
- c) is available to the Client from some source other than the other party without a breach of confidence with the other party;
 - (i) is general computer technology, ideas, concepts or tools;
 - (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party;
 - (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or

- (iv) the disclosure of which may be required to be made by a court of competent jurisdiction.

10. TERMINATION

- 10.1 Either party may terminate this Agreement immediately without notice upon the institution of insolvency, bankruptcy, or similar proceedings by or against the other party, any assignment or attempted assignment by the other party for the benefit of creditors or any appointment or application for such appointment of a receiver for the other party.
- 10.2 If either party fails to comply with any of the material terms and conditions of this Agreement, including without limitation, the payment of the Fees, the non-defaulting party may terminate the Agreement and any and all rights upon 15 days' written notice to the defaulting party specifying any breach, unless within the period of such notice, all breaches specified therein are remedied by the defaulting party. In the event that such breaches have been remedied by the defaulting party within the period of notice, the non-defaulting party shall have no claims for damages, compensation, loss of profit, allowance in relation to such breach.
- 10.3 The parties hereto acknowledge and agree that upon any such termination under sections 10.1 and 10.2 of this Agreement, the Contractor will have no further liability or obligation hereunder arising out of such termination, except where Client has paid in advance for services beyond the date of termination, which shall be refunded by Contractor to Client within thirty (30) days of termination.
- 10.4 In the event that this Agreement is terminated for any reason whatsoever, the Client will immediately return to the Contractor any materials provided by the Contractor under this Agreement.
- 10.5 Either party may terminate this Agreement for any reason, or without cause, by giving ninety (90) calendar days written notice to the other, which notice shall be given by Certified Mail. In the event of termination not the fault of Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement.

11. RELATIONSHIP OF THE PARTIES

- 11.1 The parties acknowledge and agree that:
 - a) the relationship between the parties is, for all purposes of independent contractor and principal rather than employer and employee;
 - b) the Contractor shall not be eligible for, and shall not participate in, any employee pension, health, welfare or other fringe benefit plan, of the Client. No worker's compensation insurance shall be obtained by the Client to cover the Contractor; and
 - c) the Contractor is solely responsible for the payment of all income taxes or other taxes attributable to any compensation paid to the Contractor pursuant to this Agreement and during the Term and is solely responsible for deducting and remitting from such compensation and payments all withholding taxes, income taxes, Canada Pension Plan deductions, employment insurance deductions and all other deductions required by any applicable statute.

12. EXPENSES

- 12.1 The Client shall reimburse the Contractor for all expenses incurred by the Contractor in the course of carrying out the Services so long as the expenses are authorized in advance by the

Client.

13. PROPRIETARY RIGHTS AND INTELLECTUAL PROPERTY

13.1 The Contractor shall retain ownership and all right, title, and interest to the background technology and the intellectual property in and related to the Software and any materials thereof, including but not limited to all related software used to provide the Software, all graphics, user interfaces, logos, trademarks, know-how, trade secrets, copyrights, patentable inventions, notes, designs, technical data, ideas, research, reports, documentation and other information related thereto and created by the Contractor (the "**Intellectual Property**"), provided that the Client shall retain ownership of the Client's Marks.

"**Client's Marks**" means any CIBHS trademarks, service marks, logos and names, including without limitation, eBHS.

13.2 Without limiting Section 13.1, the parties acknowledge and agree that:

- a) the Contractor is the creator, developer and sole owner of the Software, including customizations and modifications thereto; and
- b) this Agreement gives the Client online access to and use of the Software, which resides on a data center controlled by the Contractor; it does not grant the Client any license or rights to the Intellectual Property in or to the Software or any of its components. The Client recognizes that the Software and its components are protected by copyright and other laws.

13.3 The Client shall not represent itself as an owner, creator or developer of the Software or any aspect of the Software Services or Deliverables, or any component of the Contractor's Intellectual Property.

13.4 The Parties hereto acknowledge and agree that any and all pre-existing, present or future intellectual property owned by the Client, including without limitation all graphics, user interfaces, logos, trademarks, know-how, trade secrets, copyrights, patentable inventions, notes, designs, technical data, ideas, research, reports, documentation and other information related thereto and created by the Client (collectively, the "**Client's Intellectual Property**") shall remain the property of the Client and immediately returned to Client upon termination of this Agreement.

14. WARRANTIES, EXCLUSIONS AND LIMITATIONS

14.1 **Mutual Warranties** –Each of the Contractor and the Client represents and warrants to the other party that:

- a) it is duly organized and validly existing under applicable law;
- b) it has all right and authorization, and has obtained all consents necessary to execute, deliver and perform this Agreement;
- c) nothing in this Agreement, nor the performance of any obligations hereunder, will conflict with such party's constating documents, any law or any other person's rights, or violate any agreement to which that party is a party to or is otherwise bound; and
- d) there are no pending suits or actions threatened against such party that would affect the performance of its obligations under this Agreement.

14.2 Contractor warrants the Software to operate in all material respects as specified in the Contractor-provided documentation. If Contractor makes or has made claims in response to specifications listed in a County solicitation, then the Contractor warrants the Software to operate in all material respects as claimed in response to the solicitation. Contractor warrants that the Software does not contain any disabling devices that would allow Contractor to terminate operation of the Software. Contractor further warrants that, to the best of its knowledge, the Software does not contain any malicious code or components such as viruses, malware or spyware. Contractor warrants as follows for all customization made by Contractor for the County: (1) All Customizations will continue to be supported by Contractor under its maintenance agreement as defined in Schedule C; (2) All Customizations will be preserved and will remain functional in any future software versions, revisions, or updates provided by Contractor; (3) All future software versions, revision, or updates provided by Contractor will not cause the County to incur any additional cost as a result of the Customizations. These provisions shall apply for as long as the County is covered by the Contractor's maintenance agreement.

14.3 **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED "AS-IS" AND THE CONTRACTOR HEREBY DISCLAIMS ALL CONDITIONS AND WARRANTIES WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER THIS AGREEMENT, AND CONTRACTOR SPECIFICALLY DISCLAIMS ALL IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, THE CONTRACTOR MAKES NO CONDITION OR WARRANTY OF ANY KIND THAT THE SERVICES OR ANY PRODUCTS OR RESULTS THEREOF WILL (A) MEET THE CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS; (B) OPERATE WITHOUT INTERRUPTION; (C) ACHIEVE ANY INTENDED RESULT; (D) BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES; OR (E) BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD PARTY MATERIALS ARE PROVIDED "AS – IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN THE CLIENT AND THE THIRD PARTY OWNER OR DISTRIBUTOR OF THIRD PARTY MATERIALS.

14.4 **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, RESULTING FROM THIS AGREEMENT OR THE PERFORMANCE OR USE OF THE SOFTWARE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCLUSIVE OF EACH PARTY'S INDEMNIFICATION OBLIGATIONS, DAMAGES ARISING FROM A PARTY'S VIOLATION OF LAW, A PARTY'S GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER OR EACH PARTY'S BREACH OF ITS SECURITY OBLIGATIONS HEREUNDER (INCLUDING ALL DAMAGES ARISING FORM A SECURITY INCIDENT), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ANY SUCH DAMAGES PAYABLE BY EITHER PARTY TO THE OTHER PARTY HEREUNDER EXCEED AN AMOUNT EQUAL TO \$1,000,000.

15. SERVICE LEVEL AGREEMENT

15.1 Contractor will maintain a website accessible by County, which contains information concerning the Software and Support Services.

- 15.2 Contractor will respond to County requests for software support services regarding the licensed software in accordance with the procedures identified below. In each case, County may describe and submit notice of the support need by telephone, facsimile or electronic mail.
- 15.3 All Contractor staff assigned to provide services to County will be appropriately qualified by education, training and experience to deliver those services, and will be familiar with the functional capabilities of the Software.
- 15.4 Telephone Support includes: (i) remote diagnostics; (ii) service desk and dispatch; (iii) question and answer consulting; and, (iv) non-chargeable user error remedies. Contractor shall provide a toll-free maintenance telephone number. Remote access equipment is required at County's location for remote support, which equipment is to be obtained by County at its sole expense. Contractor is required to only utilize County's official remote support access solution.

Contractor shall provide County with telephone support services for Software from 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, excluding County-recognized holidays.

- 15.5 Response Policy. Contractor shall respond to any Errors reported by County based on the priority code assigned to each such Error. County shall identify the priority code when it initially reports the Error to Contractor. Contractor may, in its reasonable discretion, re-classify the Error after its initial investigation. In the event Contractor does not meet the service level response for the Error as described in the table below, the County may request to escalate the Error to a higher priority code, which request the Contractor shall not unreasonably deny.
- a) Request for Technical Support. Authorized Users will make Technical Support requests by calling or emailing Contractor's Technical Support staff or by submitting a request via Contractor's customer service web portal. The Technical Support staff shall assign to the request the Problem Severity Level (as defined herein) indicated by the requestor.
 - b) Problem Severity Levels 1 and 2 Response and Resolution. For Technical Support requests not made by telephone, within the Request Response Time of such a request, Contractor shall confirm to the requestor receipt of the request by Contractor. If a Problem Severity Level 1 or 2 request cannot be corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for Technical Support, Contractor will: (a) immediately escalate the request to Contractor's management; (b) take and continue to take the actions which will most expeditiously resolve the request; (c) provide a hourly report to the requestor of the steps taken and to be taken to resolve the request, the progress to correct, and the estimated time of correction until the request is resolved; and, (d) every 4 hours, provide increasing levels of technical expertise and Contractor management involvement in finding a solution to the request until it has been resolved.
 - c) Problem Severity Levels 3 and 4 Response and Resolution. For Technical Support requests not made by telephone, within the Request Response Time of such a request, Contractor shall confirm to the requestor receipt of the request by Contractor. If a Problem Severity Level 3 or 4 request cannot be corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for Technical Support, at the sole election of requestor: (a) Contractor will work

continuously to resolve the request; or, (b) requestor and Contractor will mutually agree upon a schedule within which to resolve the request.

Technical Support Problem Severity Levels

a) Problem Severity Level 1.

- 1) Description. This Problem Severity Level is associated with: (a) Software, as a whole, are non-functional or are not accessible; (b) unauthorized exposure of all or part of County Data; or, (c) loss or corruption of all or part of Subscriber Data.
- 2) Request Response Time. 30 minutes.
- 3) Request Resolution Time. 2 hours.

b) Problem Severity Level 2.

- 1) Description. This Problem Severity Level is associated with significant and / or ongoing interruption of an Authorized User's use of a critical function (as determined by the Authorized User) of the Software and for which no acceptable (as determined by the Authorized User) work-around is available.
- 2) Request Response Time. 1 hour.
- 3) Request Resolution Time. 4 hours.

c) Problem Severity Level 3.

- 1) Description. This Problem Severity Level is associated with: (a) minor and / or limited interruption of an Authorized User's use of a non-critical function (as determined by the Authorized User) of the Software; or, (b) problems which are not included in Problem Severity Levels 1 or 2.
- 2) Request Response Time. 8 hours.
- 3) Request Resolution Time. 24 hours.

d) Problem Severity Level 4.

- 1) Description. This Problem Severity Level is associated with: (a) general questions pertaining to the Software; or, (b) problems which are not included in Problem Severity Levels 1, 2, or 3.
- 2) Request Response Time. 8 hours.
- 3) Request Resolution Time. 48 hours.

15.6 Remedies

In the event Contractor fails to meet the service level standards described herein, County may, without penalty, withhold payment for maintenance and support fees until said standards are met.

16. INDEMNIFICATION

16.1 Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify, defend and hold harmless the County and its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, damages, losses and expenses (including, without limitation, defense costs and attorney fees of litigation) which result from the negligent act, willful misconduct, or error or omission of Contractor, except such loss or damage which was

caused by the sole negligence or willful misconduct of County or its officers, officials, employees, agents and volunteers.

17. INSURANCE

During the performance of this Agreement, Contractor shall maintain in full force and effect the following insurance coverages:

17.1 Commercial General Liability Insurance: (County Resolution No. 90674) Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following:

- a) Broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the minimum amount of \$1,000,000.
- b) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from Seller's product(s) and/or the services provided under this contract;
- c) A provision that said insurance shall be primary and other insurance maintained by the County shall be excess only and not contributing with Contractor's insurance; and
- d) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days' notice for non-payment of premium). Upon receipt of such notice, County will provide Contractor in writing a notice that Contractor has until the effective date of termination, change in coverage protection, or reduction in coverage limits to secure new insurance coverage as required herein, and that Contractor's failure to do so will constitute default under the terms of this Agreement.

17.2 Data Processing Errors and Omissions Insurance: Contractor shall maintain either a professional liability or errors & omissions policy in an amount of no less than \$1,000,000, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.

17.3 Cyber Liability Insurance: Without limiting any of the obligations or liabilities of Contractor, Contractor shall carry and maintain, at its own expense including any applicable deductibles or retentions, as long as respective, applicable statute(s) of limitation or repose are in effect relating to the specific purposes of this Agreement, Cyber Liability insurance with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of \$1,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

18. SEVERABILITY

18.1 If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

19. GOODFAITH

19.1 Each of the Parties acknowledge to one another that each respectively intends to perform its

obligations as specified in this Agreement in good faith.

20. WAIVER OF CONTRACTUAL RIGHT

20.1 The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

21. BENEFIT

21.1 This Agreement shall inure to and be binding upon the parties hereto and their respective successors and assigns.

22. AMENDMENTS

22.1 No amendment of this Agreement or waiver of any of the terms and provisions shall be deemed valid unless effected by a written amendment and signed by both Parties.

23. ASSIGNMENT or SUBCONTRACTING

23.1 This Agreement shall not be assign or subcontract in whole or in part by the Contractor or the Client without the prior written consent of the other party and any assignment or subcontracting made without that consent is void and of no effect.

24. THE GOVERNING LAW

24.1 This Agreement and all matters arising hereunder shall be construed in accordance with and be governed by the laws of the State of California and the parties to this Agreement hereby irrevocably submit and attorn to the exclusive jurisdiction of California.

25. CONSIDERATION

25.1 The parties acknowledge and agree that this Agreement has been executed by each of them in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged.

25.2 The parties waive any and all defenses relating to an alleged failure or lack of consideration in connection with this Agreement.

26. DISPUTE RESOLUTION

26.1 If a dispute arises out of, or in connection with this Agreement, the parties agree to meet to pursue resolution through negotiation or other mutually agreed upon dispute resolution process before resorting to litigation.

26.2 All information exchanged during this meeting or any subsequent dispute resolution process, shall be regarded as "without prejudice" communications for the purpose of settlement negotiations and shall be treated as confidential by the parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the dispute resolution process.

27. NOTICES

27.1 This Agreement shall be managed and administered on behalf of the respective parties by the individuals identified below. All invoices shall be submitted to and approved by the County's representative so identified. In addition to personal service, all notices may be given to County and to Contractor by first class mail addressed to said party and shall be deemed received the fifth (5th) day following the date of mailing or the earlier date of personal service, as the case may be.

Contractor:
eCenter Research Inc.
101 High Street, Sutton, ON, L0E1R0
Contact Person:
Dr. Steve Weatherbee
President/CEO

County of Nevada:
950 Maidu Avenue
Nevada City, California 95959
Contact Person:
Cindy Morgan
Program Manager

604-910-3948
steve@ecenterresearch.com

530-265-1779
Cindy.Morgan@co.nevada.ca.us

IN WITNESS WHEREOF the parties have signed this Agreement as of the date first written above.

NEVADA COUNTY

Per:
Chair, Board of Supervisors

Date: _____

ECENTER RESEARCH INC.

Per:
Authorized Signatory

Date: _____

SCHEDULE "A"

Deliverables - pro-rated for January 15, 2019 to June 30, 2019

1. Data Center - USA enterprise dedicated server infrastructure – 1 Load balancer, 2 enterprise 4 cores web servers, 2 enterprise 4 cores data base servers, data backup fees, server management/maintenance fees, server software fees, HIPAA SSL certificate (military grade 256 bit encryption) fees, HIPAA “Safe Harbour” Database Column Level Transparent Encryption License fees = **\$0 USD** (\$5,000/a waived to June 30, 2019)
2. Enterprise system licensing and Help Desk support for up to 30 users - **\$15,000/a x .55 = \$8,250 USD**
3. Project Management/Consulting (external/internal meetings, documenting specifications, communications/coordination, consulting, etc.) - **\$7,500 x .55 \$4,125 USD** (12,500/a fee reduced to June 30, 2019)
4. One time custom import of Basis-24 results - **\$0 (in kind, no cost)**
5. Additional existing assessments (CANS, PSC-35, GAD-7, PHQ-9) - **\$0 (included, no cost)**
6. CANS data entry access for Victor Community Services and Sierra Forever Families staff - **\$0 (included, no cost)**
7. Online eBHS system training of new Nevada county staff is included - **\$0** (covered in initial training fee)
8. Phase 2 system enhancements ... CANS/PSC-35 state report, DSM/ASAM CalOMS data export/report, etc... see notes below (68.5 hrs.) - **\$17,125 USD**
9. Ongoing change requests, system enhancement, modifications to EHR data imports funds - **\$10,000 USD**
10. Additional system customization, new data collections, new report as required based on Change Management requirements billed at \$250/hr. USD
11. Contract term is January 15, 2019 to June 30, 2019, total fees = **\$39,500 USD**

Date updated	Update by	Collection	Change/Enhancement Request Description	Requested By	Update (CIBHS/eCenter)	Priority	Phase	Scope	Ticket/Time
06/14/18	Iterhorst	ASAM	Requesting documentation or training guide on how to use additional eBHS features: Exclusive, My Clients Only, and how to separate MH from SUD.	Iterhorst	Use Knowledge Base search for articles. If no article found, submit Support ticket requesting Knowledge Base how to article. Does EHR currently handle Sequestered clients as exclusively only viewable by attached staff? Is the question 'separate MH from SUD' related to 42-CFR or other? We need to review functionality needed for managing what parts of a client record can be viewed by others...client consent through client portal?	Very High	Phase 1 - Before Go-Live	No Cost	In kind
06/14/18	Iterhorst	ASAM	Make the "Select DSM Code" field required, unless the "...not applicable..." question before it is checked.	Iterhorst		Very High	Phase 2	Additional Costs	2190/3.5 hrs
06/20/18	Iterhorst	ASAM Admin Report	Data Export/Report for state submission for CalOMS	Iterhorst	Aug 1 (one week grace)		Phase 2	Additional Costs	2191/8 hrs
			clinician notification grid on login to prompt client's with pending assessments/dates, auto remove once assessment has been completed				Phase 2	Additional Costs	2207/4 hrs
			Admin report view to display by staff member, client assessment results for all completed assessments including date of completion. One master summary view of clients on the caseload for all linked collections				Phase 2	Additional Costs	2206/20 hrs
			Client open record > Assessment Summary > Add 'entered by' column to inject staff first, last name beside assessment when completed				Phase 2	Additional Costs	2205/5 hrs
8/8/18	Iterhorst	Children's	CANS data upload to DHCS				Phase 2	Additional Costs	2221/30 hrs
Sept 13	Iterhorst	ASAM	Modify Level of Care Reason for Difference to match State reporting requirements		Need to update ASAM report based on these data element changes		Phase 2	Additional Costs	2262/2 hrs
Sept 13	Iterhorst	ASAM	DSM5 - Dx check boxes. Calculate at the end of the page instead of after each box is checked				Phase 2	Additional Costs	2259/5 hrs
Sept 14	Steve W	Reports	Add admin report tab>Staff Reports>Case Load to pull staff case load of linked clients with filter option by collection/assessment	Iterhorst			Phase 2	No Cost	In Kind work