

NO WITHHOLDING

PERSONAL SERVICES AGREEMENT BETWEEN THE COUNTY OF SHASTA AND CLINISYS, INC.

This agreement is entered into between the County of Shasta, through its Health and Human Services Agency (“HHSA”), a political subdivision of the State of California (“County”) and Clinisys, Inc. (“Consultant”) (collectively, the “Parties” and individually a “Party”) for the purpose of providing the HHSA Public Health Laboratory with a Laboratory Information Management System (“LIMS”).

Section 1. RESPONSIBILITIES OF CONSULTANT

Pursuant to the terms and conditions of this agreement, Consultant shall:

- A. Provide County with one non-exclusive, non-transferrable license to the Apollo LIMS Base Software (“Software”). The Software is owned by Consultant and is protected by U.S. copyright laws and international treaty provision. Consultant retains proprietary rights to the Software program to third parties. Software license provided to County will include access for four concurrent users.
- B. Provide County with a non-exclusive, non-transferrable, license to the Apollo Web Portal (“Portal”) as listed in Exhibit A, Quote, attached and incorporated herein. The Portal will include Reporting, Order Entry, and Requisition modules. The Portal access provided to County will include access for seven concurrent users.
- C. Provide County with one Panther Instrument Interface as listed in Exhibit A.
- D. Provide County with Apollo eXchange products as listed in Exhibit A. This shall include the California Reportable Disease Information Exchange (“CalREDIE”) Electronic Laboratory Reporting (“ELR”) Interface with the California Department of Public Health (“CDPH”).
- E. Provide County with Apollo LIMS Bioterrorism Module (“BT Module”) and its components as listed in Exhibit A.
- F. Provide unlimited software and technical support to County via telephone and internet. Consultant shall provide software and technical support within one business day from the time Consultant is contacted by County for support, Monday through Friday, 8:00 a.m. – 5:30 p.m., Central Time, excluding New Year’s Day, Martin Luther King, Jr. Day, Lincoln’s Birthday, President’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, Christmas Day, or the closest business day should any of the excluded holidays fall on a weekend.
 1. Telephonic Customer Support includes basic help desk response, troubleshooting, remedial software remedies, answering questions relating to Software, researching LIMS issues and assisting the site in routine LIMS system maintenance.

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- G. Provide written notice allowing County 20 days from the date of receipt of the written notice to fulfill its responsibility to maintain backups and computer/network maintenance. Consultant shall be released from any responsibility to provide software and technical support if County fails to remedy its failure to maintain backups and computer/network maintenance within 20 days of receipt of such notice from Consultant. Consultant assumes no responsibility for County data that is lost or damaged due to lack of complete and accurate backups.
- H. Refund a portion of the annual compensation in the event this agreement is terminated by either Party. The refund shall be determined by multiplying the number of days remaining in the current month by \$72.40 per day (annual cost of \$26,425.32 divided by 365 days = \$72.40 per day, times the number of days remaining in the current month).
- I. Provide access to InterSystems cache database. This access includes support from InterSystems for the database. Consultant is to use commercially reasonable efforts to assist in replacing or regenerating data lost or damaged while resident in the Software.
- J. Provide an electronic copy of the Software User Manual to County in either PDF or Word Format.
- K. Maintain an escrow account that lists the County as a beneficiary and includes a current and complete source code version of the Software, in addition to the object code version. County agrees that said source code is the sole and complete property of Consultant. In the event that Consultant shall be adjudicated to be in default in respect to any obligation to provide maintenance, support, or enhancements under this agreement, or in the event that Consultant is adjudicated bankrupt by order of the Bankruptcy Court following the voluntary or involuntary filing of a petition under the Federal Bankruptcy Act, then County shall have the right to modify the source code for their own use, including the engagement of another vendor to continue services previously provided by Consultant. Under no circumstances shall County have the right to transfer, sell, or disclose the source code to any other party. Consultant shall provide County the name of the software escrow company, and provide documentation the source code has been deposited into the escrow account, within 30 days of final execution of this agreement.
- L. Provide "Software Maintenance," which is defined as any regularly scheduled release of updates and enhancements to the portions of the Software that County has licensed. Updates and enhancements will be made available to County, and the decision to utilize new functionality will be made by County. In the event that a software defect is identified and reported, Consultant will either issue a remediation release or incorporate the remediation into the next scheduled release depending on the nature and severity of the defect reported.
- M. At the written request of County, and at an additional cost as specified in Section 3., schedule and conduct on-site training to County staff on how to use the Software.

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- N. At the written request of County, and at an additional cost as specified in Section 3., provide on-site software and technical assistance to County for the Software.
- O. Consultant will direct all local issues to the County’s LIMS Administrator who will attempt to reproduce and document the issue.

Section 2. RESPONSIBILITIES OF COUNTY

Pursuant to the terms and conditions of this agreement, County shall:

- A. Compensate Consultant as prescribed in Sections 3 and 4 of this agreement and shall monitor the outcomes achieved by Consultant.
- B. Maintain a daily backup of data in the Software and County computer/network maintenance.
- C. Provide reasonable diagnostic testing, network administration and maintenance, file server, and workstation hardware support for any problems encountered in the use of the Software.
- D. Provide Consultant with access to the Software for debugging and testing purposes. At no time will Consultant have access to servers or workstations without the express permission of County. Consultant shall have access only to the required files and folders needed for maintenance and software upgrades.
- E. Provide and maintain all server hardware, workstation hardware and the transition control protocol/internet protocol (“TCP/IP”) network. In addition, County is responsible for maintaining the operating system on its servers and workstations. County is also responsible for implementing and maintaining a means to allow the Consultant to gain remote access to the County’s network to provide support.
- F. Acquire and maintain all required certifications and licenses required to work with CalREDIE.
- G. Manage and allow remote access to Shasta Test database on a server identified by County for Consultant Software. County shall provide Consultant access via Wi-Fi or Ethernet connections if on-site support is needed.
- H. Designate a County employee as the County’s LIMS Administrator to handle tasks such as user security and routine file definition. All local issues will be directed to the LIMS Administrator who will attempt to reproduce and document the issue.
- I. Maintain Logical Observation Identifiers Names and Codes (“LOINC”) in Software, including additions and revisions, available at Loinc.org.
- J. Maintain Systematized Nomenclature of Medicine (“SNOMED”) codes in the Software, including additions and revisions, maintained by the U.S. National

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Library of Medicine at:
(https://www.nlm.nih.gov/research/umls/Snomed/snomed_main_old.html).

Section 3. COMPENSATION

- A. Consultant shall be paid \$26,425.32 annually, in monthly maintenance installments of \$2,202.11, for the services described in this agreement.
- B. Consultant shall be paid \$138.00 per hour, with a minimum of eight hours for optional on-site training services as described in Sections 1.M. and 1.N., not to exceed \$3,312 for the term of the agreement.
- C. In no event shall the maximum amount payable under this agreement exceed \$65,000.
- D. Consultant's violation or breach of agreement terms may result in fiscal penalties, withholding of compensation, or termination of agreement.
- E. Consultant shall be paid via electronic invoice payment; automated clearing house ("ACH"), County credit card, or Commerce Bank virtual card. ACH payments require submission of the completed Auditor-Controller ACH/Direct Deposit authorization form with first claim for payment.

Section 4. BILLING AND PAYMENT

- A. County shall make payment of retroactive invoices within 30 days of execution of this agreement.
- B. Consultant shall submit to HHS Administration Branch, Attn: Accounts Payable, P.O. Box 496005, Redding, CA 96049-6005 an itemized statement or invoice of services within five days after completion of the services prescribed in Section 1. County shall make payment within 30 days of receipt of Consultant's correct and approved statement or invoice.
- C. Should County, or the state or federal government, disallow any amount claimed by Consultant, Consultant shall reimburse County, or the state or federal government, as directed by County, or the state or federal government, for such disallowed cost.

Section 5. TERM OF AGREEMENT

This agreement shall commence on August 20, 2022 and end December 31, 2024. Notwithstanding the foregoing, County shall not be obligated for payments hereunder for any future County fiscal year unless or until County's Board of Supervisors appropriates funds for this agreement in County's budget for that County fiscal year. In the event that funds are not appropriated for this agreement, then this agreement shall end December 31, 2024. County shall notify Consultant in writing of such non-appropriation at the earliest possible date.

Section 6. TERMINATION OF AGREEMENT

- A. If Consultant materially fails to perform Consultant's responsibilities under this agreement to the satisfaction of County, or if Consultant fails to fulfill in a timely and professional manner Consultant's responsibilities under this agreement, or if Consultant violates any of the terms or provisions of this agreement, then County shall have the right to terminate this agreement for cause effective immediately upon the County giving written notice thereof to Consultant. If termination for cause is given by County to Consultant and it is later determined that Consultant was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph B of this Section.
- B. County may terminate this agreement without cause on 30 days written notice to Consultant.
- C. County may terminate this agreement immediately upon oral notice should funding cease or be materially decreased during the term of this agreement.
- D. County's right to terminate this agreement may be exercised by County Executive Officer or his/her designee, or County HHSA Director or any HHSA Branch Director designated by the HHSA Director.
- E. Should this agreement be terminated, Consultant shall promptly provide to County any and all finished and unfinished reports, data, studies, photographs, charts, and other documents prepared by Consultant pursuant to this agreement in a mutually agreeable format.
- F. If this agreement is terminated, Consultant shall only be paid for services satisfactorily completed and provided prior to the effective date of termination.

Section 7. ENTIRE AGREEMENT; AMENDMENTS; HEADINGS; EXHIBITS/APPENDICES

- A. This agreement supersedes all previous agreements relating to the subject of this agreement and constitutes the entire understanding of the Parties hereto. Consultant shall be entitled to no other benefits other than those specified herein. Consultant specifically acknowledges that in entering into and executing this agreement, Consultant relies solely upon the provisions contained in this agreement and no others.
- B. No changes, amendments, or alterations to this agreement shall be effective unless in writing and signed by both Parties. However, minor amendments, including retroactive, that do not result in a substantial or functional change to the original intent of this agreement and do not cause an increase to the maximum amount payable under this agreement may be agreed to in writing between Consultant and County Executive Officer or their designee, or County HHSA Director or any

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HHSA Branch Director designated by the HHSA Director, provided that the amendment is in substantially the same format as the County's standard format amendment contained in the *Shasta County Contracts Manual* (Administrative Policy 6-101).

- C. The headings that appear in this agreement are for reference purposes only and shall not affect the meaning or construction of this agreement.
- D. If any ambiguity, inconsistency, or conflict exists or arises between the provisions of this agreement and the provisions of any of this agreement's exhibits or appendices, the provisions of this agreement shall govern.

Section 8. NONASSIGNMENT OF AGREEMENT; NON-WAIVER

Inasmuch as this agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or sublet any interest herein without the prior written consent of County. The waiver by County of any breach of any requirement of this agreement shall not be deemed to be a waiver of any other breach.

Section 9. EMPLOYMENT STATUS OF CONSULTANT

Consultant shall, during the entire term of this agreement, be construed to be an independent contractor, and nothing in this agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow County to exercise discretion or control over the professional manner in which Consultant performs the work or services that are the subject matter of this agreement; provided, however, that the work or services to be provided by Consultant shall be provided in a manner consistent with the professional standards applicable to such work or services. The sole interest of County is to ensure that the work or services shall be rendered and performed in a competent, efficient, and satisfactory manner. Consultant shall be fully responsible for payment of all taxes due to the State of California or the federal government that would be withheld from compensation if Consultant were a County employee. County shall not be liable for deductions for any amount for any purpose from Consultant's compensation. Consultant shall not be eligible for coverage under County's workers' compensation insurance plan nor shall Consultant be eligible for any other County benefit. Consultant must issue W-2 and 941 Forms for income and employment tax purposes, for all of Consultant's assigned personnel under the terms and conditions of this agreement.

Section 10. INDEMNIFICATION

- A. Consultant shall defend and indemnify County, its elected officials, officers, employees, agents and volunteers against any third-party claim, suit, or proceeding arising out of or related to a Data Incident (as defined below) caused by the act or omission of Consultant or any of its agents, subcontractors or employees (an "Indemnified Claim"). This indemnification includes expenses resulting from the claim, suit or proceeding, including, but not limited to attorney fees, expert fees, and litigation/investigation costs, as well as damages, judgments, or decrees arising from the Data Incident. Indemnified Claims include, without limitation,

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government enforcement actions. (A “Data Incident” is any unauthorized disclosure of, access to, or use of Customer Data. Customer Data as used herein means personally identifiable information and/or protected health data provided to Consultant by County.) Consultant shall also defend, indemnify, and hold harmless County with respect to Consultant's "independent contractor" status that would establish a liability on County for failure to make social security deductions or contributions or income tax withholding payments, or any other legally mandated payment customarily payable by Consultant to the Internal Revenue Service or the California State Franchise Tax Board. The provisions of this paragraph are intended to be interpreted as broadly as permitted by applicable law. This provision shall survive the termination, expiration, or cancellation of this agreement.

- B. This indemnification provision is independent of, and shall not in any way be limited by, Consultant’s insurance coverage or lack of coverage, or by the insurance requirements of this agreement. County acknowledgement or approval of Consultant’s evidence of insurance coverage required by this agreement does not in any way relieve Consultant from its obligations under this Section.

- C. EACH PARTY’S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FROM ANY CAUSE RELATED TO OR ARISING OUT OF THIS CONTRACT REGARDLESS OF THE LEGAL THEORY, WHETHER BASED ON NEGLIGENCE, BREACH OF CONTRACT, WARRANTY OR OTHER LEGAL THEORY, WILL BE THOSE PROVIDED IN THIS CONTRACT. IN NO EVENT SHALL THE COUNTY OR CONSULTANT (INCLUDING ITS AFFILIATES, SUPPLIERS OR SUBCONTRACTORS) BE LIABLE FOR (I) INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES; (II) LOST PROFITS, LOSS OF USE OR LOSS OF REVENUE (WHETHER DIRECT OR INDIRECT); (III) LOSS OF GOODWILL OR OTHER DIMINUTION IN THE VALUE OF A PARTY’S BUSINESS; OR (IV) CLAIMS AGAINST A PARTY FROM OTHERS EXCEPT FOR AMOUNTS FOR WHICH A PARTY IS INDEMNIFIED PURSUANT TO THIS CONTRACT, IN ALL CASES EVEN IF KNOWN OR FORESEEABLE. THE TOTAL AGGREGATE LIABILITY OF EACH PARTY WILL NOT EXCEED THE CHARGES PAID OR PAYABLE TO CONTRACTOR UNDER THIS CONTRACT DURING THE TWELVE (12) MONTHS PRECEDING THE ACCRUAL OF THE CLAIM. THE LIMITATION OF LIABILITY ABOVE SHALL NOT APPLY TO EITHER CONSULTANT’S INDEMNIFICATION OBLIGATIONS HEREUNDER OR A BREACH OF THE BUSINESS ASSOCIATE AGREEMENT ATTACHED HERETO AS AN ADDENDUM.

Section 11. INSURANCE REQUIREMENTS

Without limiting Consultant’s duties of defense and indemnification:

- A. Consultant and any subcontractor shall carry Commercial General Liability Insurance, and other coverage necessary to protect County and the public, with limits of \$2 million per occurrence or claim. Such coverage shall:

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1. Be equivalent to the current Insurance Services Office (ISO) form CG 00 01, assuring coverage for products and completed operations, property damage, bodily injury, and personal and advertising injury.
2. Include an endorsement, or an amendment to the policy of insurance, naming Shasta County, its elected officials, officers, employees, agents, and volunteers as additional insureds; the additional insureds coverage shall be equal to the current ISO forms CG 20 10 for on-going operations, and CG 20 37 for completed operations.
3. Apply separately to this project and location(s); in the event of a general aggregate limit, the general aggregate limit shall be twice the required per occurrence limit.
4. Contain, or be endorsed to contain, a “separation of insureds” clause which shall read, or have the same effect as the following:

“Separation of Insureds.

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
 - b. Separately to each suit insured against whom a claim is made or suit is brought.”
- B. Consultant and any subcontractor shall carry Automobile Liability Insurance covering any auto, unless Consultant has no owned autos then covering at minimum hired and non-owned autos, with limits of \$1 million per occurrence or claim. Such coverage shall:
1. Include, or be endorsed to contain, Additional Insured coverage in favor of Shasta County, its elected officials, officers, employees, agents, and volunteers.
 2. Include, or be endorsed to contain, coverage for hazardous waste transportation, when appropriate to the work being performed.
- C. Consultant and any subcontractor shall carry statutorily required Workers’ Compensation Insurance, and Employer’s Liability Insurance with limits of \$1 million per occurrence or claim, to cover Consultant, subcontractor, Consultant’s partner(s), subcontractor’s partner(s), Consultant’s employees, and subcontractor’s(s) employees, covering the full liability for compensation for injury to those employed by Consultant or subcontractor. Consultant hereby certifies that Consultant is aware of the provisions of section 3700 of the Labor Code, which requires every employer to insure against liability for workers’ compensation or to

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undertake self-insurance in accordance with the provisions of the Labor Code, and Consultant shall comply with such provisions before commencing the performance of the work or the provision of services pursuant to this agreement.

- D. Consultant shall carry Professional Liability (Errors and Omissions) Insurance, applicable to the Consultant's profession and the services/work being performed, with limits of not less than \$2 million per occurrence or claim, \$2 million aggregate.
- E. Without limiting any of the obligations or liabilities of Consultant, Consultant shall carry Cyber and Privacy Liability Insurance, applicable to the services/work being performed, with limits of not less than \$2 million per occurrence, \$2 million aggregate; covering, but not limited to, claims involving security breach, system failure, data recovery, damage to persons and property, business interruption, breach response, regulatory fines and penalties, credit monitoring, cyber extortion, social engineering, infringement of intellectual property, invasion of 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. Such coverage shall apply to property damage resulting from any of the above, and for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the County in the care, custody, or control of the Consultant.
- F. Consultant shall require its subcontractors, if any, to carry and maintain insurance coverage and evidence that equals or exceeds the coverage requirements imposed upon Consultant by this agreement.
- G. With regard to all insurance coverage required by this agreement:
1. Any deductible or self-insured retention exceeding \$25,000 for Consultant or subcontractor shall be disclosed to and be subject to approval by the Shasta County Risk Manager prior to the effective date of this agreement; policy shall provide, or be endorsed to provide, that any self-insured retention or deductible may be satisfied by either the named insured or County, and must also provide that defense costs satisfy the self-insured retention or deductible. Any and all deductibles and self-insured retentions shall be the sole responsibility of Consultant or subcontractor who procured such coverage and shall not apply to the Indemnified Additional Insured Parties. County may deduct from any amounts otherwise due Consultant to fund the self-insured retention or deductible.
 2. If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, Consultant or subcontractor shall maintain such coverage with an effective date earlier or equal to the effective date of this agreement and continue coverage for a period of three years after the expiration of this agreement and any extensions thereof. In lieu of maintaining post-agreement expiration coverage as specified above, Consultant or subcontractor may satisfy this provision by purchasing tail coverage for the claims-made policy. Such tail coverage shall, at a

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minimum, provide coverage for claims received and reported three years after the expiration date of this agreement.

3. In the event coverage is reduced or canceled, or otherwise materially changed, a notice of said reduction or cancellation or change shall be provided to County within 24 hours.
4. Consultant hereby grants to Shasta County, its elected officials, officers, employees, agents, and volunteers, a waiver of any right to subrogation or recovery which any insurer of said Consultant may acquire against County by virtue of the payment of any loss under such coverage, and agrees to obtain any endorsement that may be necessary to affect this waiver; this provision applies regardless of whether or not County has received such a waiver or endorsement.
5. Any available insurance proceeds in excess of the specified minimum limits and insurance coverage pursuant to the terms of this agreement shall be applicable to County.
6. Before the effective date of this agreement, Consultant shall provide County with certificates of insurance, and all amendatory endorsements or policy amendments, as evidence of meeting insurance coverage required of this agreement; for purposes of verification of Consultant meeting insurance requirements of this agreement, County reserves the right to require any policies, declarations, endorsements, and other documentation.
7. Coverage required herein shall be in effect at all times during the term of this agreement and may be provided by programs of self-insurance when supported by adequate evidence meeting appropriate self-insurance and regulatory compliance. Insurance is to be placed with insurers authorized to transact business in California, with a current A.M. Best's rating of not less than A-:VII, unless otherwise authorized by County.
8. In the event any insurance coverage expires at any time during the term of this agreement, Consultant shall provide County, at least 20 days prior to said expiration date, a new endorsement or policy amendment evidencing insurance coverage as provided for herein for not less than the remainder of the term of this agreement or for a period of not less than one year. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided and a renewal endorsement or policy amendment is not provided within 10 days of the expiration of the endorsement or policy amendment in effect at inception of this agreement, County may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.
9. For any claims related to this agreement, Consultant's coverage shall be primary and non-contributory. Any coverage maintained by Shasta County,

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its elected officials, officers, employees, agents, and volunteers, shall be excess of the Consultant’s coverage and shall not contribute with it.

- 10. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Shasta County, its elected officials, officers, employees, agents, or volunteers.

Section 12. NOTICE OF CLAIM; APPLICABLE LAW; VENUE

- A. If any claim for damages is filed with Consultant or if any lawsuit is instituted concerning Consultant’s performance under this agreement and that in any way, directly or indirectly, contingently or otherwise, affects or might reasonably affect County, Consultant shall give prompt and timely notice thereof to County. Notice shall be prompt and timely if given within 30 days following the date of receipt of a claim or 10 days following the date of service of process of a lawsuit. This provision shall survive the termination, expiration, or cancellation of this agreement.
- B. Any dispute between the Parties, and the interpretation of this agreement, shall be governed by the laws of the State of California. Any litigation shall be venued in Shasta County.

Section 13. COMPLIANCE WITH LAWS; NON-DISCRIMINATION

- A. Consultant shall observe and comply with all applicable present and future federal laws, state laws, local laws, codes, rules, regulations, and/or orders that relate to the work or services to be provided pursuant to this agreement.
- B. Consultant shall not unlawfully discriminate in employment practices or in the delivery of services on the basis of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, medical condition (including cancer, HIV, and AIDS) physical or mental disability, use of family care leave under either the Family & Medical Leave Act or the California Family Rights Act, or on the basis of any other status or conduct protected by law.
- C. Consultant represents that Consultant is in compliance with and agrees that Consultant shall continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. sections 12101, *et seq.*), the Fair Employment and Housing Act (Government Code sections 12900, *et seq.*), and regulations and guidelines issued pursuant thereto. Furthermore, where applicable, Consultant represents and warrants all websites created for County, or used by Consultant to provide services pursuant to this agreement shall comply with the Americans with Disabilities Act of 1990 and shall specifically conform to the Web Content Accessibility Guidelines found at www.w3.org.7, and comply with section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), Subpart B, 1194.22.

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- D. No funds or compensation received by Consultant under this agreement shall be used by Consultant for sectarian worship, instruction, or proselytization in a manner prohibited by law.
- E. In addition to any other provisions of this agreement, Consultant shall be solely responsible for any and all damages caused, and/or penalties levied, as the result of Consultant's noncompliance with the provisions of this section.

Section 14. ACCESS TO RECORDS; RECORDS RETENTION

- A. County, federal, and state officials shall have access to any books, documents, papers, and records of Consultant that are directly pertinent to the subject matter of this agreement for the purpose of auditing or examining the activities of Consultant or County. Except where longer retention is required by federal or state law, Consultant shall maintain all records for five years after County makes final payment hereunder. This provision shall survive the termination, expiration, or cancellation of this agreement.
- B. Consultant shall maintain appropriate records to ensure a proper accounting of all funds and expenditures pertaining to the work performed or the services provided pursuant to this agreement. Consultant shall maintain records providing information that account for all funds and expenses related to the provision of services provided pursuant to this agreement. Access to these records shall be provided to County during working days, 8:00 a.m. to 5:00 p.m. and at other times upon reasonable notice by County, and upon request of state and federal agencies charged with the administration of programs related to the work or services to be provided pursuant to this agreement.
- C. Consultant agrees to accept responsibility for receiving, replying to, and/or complying with any audit exception by appropriate federal, state, or County audit directly related to the provisions of this agreement. Consultant agrees to repay County the full amount of payment received for duplicate billings, erroneous billings, audit exceptions, or false or deceptive claims. Consultant agrees that County may withhold any money due and recover through any appropriate method any money erroneously paid under this agreement if evidence exists of less than full compliance with this agreement including, but not limited to, exercising a right of set-off against any compensation payable to Consultant.

Section 15. COMPLIANCE WITH CHILD, FAMILY, AND SPOUSAL SUPPORT REPORTING OBLIGATIONS

Consultant's failure to comply with state and federal child, family, and spousal support reporting requirements regarding Consultant's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family, and spousal support obligations shall constitute a default under this agreement. Consultant's failure to cure such default within 90 days of notice by County shall be grounds for termination of this agreement.

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Section 16. LICENSES AND PERMITS

Consultant, and Consultant's officers, employees, and agents performing the work or services required by this agreement, shall possess and maintain all necessary licenses, permits, certificates, and credentials required by the laws of the United States, the State of California, the County of Shasta, and all other appropriate governmental agencies, including any certification and credentials required by County. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this agreement and constitutes grounds for the termination of this agreement by County.

Section 17. PERFORMANCE STANDARDS

Consultant shall perform the work or services required by this agreement in accordance with the industry standards applicable to Consultant's work or services.

Section 18. SERVICES WARRANTY

Consultant warrants that all Services will be performed in a workmanlike manner consistent with generally accepted industry standards and will conform to the specifications set forth herein for ninety (90) days from performance of the Services.

Section 19. WARRANTY EXCLUSIONS

EXCEPT AS SET FORTH IN SECTION 18, NEITHER CONSULTANT NOR ITS AFFILIATES MAKE ANY WARRANTY, REPRESENTATION, CONDITION OR AGREEMENT WITH RESPECT TO THE SOFTWARE, SERVICES, SUPPORT, HARDWARE OR THIRD-PARTY SOFTWARE SUPPORTED HEREUNDER. CONSULTANT AND ITS AFFILIATES EXPRESSLY DISCLAIM AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL IMPLIED AND EXPRESS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CONSULTANT DOES NOT REPRESENT THAT THE OPERATION OF THE SOFTWARE, HARDWARE OR THIRD-PARTY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED.

Section 20. CONFLICTS OF INTEREST

Consultant and Consultant's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property, or source of income that could be financially affected by or otherwise conflict in any manner or degree with the performance of the work or services required under this agreement.

Section 21. NOTICES

A. Except as provided in Section 6.C. of this agreement (oral notice of termination due to insufficient funding), any notices required or permitted pursuant to the terms and provisions of this agreement shall be given to the appropriate Party at the address specified below or at such other address as the Party shall specify in writing. Such notice shall be deemed given: (1) upon personal delivery; or (2) if sent by first class mail, postage prepaid, two days after the date of mailing.

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If to County: Branch Director
HHSa Public Health Branch
Attn: Contracts Unit
2650 Breslauer Way
Redding, CA 96001
Phone: 530-225-3761
Fax: 530-225-3743

If to Consultant: Clinisys, Inc.
Attn: Contracts & Legal
3300 E. Sunrise Drive
Tucson, AZ 85718
Phone: 520-570-2562

- B. Any oral notice authorized by this agreement shall be given to the persons specified in Section 21.A. and shall be deemed to be effective immediately.
- C. Unless otherwise stated in this agreement, any written or oral notices on behalf of the County as provided for in this agreement may be executed and/or exercised by the County Executive Officer or their designee.

Section 22. AGREEMENT PREPARATION

It is agreed and understood by the Parties that this agreement has been arrived at through negotiation and that neither Party is to be deemed the Party which created any uncertainty in this agreement within the meaning of section 1654 of the Civil Code.

Section 23. COMPLIANCE WITH POLITICAL REFORM ACT

Consultant shall comply with the California Political Reform Act (Government Code, sections 81000, *et seq.*), with all regulations adopted by the Fair Political Practices Commission pursuant thereto, and with the County's Conflict of Interest Code, with regard to any obligation on the part of Consultant to disclose financial interests and to recuse from influencing any County decision which may affect Consultant's financial interests. If required by the County's Conflict of Interest Code, Consultant shall comply with the ethics training requirements of Government Code sections 53234, *et seq.*

Section 24. PROPERTY TAXES

Consultant represents and warrants that Consultant, on the date of execution of this agreement, (1) has paid all property taxes for which Consultant is obligated to pay, or (2) is current in payments due under any approved property tax payment arrangement. Consultant shall make timely payment of all property taxes at all times during the term of this agreement.

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Section 25. SEVERABILITY

If any portion of this agreement or application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal or state statute or regulation or County ordinance, the remaining provisions of this agreement, or the application thereof, shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this agreement are severable.

Section 26. COUNTY'S RIGHT OF SETOFF

To the fullest extent permitted by law, County shall have the right but not the obligation, to setoff, in whole or in part, against any compensation owed to Consultant or any of its subsidiaries under any contract with the County, any amount of any Federal or State audit liability owed by or claimed or asserted against the County or any amounts owed to County by Consultant or its subsidiaries.

Section 27. CONFIDENTIALITY

During the term of this agreement, both Parties may have access to information that is confidential or proprietary in nature. Both Parties agree to preserve the confidentiality of and to not disclose any such information to any third party without the express written consent of the other Party or as required by law. This provision shall survive the termination, expiration, or cancellation of this agreement.

Section 28. HIPAA ADDENDUM

Attached to this agreement as Exhibit B, and incorporated by reference, is an Addendum that constitutes a Business Associate Agreement as required by the federal Health Insurance Portability and Accountability Act.

Section 29. SCOPE AND OWNERSHIP OF WORK

All research data, reports, and every other work product of any kind or character arising from or relating to this agreement shall become the property of the County and be delivered to the County upon completion of its authorized use pursuant to this agreement in a mutually agreed upon format. County may use such work products for any purpose whatsoever. All works produced under this agreement shall be deemed works produced by a contractor for hire, and all copyright with respect thereto shall vest in the County without payment of royalty or any other additional compensation. Notwithstanding anything to the contrary contained in this agreement, Consultant shall retain all of Consultant's rights in Consultant's own intellectual property and proprietary information, including, without limitation, Consultant's methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge, and experience possessed by Consultant prior to, or acquired by Consultant during the performance of this agreement and Consultant shall not be restricted in any way with respect thereto.

NO WITHHOLDING

Section 30. USE OF COUNTY PROPERTY

Consultant shall not use County premises, property (including equipment, instruments, and supplies), or personnel for any purpose other than in the performance of Consultant's obligations under this agreement.

Section 31. COUNTERPARTS/ELECTRONIC, FACSIMILE, AND PDF SIGNATURES

This agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each Party of this agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this agreement. The Parties further agree that the electronic signatures of the Parties included in this agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among Parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the Parties. For purposes of this Section, a digital signature is a type of “electronic signature” as defined in subdivision (h) of section 1633.2 of the Civil Code. Facsimile signatures or signatures transmitted via pdf document shall be treated as originals for all purposes.

SIGNATURE PAGE FOLLOWS

NO WITHHOLDING

IN WITNESS WHEREOF, County and Consultant have executed this agreement on the dates set forth below. By their signatures below, each signatory represents that they have the authority to execute this agreement and to bind the Party on whose behalf their execution is made.

COUNTY OF SHASTA

Date: _____

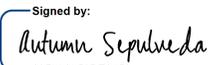
KEVIN W. CRYE, CHAIR
Board of Supervisors
County of Shasta
State of California

ATTEST:

David J. Rickert
Clerk of the Board of Supervisors

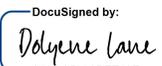
By: _____
Deputy

Approved as to form:
JOSEPH F. LARMOUR
County Counsel

By: 
Name: Autumn Sepulveda

Date: 08/09/2024 | 9:56 AM PDT
Title: Deputy County Counsel III

RISK MANAGEMENT APPROVAL

By: 
Name: Dolyene Lane

Date: 08/08/2024 | 10:51 AM PDT
Title: Risk Manager

INFORMATION TECHNOLOGY APPROVAL

By: 
Name: Thomas Schreiber

Date: 08/12/2024 | 7:33 AM PDT
Title: Chief Information Officer

CONSULTANT

By: 
Name: Anne Rounds

Date: 08/12/2024 | 10:16 AM PDT
Title: Contracts Director

Tax ID#: *On file*

EXHIBIT B

ADDENDUM TO CONTRACT/AGREEMENT (HIPAA Business Associate Agreement)

This Addendum is attached to, and incorporated into the agreement, entitled Personal Services Agreement between County of Shasta and Clinisys, Inc., dated the last date signed by both Parties.

Definitions.

All terms and phrases used, but not otherwise defined in this Addendum, shall have the same meaning as those terms are defined in 45 Code of Federal Regulations, subtitle A, subchapter C, parts 160 and 164. All section references in this Addendum are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- (a) *Business Associate.* “Business Associate” shall mean the Party with whom County of Shasta is contracting, as referenced above.
- (b) *Underlying Agreement.* “Underlying Agreement” shall mean the agreement or contract between the County of Shasta and the Business Associate, to which this Addendum is attached and incorporated.
- (c) *Covered Entity.* “Covered Entity” shall mean the covered components of the County of Shasta hybrid entity which are subject to the standards for privacy and security of Title 45, Code of Federal Regulations, subchapter C, Parts 160 and 164.

Obligations and Activities of Business Associate.

Business Associate shall:

- (a) Not use or disclose Protected Health Information (PHI), or Electronic Protected Health Information (EPHI), other than as permitted or required by this Addendum or as required by law.
- (b) Use appropriate safeguards and comply with Subpart C of Title 45, Code of Federal Regulations, Part 164 with respect to EPHI, to prevent use or disclosure of PHI or EPHI other than as provided for by this Addendum and the Underlying Agreement.
- (c) If a pattern of activity or practice of an agent, including a subcontractor, constitutes a material breach or violation of the requirements of this Addendum and/or the Underlying Agreement, cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the subcontract or other agreement.
- (d) Report, promptly following discovery, to Covered Entity’s Privacy and/or Security Officer any use or disclosure of PHI or EPHI not provided for by this Addendum

and/or the Underlying Agreement of which it becomes aware, including breaches of unsecured PHI as required in Section 164.410. A report including at least the following information, if known at the time: (a) a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known; (b) a description of the types of unsecured protected health information that were involved in the breach, including the approximate number of individuals affected (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved); (c) a brief description of what Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches. Business Associate shall provide the report to Covered Entity's Privacy and/or Security Officer no later than 24 hours from the date the breach was discovered or, if exercising due diligence, should have been discovered, and shall update Covered Entity's Privacy and/or Security Officer as more information becomes available.

- (e) Business Associate is responsible for any and all costs related to notification of individuals or next of kin (if the individual is deceased) as required in Section 164.412, of any Security or Privacy breach reported by Business Associate to Covered Entity.
- (f) Ensure that any agent, including a subcontractor, to whom it provides PHI or EPHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Addendum and the Underlying Agreement to Business Associate with respect to such information.
- (g) Provide access, at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to PHI and EPHI information in a designated record set, to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under Section 164.524.
- (h) Make any amendment(s) to PHI and EPHI in a designated record set that the Covered Entity directs or agrees to make pursuant to Section 164.526 at the request of Covered Entity or an individual, and in the time and manner designated by Covered Entity.
- (i) Make internal practices, books, and records, including policies and procedures and PHI and EPHI, relating to the use and disclosure of PHI and EPHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the federal Secretary of Health and Human Services (HHS), in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the law.

- (j) Document disclosures of PHI and EPHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures in accordance with Section 164.528.
- (k) Provide to Covered Entity or an individual, in the time and manner reasonably designated by Covered Entity, information collected regarding disclosures of PHI and EPHI, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures in accordance with Section 164.528.
- (l) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and EPHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity, as required by law. In addition, Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI or EPHI agrees to implement reasonable and appropriate safeguards to protect it.
- (m) Ensure that all employees of Business Associate that handle or access PHI or EPHI undergo annual training regarding the safeguarding of PHI and EPHI.
- (n) To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of Title 45, Code of Federal Regulations, Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

Permitted Uses and Disclosures by Business Associate.

Except as otherwise limited in this Addendum and the Underlying Agreement, Business Associate may use or disclose PHI and EPHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the law if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

Obligations of Covered Entity.

- (a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with Section 164.520, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI and EPHI.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose PHI and EPHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI and EPHI.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI and EPHI that Covered Entity has agreed to in accordance with

Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI and EPHI.

Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose PHI and EPHI in any manner that would not be permissible under the law if done by Covered Entity.

Term and Termination.

The provisions of this Addendum shall supersede the provisions of the Underlying Agreement insofar as they relate to the term and termination of the Underlying Agreement.

- (a) *Term.* The provisions of this Addendum shall be effective as of the Effective Date of the Underlying Agreement and shall terminate when all of the PHI and EPHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy, protections are extended to such information, in accordance with the termination provisions in this Addendum.
- (b) *Termination for Cause.* Upon County of Shasta's knowledge of a material breach by Business Associate of the provisions of this Addendum, County of Shasta may terminate this Addendum and the Underlying Agreement immediately upon written notice.
- (c) *Effect of Termination.*
 - (1) Except as provided in paragraph (c)(2) of this provision, upon termination of this Addendum and the Underlying Agreement, for any reason, Business Associate shall return or destroy, in a confidential manner, all PHI and EPHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI and EPHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of said PHI and EPHI.
 - (2) In the event that Business Associate determines that returning or destroying the PHI and EPHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon the agreement of Covered Entity that return or destruction is infeasible, Business Associate shall extend the protections of this Addendum to such PHI and EPHI and limit further uses and disclosures to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI and EPHI.

Miscellaneous.

- (a) *Amendment.* The Parties agree to take such action as is necessary to amend this Addendum and the Underlying Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the regulations enacted pursuant thereto. Any such amendment may be signed on behalf of the County of Shasta by the County Executive Officer, or his or her designee(s), provided that such amendment is in substantially the same format as the County of Shasta's standard format amendment contained in the Shasta County Contracts Manual (Administrative Policy 6-101) and is approved by County Counsel as to form.
- (b) *Survival.* The respective rights and obligations of Business Associate under the provision of this Addendum entitled "Effect of Termination" shall survive the termination of the Underlying Agreement.
- (c) *Interpretation.* Any ambiguity in this Addendum and the Underlying Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- (d) *Indemnification.* To the fullest extent permitted by law, Business Associate shall indemnify and hold harmless Covered Entity, its elected officials, officers, employees, agents, and volunteers against all third-party claims, suits, actions, costs, expenses (including, but not limited to, reasonable attorney's fees of County Counsel and counsel retained by County, expert fees, litigation costs, and investigation costs), damages, judgments, or decrees arising from a breach of this HIPAA Business Associate Agreement by Business Associate, or by any of Business Associate's subcontractors, any person employed under Business Associate, or under any subcontractor, except when and to the extent the injury or loss is caused by the negligence or intentional wrongdoing of Covered Entity.