



**L.A. Care**  
HEALTH PLAN®

10/7/2014

**NOTICE OF REQUEST FOR PROPOSALS**

**GENERAL CONDITIONS AND INSTRUCTIONS TO OFFERORS**

for

**Microsoft Enterprise Agreement Software Volume Licensing Services**

**L. A. CARE HEALTH PLAN**  
1055 West Seventh Street, 11<sup>th</sup> Floor  
Los Angeles, California 90017  
Main Phone: (213) 694-1250  
Main Fax: (213) 438-5752

**KEY DATES**

Issue RFP: 10/7/14  
Written Questions Due: 10/20/14  
Vendor Response Due: 11/03/14

## 1. ABOUT L.A. CARE

L.A. Care's Mission Statement is to provide access to quality health care for Los Angeles County's vulnerable and low income communities and residents, and to support the safety net required to achieve that purpose.

As the nation's largest public plan, L.A. Care is dedicated to helping Los Angeles County residents obtain health care for their families from doctors and other health care providers who understand and respect them. L.A. Care Health Plan is governed by 13 board members representing medical and health care professionals, as well as Medi-Cal consumers. L.A. Care is accountable to community stakeholders, not stockholders.

L.A. Care advances individual and community health through a variety of targeted activities including a Community Health Investment Fund that has awarded more than \$132 million throughout the years to support the safety net and expand health coverage. The patient-centered health plan has a robust system of consumer advisory groups, including the Regional Community Advisory Committees and the Executive Community Advisory Committee, health promoters, two Family Resource Centers that offer free health education and exercise classes to the community, and has made significant investments in Health Information Technology for the benefit of the more than 10,000 doctors and other health care professionals who serve L.A. Care members.

## 2. PURPOSE

L.A. Care is issuing this Request for Proposals ("RFP") to solicit proposals for Microsoft Enterprise Agreement software volume licensing services. Interested Bidders may submit a proposal ("Proposal") containing the information requested in this RFP.

L.A. Care will select one Bidder to be contracted at L.A. Care's discretion to perform the required services. The Bidder will provide services as set forth In Exhibit B Scope of Work, pursuant to a contract to be entered into with L.A. Care. L.A. Care is under no obligation to order any work pursuant to this RFP.

## 3. SOLICITATION TERMS AND CONDITIONS

The following terms and conditions apply to the submission of proposals.

3.1 Proposal timetable. The timetable for this RFP is as follows:

<b>Activity</b>	<b>Date</b>
Release of RFP	10/7/2014
Written questions due to L.A. Care	10/20/2014
Questions and answers released	10/27/2014
Vendor Proposals Due	11/03/2014 5:00pm
Finalist Selection Made	11/07/2014
Finalist Interviews	11/10/2014
Business Awarded	11/17/2014

*Preparation and submission of a Proposal by interested Bidders will be at no cost or obligation to L.A. Care. L.A. Care reserves the right to terminate its efforts to contract for said services without obligation. Proposals and other materials submitted will become the*

*property of L.A. Care and will not be returned. Your proposal must not be marked proprietary or confidential. Please note that L.A. Care is subject to the California Public Records Act.*

3.2 Submission of proposals. Proposals shall be submitted to L.A. Care, as follows:

(a) One hard copy shall be submitted to:

L.A. Care Health Plan  
1055 W. 7<sup>th</sup> Street, 11<sup>th</sup> Floor  
Los Angeles, California 90017  
Attention: Wayne Barker, Contract Technical Manager

(b) An electronic copy shall be submitted to: [rfp@lacare.org](mailto:rfp@lacare.org); the Subject shall read: Microsoft License RFP.

3.3 Withdrawal of proposals. A Bidder may withdraw its proposal in writing on Bidder's letterhead or by email, signed by an authorized representative, to the address in Section 3.6.

3.4 The notice of withdrawal must be received by L.A. Care before the proposal due date (see Section 3.5).

3.5 Due date. Proposals are due by 5:00pm PST 11/03/2014.

3.6 Contact with L.A. Care personnel. All contact regarding this RFP or any matter relating thereto must be in writing and may be mailed, emailed or faxed as follows:

L.A. Care Health Plan  
1055W. 7<sup>th</sup> Street, 11<sup>th</sup> Floor  
Los Angeles, California 90017  
Attention: Wayne Barker, Contract Technical Manager  
Email: [rfp@lacare.org](mailto:rfp@lacare.org); the Subject shall read: Microsoft License RFP.

If it is discovered that Bidder contacted and received information from any L.A. Care personnel, other than the person specified above, regarding this solicitation, L.A. Care, in its sole determination, may disqualify their proposal from further consideration.

3.7 Questions about this RFP. Bidders may submit written questions regarding this RFP by mail, fax or email to the individual identified above. All questions must be received by 10/27/2014. All questions, without identifying the submitting company, will be compiled with the appropriate answers and issued as an amendment to the RFP. When submitting questions please specify the RFP section number, paragraph number, and page number and quote the language that prompted the question. This will ensure that the subject of the question can be quickly found in the RFP. L.A. Care reserves the right to group similar questions when providing answers.

3.8 Amendment of RFP. L.A. Care retains the right to amend the RFP by a written amendment.

3.9 L.A. Care option to reject proposals. L.A. Care may, at its sole discretion, reject any or all proposals submitted in response to this RFP at any time, with or without cause. L.A. Care shall not be liable for any costs incurred by the Bidder in connection with the

preparation and submission of any proposal. L.A. Care reserves the right to waive immaterial deviations in a submitted proposal.

3.10 Notice regarding the Public Records Act.

- (a) Proposals submitted in response to this solicitation shall become the exclusive property of L.A. Care.
- (b) Proposals submitted in response to this solicitation become a matter of public record, with the exception of those parts of each proposal which are justifiably defined by the Bidder as business or trade secrets, and if by the Bidder, plainly marked as "Trade Secret," "Confidential," or "Proprietary."
- (c) L.A. Care shall not, in any way, be liable or responsible for the disclosure of any such record or any parts thereof, if disclosure is required or permitted under the California Public Records Act or otherwise by law. **A blanket statement of confidentiality or the marking of each page of the proposal as confidential shall not be deemed sufficient notice of exception. Bidders must specifically label only those provisions of their respective proposal which are "Trade Secrets," "Confidential," or "Proprietary" in nature.**

3.11 Conflicts of interest. By submission of a proposal, Bidder warrants that no member of L.A. Care's Board of Governors or any officer, official, director, employee or consultant of L.A. Care whose position enables such member, officer, official, director, employee or consultant to influence L.A. Care's award or administration of an agreement in response to this solicitation or any competing agreement is currently or shall be employed in any capacity by the Bidder or shall have any direct or indirect financial interest in the selection of the successful Bidder.

3.12 Validity of proposals. Proposals submitted in response to this solicitation must remain valid for a period of at least six (6) months (183) calendar days.

3.13 Eligibility for award. L.A. Care will not award any contract, purchase order, grant or other agreement to a vendor or grantee that is debarred, suspended or otherwise ineligible for the award of contracts or grants by any Federal agency or from participating in any Federal healthcare programs. Each Bidder must submit the following certification with its proposal.

Bidder certifies, to the best of its knowledge and belief, that the Bidder and/or any of its Principals:

- (a) Are , are not  presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency or from participating in any Federal healthcare programs;
- (b) Have , have not , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
- (c) Are , are not  presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in Section (b); and
- (d) Have , have not , within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

For purposes of this certification, "Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

3.14 Contract terms and conditions. Any agreement awarded in response to this RFP shall be subject to the terms and conditions in Exhibit A, Sample Agreement.

3.15 Compliance with HIPAA. Any agreement awarded in response to this RFP will require access to protected health information or individually identifiable information, as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Title XIII of the American Recovery and Reinvestment Act of 2009 and regulations and guidance promulgated thereunder ("ARRA"), also known as the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and other privacy statutes or regulations. The access, use and disclosure of such information shall be governed by the Business Associate Addendum.

3.16 Proposal preparation costs. Any costs incurred while developing responses to this RFP are the sole responsibility of the Bidder.

#### 4. PROPOSAL SUBMISSION REQUIREMENTS

4.1 Proposal format. Vendor shall submit its proposal in the following format:

<b>Section</b>	<b>Description</b>
Table of Contents	
A - Executive Summary	Summary of the contents of the Proposal to provide a broad understanding of the Bidder's approach, qualifications, experience, and staffing.
B –Approach	Provide a description of the methodology the Bidder will use to meet SOW requirements. Include a staffing plan, identify any key personnel who will be assigned to the project, and describe how staff continuity will be provided.  Identify any assumptions or variables that may impact the scope, schedules or pricing.
C – Quality control plan	Provide a comprehensive quality control plan Bidder will use to ensure the required services are provided as specified in the SOW. List any connections the Bidder might have with L.A. Care that could create a conflict of interest or bias. Describe the Bidder system in place used to identify and prevent possible causes of bias.
D – Pricing	Discuss the pricing methodology and structure (e.g., time and materials, fixed price, milestones, etc.), including any expenses.  Include any variables, performance incentives, etc. Provide a budget sheet, which must match the proposed staffing plan.
E – Qualifications	Discussion of proposer's qualifications,

<b>Section</b>	<b>Description</b>
	<p>including Firm's:</p> <ul style="list-style-type: none"> <li>• Organizational structure (e.g., corporation, partnership, etc.)</li> <li>• Number of years in business</li> <li>• Scope of services available</li> <li>• Relevant background and experience with Public Agencies, Health Care organizations, non-profits, etc.</li> <li>• References (at least 3)</li> <li>• Copies of the Bidder's most current financial statements.</li> </ul>
F – Exceptions to Sample Agreement	<p>A statement offering the Bidder's acceptance of or exceptions to all terms and conditions provided by L.A. Care</p> <p>For each exception, the Bidder shall provide:</p> <ul style="list-style-type: none"> <li>• An explanation of the reason(s) for the exception;</li> <li>• The proposed alternative language; and</li> <li>• A description of the impact, if any, to the Bidder's price.</li> </ul> <p>Indicate all exceptions to the Sample Agreement by providing a 'red-lined' version of the language in question. L.A. Care relies on this procedure and any Bidder who fails to make timely exceptions as required herein, may be barred, at L.A. Care's sole discretion, from later making such exceptions.</p> <p>L.A. Care reserves the right to determine if Bidders' exceptions are material, singularly or in total, such that L.A. Care may deem the proposal non-responsive and not subject to further evaluation.</p> <p>L.A. Care reserves the right to make changes to the Sample Agreement and its appendices and exhibits at its sole discretion.</p>
G – Exceptions to SOW	<p>A statement offering the Bidder's acceptance of or exceptions to all terms and conditions provided by L.A. Care.</p> <p>For each exception, the Bidder shall provide:</p> <ul style="list-style-type: none"> <li>• An explanation of the reason(s) for the exception;</li> <li>• The proposed alternative language; and</li> <li>• A description of the impact, if any, to the Bidder's price.</li> </ul>

**Section****Description**

Indicate all exceptions to the SOW by providing a 'red-lined' version of the language in question. L.A. Care relies on this procedure and any Bidder who fails to make timely exceptions as required herein, may be barred, at L.A. Care's sole discretion, from later making such exceptions.

L.A. Care reserves the right to determine if Bidders' exceptions are material, singularly or in total, such that L.A. Care may deem the proposal non-responsive and not subject to further evaluation.

L.A. Care reserves the right to make changes to the SOW and its exhibits (if any) at its sole discretion.

H – Certifications

Certification regarding eligibility for award.

**5. EVALUATION OF PROPOSALS**

5.1 The selection of the Vendor will be based upon evaluation by L. A. Care considering all appropriate factors and criteria (subjective and otherwise) as L. A. Care may, at its sole discretion, deem relevant. In no event will L. A. Care be limited to selecting a successful respondent based solely upon total cost submissions.

5.2 Bidders will be evaluated on the following factors including, but not limited to:

- (a) Pricing
- (b) Quality of service
- (c) References/ Previous relevant experience
- (d) Bidder's willingness to accept the Terms and Conditions outlined by L.A. Care, and the Requirements of the Statement of Work stated in Section G of the proposal will be considered. L.A. Care retains the right to determine if Bidders' exceptions are material, singularly or in total, such that L.A. Care may deem the proposal non-responsive and not subject to further evaluation.





## EXHIBIT A SAMPLE AGREEMENT

This Services Agreement ("**Agreement**") is made and entered into effective as of the second signature below ("Effective Date"), by and between the Local Initiative Health Authority for Los Angeles County, a local public agency operating as L.A. Care Health Plan ("**L.A. Care**"), and ("**Vendor**") (each a "**Party**," or collectively the "**Parties**").

**WHEREAS**, L.A. Care finds it necessary to secure services , as more particularly described and set out in Section 1 of this Agreement ("**Services**"); and

**WHEREAS**, Vendor is skilled at providing the Services; and

**WHEREAS**, L.A. Care is authorized to enter into this Agreement pursuant to Section 14087.9605 of the Welfare and Institutions Code, as well as applicable L.A. Care by-laws, policies and procedures, including without limitation L.A. Care Policy and Procedure No. AFS-006.

**NOW, THEREFORE**, for good and valuable consideration, the Parties hereto agree as follows:

### 1. Services.

Subject to the terms and conditions of this Agreement, Vendor shall provide the Services described in Exhibit B (Scope of Work and Compensation). Except as otherwise specifically provided in the SOW, Vendor will provide, at its own expense, all equipment, tools and other materials (including intellectual property) necessary to perform the Services.

### 2. Changes.

(a) Amendments. L.A. Care may, from time to time, and with agreement of the Parties, make changes to this Agreement; including, but not limited to, changes in scope, schedule and pricing or compensation, through a written amendment signed by an individual authorized to bind each Party ("Amendment").

(b) Change Orders. The Parties may agree to make changes that do not impact the cost or termination date by a change order ("Change Order"). Change Orders may include technical changes, changes to interim milestones, assignment of key personnel, etc. ("Change Orders") Change Orders must be signed by an individual authorized to bind the Parties.

#### (c) Change Management Process.

- (i) Either Party may request a change to the Agreement. Any requests for an Amendment or a Change Order shall be submitted in accordance with L.A. Care's change management process, as follows.
- (ii) Vendor shall submit a proposal for any change requests, whether requested by L.A. Care or initiated by Vendor. The proposal shall:
  - (1) Describe the change in sufficient detail to avoid any ambiguity;
  - (2) Describe the impact on any task, activity or deliverables or work product;
  - (3) Provide a cost estimate, including the effort required by hours, skill requirements (e.g., software developer, project manager, etc.), expenses, if any, and associated costs;
  - (4) Identify any impact (increase or decrease) on the project budget; and
  - (5) Identify the impact on the project timeline.
- (iii) Once the parties agree on the change, the Agreement shall be amended in writing. The change shall not be effective until the Amendment or Change Order is signed by both Parties. No verbal Change Orders are authorized.

### 3. Compensation.

(a) L.A. Care agrees to compensate Vendor for the Services as set forth in Exhibit B, attached hereto and incorporated herein by this reference.

(b) L.A. Care will not reimburse Vendor any expenses incurred in connection with its performance of the Services, unless such reimbursement is specifically authorized in Exhibit B. Each expense reimbursement request, when authorized in Exhibit B, must include receipts or other suitable documentation.

(c) In no event shall the total compensation payable to Vendor for the Services exceed the Maximum Amount of Compensation, as set forth in the attached Exhibit B, without the express prior written authorization of L.A. Care. Vendor shall at all times monitor its costs and expenditures for the Services to ensure it does not exceed the Maximum Amount of Compensation. Vendor shall provide L.A. Care with sixty (60) days written notice if at any time during this Agreement Vendor becomes aware that it may exceed the Maximum Amount of Compensation. **VENDOR ACKNOWLEDGES AND AGREES THAT L.A. CARE SHALL NOT BE LIABLE FOR ANY FEES, EXPENSES OR COMPENSATION IN EXCESS OF THE MAXIMUM AMOUNT OF COMPENSATION.**

(d) The Maximum Amount of Compensation includes all applicable Federal, State, and local taxes and duties, except sales tax, which is shown separately, if applicable. Vendor is responsible for submitting any withholding exemption forms (e.g., W-9) to L.A. Care. Such forms and information should be furnished to L.A. Care before payment is made. If taxes are required to be withheld on any amounts otherwise to be paid by L.A. Care to Vendor due to Vendor's failure to timely submit such forms, L.A. Care will deduct such taxes from the amount otherwise owed and pay them to the appropriate taxing authority, and shall have no liability for or any obligation to refund any payments withheld.

(e) Unless otherwise specifically stated in Exhibit B, Vendor shall submit to L.A. Care, to the attention of Accounts Payable, [accountspayable@lacare.org](mailto:accountspayable@lacare.org), an invoice at the conclusion of every month for the Services performed during the prior thirty (30) days. Each invoice shall itemize the Services rendered during the billing period and the amount due. L.A. Care shall have thirty (30) days from the receipt of an invoice or corrected invoice, if disputed by L.A. Care, to pay Vendor. L.A. Care shall only pay for the Services rendered by Vendor and authorized under this Agreement. **L.A. CARE SHALL NOT PAY ANY FEES, EXPENSES OR COSTS WHATSOEVER INCURRED BY VENDOR IN RENDERING ADDITIONAL SERVICES NOT AUTHORIZED BY A WRITTEN AMENDMENT TO THIS AGREEMENT.**

(f) Vendor shall maintain accurate and complete financial records of its charges and expenses for the Services provided under this Agreement in accordance with generally accepted accounting principles and procedures. Vendor shall also maintain accurate and complete employment and other records of all Services provided hereunder. Vendor shall retain all such records for minimum period of six (6) years following the expiration or termination of this Agreement. L.A. Care shall have the right to access and examine such records, without charge, during normal business hours and upon reasonable notice. L.A. Care shall further have the right to audit such records, to make transcripts of the records and to inspect all program data, documents, proceedings and activities.

### 4. Term; Termination.

(a) The term of this Agreement shall commence on the Effective Date and shall terminate on 10/31/2016, unless earlier terminated as provided in this Section 4. This Agreement may be extended by the Parties by written amendment.

(b) Termination. L.A. Care may terminate this Agreement for its convenience and without any breach by Vendor upon fifteen (15) days prior written notice to Vendor without any liability to Vendor other than to pay amounts due for Services satisfactorily

performed and accepted by L.A. Care as of the date of termination or, if the Services are provided on a fixed fee or fixed price basis, a pro-rata amount based on the percentage of satisfactory completion of the Services.

(c) Termination for Breach. Either Party may terminate this Agreement upon ten (10) days prior written notice to the other Party in the event the other Party breaches a material term of this Agreement, and fails to cure such breach within such period. L.A. Care may terminate this Agreement immediately upon Vendor's breach of Sections 7 (Confidentiality), 9 (Insurance) or 10 (Conflicts of Interest).

(d) L.A. Care Remedies upon Breach by Vendor. In addition to other remedies available under this Agreement or under the law, if Vendor materially breaches any of the terms of this Agreement and fails to cure the breach as provided in subsection 4(c), L.A. Care's remedies shall include, but not be limited to, the following: (i) retain the data, materials, reports and any other work product prepared by Vendor pursuant to this Agreement; and (ii) retain a different vendor to complete the unfinished Services; and (iii) charge Vendor any reprourement costs.

(e) Duties upon Agreement expiration or termination. Upon expiration or termination of this Agreement, Vendor shall return all information, including Confidential Information, Protected Health Information or equipment provided by L.A. Care. If Vendor personnel were granted access to L.A. Care's premises and issued a badge or access card, such badge or access card shall be returned prior to departure. Failure to return any information, equipment, badge or access card is considered a material breach of this Agreement and L.A. Care's privacy and security rules.

(f) Survival. Sections 5, 6, 7, 8, 9, 10, 11 and 12 and this subsection 4(f) shall survive the expiration or earlier termination of this Agreement.

## **5. Ownership of Materials Related to Services.**

(a) Vendor hereby assigns to L.A. Care all of its rights in all materials prepared by or on behalf of L.A. Care under this Agreement ("Works"), and this Agreement shall be deemed a transfer to L.A. Care of the sole and exclusive copyright of any copyrightable subject matter Vendor created in these Works. Vendor agrees to cause its agents and employees to execute any documents necessary to secure or perfect L.A. Care's legal rights and worldwide ownership in such materials, including, but not limited to, documents relating to patent, trademark and copyright applications. Upon L.A. Care's request, Vendor will return or transfer all property and materials, including the Works, in Vendor's possession or control belonging to L.A. Care.

(b) Notwithstanding the foregoing, Vendor's intellectual property ("**Vendor IP**") that pre-exists this Agreement shall remain the sole and exclusive property of Vendor. Vendor shall not incorporate any Vendor IP into the Works that would limit L.A. Care's use of the Works without L.A. Care's written approval. To the extent that Vendor incorporates any Vendor IP into the Works, Vendor hereby grants to L.A. Care a non-exclusive, irrevocable, perpetual, worldwide, royalty-free license to use and reproduce the Vendor IP to the extent required to fully utilize the Works.

(c) Vendor acknowledges and agrees that, notwithstanding any provision herein to the contrary, L.A. Care's Intellectual Property ("**L.A. Care IP**") in the information, documents and other materials provided to Vendor shall remain the sole and exclusive property of L.A. Care, and L.A. Care grants to Vendor a non-exclusive, royalty-free, non-transferable license to use and reproduce L.A. Care IP solely for the purposes of performing its obligations under this Agreement. Any information, documents or materials provided by L.A. Care to Vendor pursuant to this Agreement and all copies thereof (including without limitation L.A. Care IP, Confidential Information, as these terms are defined in Section 7, below) shall upon the earlier of L.A. Care's request or the expiration or termination of this Agreement be returned to L.A. Care.

(d) For purposes of this paragraph, Intellectual Property shall mean patents, copyrights, trademarks, trade secrets and other proprietary information.

## 6. Vendor's Representations and Warranties:

Vendor represents and warrants to L.A. Care that:

(a) Vendor has the expertise to perform the Services in a manner commensurate with standards generally applicable to its industry.

(b) The Services, including without limitation, the development and delivery of the Works, do not and shall not violate: (i) any applicable law, rule, or regulation ("**Laws**"); (ii) any contracts with third parties; or (iii) any third-party rights in any patent, trademark, copyright, trade secret, or any other proprietary or intellectual property right.

(c) Vendor will identify, obtain and keep current all necessary licenses, approvals, permits and authorizations as may be required from time to time under applicable Laws.

(d) Vendor has full authority and sufficient right, title, and interest in and to the Works to grant and convey the rights accorded to L.A. Care under Section 5. Vendor shall have in place with each employee or other personnel assigned to perform the Services a written agreement pursuant to which the employee or other personnel (i) agrees to comply with the confidentiality provisions of this Agreement and (ii) assigns all the Works to Vendor.

(e) Vendor and its principals or affiliates or any subcontractor utilized under this agreement, are not debarred or suspended from federal financial assistance programs and activities nor proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Vendor also certifies that it or any of its subcontractors are not listed either on the Excluded Parties listing System (<https://www.sam.gov/portal/public/SAM/>) or the List of Excluded Individuals/Entities (<http://exclusions.oig.hhs.gov/>).

## 7. Confidentiality

(a) During the term of this Agreement, either Party may have access to confidential material or information ("**Confidential Information**") belonging to the other Party or the other Party's customers, vendors, or partners. "Confidential Information" shall include without limitation the disclosing Party's computer programs and codes, business plans, customer/member lists and information, financial records, partnership arrangements and licensing plans or other information, materials, records, writings or data that is marked confidential or that due to its character and nature, a reasonable person under like circumstances would treat as confidential. Confidential Information will be used only for the purposes of this Agreement and related internal administrative purposes. Each Party agrees to protect the other's Confidential Information at all times and in the same manner as each protects the confidentiality of its own confidential materials, but in no event with less than a reasonable standard of care.

(b) Confidential Information does not include information which: (i) is already known to the other Party at the time of disclosure; (ii) is or becomes publicly known through no wrongful act or failure of the receiving Party; (iii) is independently developed without use or benefit of the other's Confidential Information; (iv) is received from a third party which is not under and does not thereby breach an obligation of confidentiality; or (v) is a public record, not exempt from disclosure pursuant to California Public Records Act, Government Code Section 6250 *et seq.*, applicable provisions of California Welfare and Institutions Code or other State or Federal laws, regardless of whether such information is marked as confidential or proprietary.

(c) Disclosure of the Confidential Information will be restricted to the receiving Party's employees, consultants, suppliers or agents on a "need to know" basis in connection with the Services, who are bound by confidentiality obligations no less stringent than these prior to any disclosure. The receiving Party may disclose Confidential Information pursuant to legal, judicial, or administrative proceeding or otherwise as required by law; provided that the receiving Party shall give reasonable prior notice, if not prohibited by applicable law, to the disclosing Party and shall assist the disclosing Party, at the disclosing Party's expense, to obtain protective or other appropriate confidentiality orders, and further provided that a required disclosure of Confidential Information to an agency or Court does not relieve the receiving Party of its confidentiality obligations with respect to any other party.

(d) Except as to the confidentiality of trade secrets, these confidentiality restrictions and obligations will terminate three (3) years after the expiration or termination of the Agreement, unless the law requires a longer period. Upon written request of the disclosing Party, the receiving Party shall promptly return to the disclosing Party all documents, notes and other tangible materials representing the disclosing Party's Confidential Information and all copies thereof. This obligation to return materials or copies thereof does not extend to automatically generated computer back-up or archival copies generated in the ordinary course of the receiving Party's information systems procedures, provided that the receiving Party shall make no further use of such copies.

(e) Confidential Information does not include protected health information or individually identifiable information, as defined by the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and other privacy statutes or regulations. The access, use and disclosure of Protected Health Information shall be governed by the Business Associate Addendum, which is attached as Exhibit C and incorporated herein by this reference.

## **8. Indemnification.**

(a) The Parties agree that L.A. Care, its Board of Governors, officers, officials, agents, employees and volunteers (collectively, "**L.A. Care Indemnitees**") should, to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation or court costs, or any other cost arising out of or in any way related to the performance of the Services pursuant to this Agreement. Accordingly, the provisions of this indemnity clause are intended by the Parties to be interpreted and construed to provide the fullest protection possible under the law to L.A. Care. Vendor acknowledges that L.A. Care would not enter into this Agreement in the absence of Vendor's commitment to indemnify and protect L.A. Care as set forth herein.

(b) Vendor agrees to indemnify and defend the L.A. Care Indemnitees against all claims, liabilities, losses, expenses, suits, actions and causes of actions (including reasonable attorneys' fees and legal expenses), fines, penalties, taxes or damages (collectively, the "**Liabilities**") where such Liabilities arise out of or result, in whole or in part, from: (i) the negligent acts or omissions, the willful or intentional misconduct of Vendor or its employees, subcontractors or agents, in the course of providing the Services; (ii) Vendor's breach of the terms of this Agreement; (iii) any claim that any of the Services or materials otherwise provided by Vendor, including the deliverables or Works, infringes or misappropriates a copyright, patent, trade secret, trademark or any other proprietary right of a third party; (iv) any acts for which Vendor or L.A. Care could be strictly liable if performed by L.A. Care; or (v) quality of Vendor's work performed. It is understood that the duty of Vendor to indemnify and hold harmless includes the duty to defend as set forth in **Section 2778 of the California Civil Code**.

(c) L.A. Care agrees to indemnify and defend Vendor against all Liabilities where such Liabilities arise out of or result, in whole or in part, from: (i) the negligent acts or

omissions, the willful or intentional misconduct of L.A. Care or its employees, subcontractors or agents under this Agreement; or (ii) any claim that any materials provided to Vendor by L.A. Care infringes or misappropriates a copyright, patent, trade secret, trademark or any other proprietary right of a third party.

(d) The indemnified Party ("Indemnitee") shall promptly notify indemnifying Party ("Indemnitor") of any third party claim and Indemnitor shall conduct the defense in any such third party action arising as described herein at Indemnitor's sole expense and Indemnitee shall cooperate with such defense. Acceptance by L.A. Care of insurance certificates and endorsements required under this Agreement does not relieve Vendor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Vendor acknowledges and agrees to the provisions of this Section 8 and that it is a material element of consideration.

(e) L.A. Care shall have the right to offset against the amount of any compensation due to Vendor under this Agreement any amount due to L.A. Care from Vendor as a result of Vendor's failure to promptly pay to L.A. Care any indemnification arising under this Section 8 and related to Vendor's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

(f) The obligations of Vendor under this Section 8 will not be limited by the provisions of any workers' compensation act or similar act, except as required by applicable law.

## **9. Insurance.**

(a) Throughout the term of this Agreement, and for a period of one (1) year thereafter if the insurance is claims-based, Vendor shall at its own expense maintain and shall not commence the Services under this Agreement until it has obtained all of the insurance required as set forth in Exhibit D (Insurance Requirements).

(b) Prior to the commencement of Services hereunder, the Vendor shall furnish L.A. Care with Certificates of Insurance for all insurance required herein. Each insurer must be reasonably acceptable to L.A. Care, and possess a minimum Best's rating of 'A-VII' (or equivalent rating agency in the country) and licensed to conduct business in all states/countries where this Agreement shall apply.

(c) Vendor shall require each of its subcontractors, if any, to maintain insurance coverage that meets all of the requirements set forth in the attached Exhibit D.

(d) Vendor agrees that if it does not keep the aforesaid insurance in full force and effect L.A. Care may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Vendor's expense, the premium thereon.

(e) The commercial general liability policy of insurance required by this Agreement shall contain an endorsement naming L.A. Care, its Board of Governors, officials, officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days' prior written notice to L.A. Care.

(f) The insurance provided by Vendor shall be primary to any coverage available to L.A. Care.

(g) All insurance coverage provided pursuant to this Agreement shall not prohibit Vendor from waiving the right of subrogation prior to a loss. Vendor hereby waives all rights of subrogation against L.A. Care.

(h) Procurement of insurance by Vendor shall not be construed as a limitation of Vendor's liability or as full performance of Vendor's duties to indemnify, hold harmless and defend under Section 8 of this Agreement.

## 10. Conflicts of Interest.

(a) No member of L.A. Care's Board of Governors or any officer, official, director, employee or consultant of L.A. Care whose position with L.A. Care enables such individual to influence the award or administration of this Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by Vendor or have any other direct or indirect financial interest in this Agreement. No officer or employee of Vendor who may financially benefit from the performance of work hereunder shall in any way participate in L.A. Care's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence L.A. Care's approval or ongoing evaluation of such work.

(b) Vendor shall comply with all applicable conflict of interest laws and regulations now in effect or hereafter to be enacted during the term of this Agreement. Vendor warrants that it is not now aware of any facts that create a conflict of interest. If Vendor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to L.A. Care. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances.

## 11. Governing Law, Dispute Resolution.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions.

(b) Arbitration. Subject to the provisions of the California Government Claims Act (Government Code §905, *et seq.*) any controversy, dispute or disagreement arising out of or relating to this Agreement, its breach, or its subject matter, shall be settled exclusively by binding arbitration, which shall be conducted in Los Angeles, California through JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, and which shall be binding on all Parties to the Agreement, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrators will have exclusive authority to resolve any and all disputes relating to procedural and substantive questions of arbitrability, including but not limited to, the formation, interpretation, applicability, scope and enforceability of this agreement to arbitrate. Pursuant to Government Code Section 930.2, filing of a claim under the California Government Claims Act is a prerequisite to initiating arbitration proceedings pursuant to this Section Error! Reference source not found. Any such claim shall be presented and acted upon within the time limitations and in the manner prescribed by Chapter 2, commencing with Section 910 of Part 3 (Claims Against Public Entities) of Division 3.6 of Title 1 of the California Government Claims Act.

(c) Interim Relief. Either Party may, without waiving any remedy under this Agreement, seek from any court of competent jurisdiction within the State of California, Los Angeles County, any interim or provisional equitable or injunctive relief (excluding monetary or other damages) that such Party deems necessary to protect its Confidential Information, Protected Health Information or property rights, regardless of the arbitration requirements.

## 12. General.

(a) Excusable Delay. Neither Party will be liable for any delays resulting from circumstances beyond its reasonable control. In the event of any force majeure event, Vendor shall promptly notify L.A. Care of the event that may cause a delay and take all reasonable actions to mitigate the impact of the delay. In no event will a force majeure event excuse delays in performance not directly attributable to the event.

(b) Independent Contractor. Vendor agrees that Vendor's relationship with L.A. Care is that of an independent contractor and nothing in this Agreement shall be construed as creating a partnership, joint venture or employer-employee relationship. Nothing in this Agreement shall be deemed to constitute Vendor or L.A. Care the agent of the other. Neither Vendor nor L.A. Care shall be or become liable or bound by any representation, act, or omission, whatsoever, of the other. Vendor shall be solely responsible for complying with all applicable local, state and federal laws governing self-employed individuals or employees of partnerships and corporations, including, but not limited to, obligations such as payment of federal, state and local taxes, employment taxes, social security, disability and other contributions attributable to performing the Services. Vendor shall indemnify L.A. Care for any claims, losses, costs, fees, liabilities, damages or injuries incurred by L.A. Care arising out of Vendor's breach of this section, including any claim against L.A. Care by any taxing authority as a result of the services provided by Vendor under this Agreement.

(c) Anti-Discrimination. In the performance of this Agreement, Vendor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, disability, medical condition, sexual orientation or protected veteran status. Vendor will take affirmative action to ensure that employees, subcontractors and applicants for employment are treated without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, sexual orientation or protected veteran status.

(d) Other Firms Providing Services. Vendor acknowledges that it is not necessarily the exclusive provider to L.A. Care of services and that L.A. Care has, or may enter into, contracts with other vendors.

(e) Notices. Any notices required or permitted to be given hereunder by any Party to the other shall be in writing and shall be deemed delivered upon personal delivery; twenty-four (24) hours following deposit with a courier for overnight delivery; or seventy-two (72) hours following deposit in the U.S. Mail, registered or certified mail, postage prepaid, return-receipt requested, addressed to the Parties at the following addresses or to such other addresses as the Parties may specify in writing:

To L.A. Care:

L.A. Care Health Plan  
1055 West Seventh Street, 10<sup>th</sup> Floor  
Los Angeles, California 90017  
Attention: Wayne Baker

To Vendor

Attention:

(f) Nonassignability. The Services to be performed by Vendor are personal to Vendor. Vendor may not assign this Agreement or any interest therein without the prior written approval of L.A. Care, and any such assignment shall be considered *void ab initio*. Vendor shall not subcontract any portion of the Services, other than to the subcontractors noted in a proposal, if applicable, without L.A. Care's prior written approval.

(g) Press Release. Vendor shall not issue any press release concerning the Services provided hereunder or publicly identify L.A. Care as a customer of Vendor without L.A. Care's prior written consent. Vendor shall not use any trade name, trademark, service mark, logo or slogan of L.A. Care without L.A. Care's prior written consent in each instance.

(h) Severability. In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.



(i) Waiver. The waiver by either Party of a breach or compliance with any provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach or compliance.

(j) Headings. The section headings used in this Agreement are for convenience and reference purposes only and shall not enter into the interpretation of this Agreement.

(k) Exhibits. All exhibits attached hereto and referred to herein are hereby incorporated herein as though fully set forth at length.

(l) Integration. This Agreement, with its exhibits and attachments, constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous representations, proposals, discussions, and communications, whether oral or in writing. In the event of a conflict between this Agreement and the SOW, the terms and conditions of this Agreement shall prevail, unless the SOW expressly provides otherwise. This Agreement may be modified only in writing and shall be enforceable in accordance with its terms when signed by each of the Parties hereto.

(m) Counterparts. This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be subscribed as of the Effective Date.

**Local Initiative Health Authority  
for Los Angeles County, operating as  
L.A. Care Health Plan (“L.A. Care”)** (“Vendor”)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT B**  
**SCOPE OF WORK**

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**1. PURPOSE OF PROJECT**

1.1 L.A. Care is seeking proposals to select a Large Account Reseller (LAR) to provide competitive pricing and servicing for L.A. Care's Microsoft Corporation Software Licensing Enterprise Agreement (EA) for a three year contract term. Since 1997, L.A. Care has used Microsoft productivity software products and solutions to conduct business, and is considered mission critical.

L.A Care's main datacenter is located at 1055 W. 7<sup>th</sup> ST, Los Angeles, CA 90047. The LAR will be required to service the Microsoft Enterprise Agreement on behalf of L.A. Care.

Microsoft Agreement Number	01E73134
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1.2 L.A. Care has a requirement for a Microsoft Large Account Reseller (LAR) to provide Microsoft Enterprise Agreement software volume licensing services. The Microsoft LAR must be authorized and shall provide supporting documentation in its submission. The LAR is expected to provide at a minimum the following services:

- (a) Provide discounted pricing to support cost reduction initiatives.
- (b) Deliver detailed reporting on software assets management for EA contract.
- (c) Maintain on-going communication and IT relationships throughout the lifecycle of the EA
- (d) Actively engage with IT to understand and consume software assurance (SA) and EA benefits within 60 days post the new or renewal agreement.
- (e) Proactively liaise and manage software, desktop and server growth with L.A. Care IT personnel
- (f) Ensure that L.A. Care receives an annual Software Asset Management (SAM) assessment to ensure licensing accuracy and assess true up requirements within 90 days of the anniversary.
- (g) Process true-up orders within 30 days of the anniversary date.
- (h) Assist with Microsoft licensing questions, placing orders, fulfillment, and Microsoft Volume Licensing Center (MVL) portal website access.

**2. APPROACH**

2.1 The LAR shall:

- (a) Conduct a software asset management (SAM) audit to review current software licensing and any true-up requirements.
- (b) Review attached software licensing Excel spreadsheet containing current and proposed software requirements.
- (c) Provide sufficient information to quantify value-added strategies that may result in decreased costs, increased quality of service and/or improved outcomes. For example, how will the LAR ensure that L.A. Care takes advantage of software assurance (SA) benefits and how will the LAR manage

them for L.A. Care. Please describe the value add service(s) the LAR will provide and how those value added services will be delivered and quantify the benefits to L.A. Care as a result.

- (d) L.A. Care needs to additionally purchase the following software:
  - (i) BizTalk (new)
  - (ii) SQL (additive)
  - (iii) Terminal Server for 800 clients (new)

**3. TASKS, DELIVERABLES AND SCHEDULE –**

Vendor shall complete the following tasks and submit the associated deliverables in accordance with the following schedule.

<b>Task</b>	<b>Deliverable</b>	<b>Due Date</b>
Assess current licensing	Meet with IT SME's to review and document via a vendor created report in Word or Excel L.A. Care's current software asset inventory	10/27/14
Review and document new software licensing requirements for SQL, BizTalk and Terminal Server	Meet with IT SME's to review and document via a report in Word or Excel L.A. Care's new software requirements	10/27/14
Provide pricing for a 3 year renewal of the Microsoft EA for L.A. Care	Review Microsoft software requirements and provide proposed pricing for a 3 year renewal.	11/03/14

**COMPENSATION**

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**1. FEES AND EXPENSES**

Vendor shall be paid fees in the amount of \$\_\_\_\_\_, inclusive of all expenses. Payment will be made on completion and acceptance of each task and submission of an invoice, as follows:

Fixed Fee:

Task / Deliverable		Fee

**2. MAXIMUM AMOUNT OF COMPENSATION**

Vendor's total compensation for all Services performed under this Agreement, including all fees and expenses, shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_), except by a written amendment signed by both Parties.

**EXHIBIT C  
BUSINESS ASSOCIATE ADDENDUM**

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This Business Associate Addendum (“Addendum”) supplements and is made a part of the Services Agreement dated \_\_\_\_\_ (“Agreement”) by and between the Local Initiative Health Authority for Los Angeles County, a local public agency operating as L.A. Care Health Plan (“L.A. Care”) and \_\_\_\_\_ (“Business Associate”). L.A. Care and Business Associate may be individually referred to as a “Party” and collectively as the “Parties” in this Addendum.

**RECITALS**

A. L.A. Care wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information as that term is defined below.

B. L.A. Care and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with: (i) the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”); (ii) Title XIII of the American Recovery and Reinvestment Act of 2009 and regulations and guidance promulgated thereunder (“ARRA”), also known as the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”); and (iii) regulations promulgated thereunder by the U.S. Department of Health and Human Services, including the HIPAA Omnibus Final Rule, which amended the HIPAA Privacy and Security Rules (as those terms are defined below) and implemented a number of provisions of the HITECH Act (the “HIPAA Final Rule”) and caused business associates and their subcontractors to be directly regulated under HIPAA.

C. The purpose of this Addendum is to satisfy certain standards and requirements of HIPAA, the Privacy Rule, the Security Rule (as those terms are defined below), the Breach Notification Rule, the Enforcement Rule, and the HITECH Act, including, but not limited to, Title 45, §§ 164.314(a)(2)(i), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”).

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, L.A. Care and Business Associate agree as follows:

**1. Definitions.**

a. **Capitalized Terms.** Capitalized terms used in this Addendum and not otherwise defined herein shall have the meanings set forth in the Privacy, Security, Breach Notification and Enforcement Rules collectively referred to as “HIPAA Rules”) and the HITECH Act, which definitions are incorporated in this Addendum by reference.

b. **“Breach”** shall have the same meaning given to such term in 45 C.F.R. § 164.402.

c. **“Business Associate”** shall have the same meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. § 160.103.

d. **“Designated Record Set”** shall have the same meaning given to such term in 45 C.F.R. § 164.501.

e. **“Electronic Protected Health Information”** or “Electronic PHI” shall have the same meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Business Associate creates, receives, maintains or transmits from or on behalf of L.A. Care.

f. **“HIPAA Rules”** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164.

g. **“Individual”** shall have the same meaning given to such term in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

h. **“Parties”** shall mean L.A. Care and Business Associate.

i. **“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 162 and Part 164, Subparts A and E.

j. **“Protected Health Information”** or **“PHI”** shall have the same meaning given to such term in 45 C.F.R. § 160.103, as applied to information created or received by Business Associate from or on behalf of L.A. Care.

k. **“Required by Law”** shall have the same meaning given to such term in 45 C.F.R. § 164.103.

l. **“Secretary”** shall mean the Secretary of the Department of Health and Human Services or his or her designee.

m. **“Security Incident”** shall have the same meaning given to such term in 45 C.F.R. § 164.304.

n. **“Security Rule”** shall mean the Security Standards at 45 C.F.R. Parts 160 and 162 and Part 164, Subparts A and C.

o. **“Subcontractor”** shall have the same meaning given to such term in 45 C.F.R. § 160.103.

p. **“Unsecured PHI”** shall have the same meaning given to such term under 45 C.F.R. § 164.402, and guidance promulgated thereunder.

#### **Obligations of Business Associate.**

q. **Permitted Uses and Disclosures.** Business Associate shall not use or disclose Protected Health Information except as allowed under and as necessary to perform the services set forth in the Agreement and the Addendum or as Required by Law. Business Associate shall not use or disclose Protected Health Information to de-identify the information unless specified in the Agreement or Business Associate is given prior written permission by L.A. Care. Business Associate shall not use or disclose Protected Health Information in any manner that would constitute a violation of the Privacy Rule if so used or disclosed by L.A. Care, except that Business Associate may use Protected Health Information (i) for the proper management and administration of Business Associate and (ii) to carry out the legal responsibilities of Business Associate. To the extent that Business Associate is carrying out one or more of L.A. Care’s obligations under the Privacy Rule pursuant to the terms of the Agreement or this Addendum, Business Associate shall comply

with the requirements of the Privacy Rule that apply to L.A. Care in the performance of such obligation(s).

r. **Disclosures to Third Parties.** Except as otherwise limited in this Addendum, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential as provided pursuant to this Addendum and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and that the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

s. **Appropriate Safeguards.** Business Associate shall develop, implement, maintain and use appropriate safeguards as are necessary to prevent the use or disclosure of PHI other than as permitted by the Agreement and this Addendum. The safeguards shall reasonably protect PHI from any intentional or unintentional use or disclosure in violation of the Privacy Rule and this Addendum, and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Addendum. Business Associate shall develop, implement, maintain and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI, and shall, after the compliance date of the HIPAA Final Rule, comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such information other than as provided for by the Agreement and this Addendum.

t. **Reporting of Improper Use or Disclosure, Breach or Security Incident.** Business Associate shall notify L.A. Care in writing of any use or disclosure of PHI not provided for by the Agreement and this Addendum of which it becomes aware, including Breaches of Unsecured PHI as required by 45 C.F.R. § 164.410, incidents that pose a risk of constituting Breaches and any Security Incident. Such notifications shall be directed to the attention of L.A. Care's Privacy & Information Security Officer (email to [PrivacyOfficer@lacare.org](mailto:PrivacyOfficer@lacare.org) or another method may be used as agreed to by the Privacy & Information Security Officer and Business Associate) within twenty-four (24) hours of discovery. Such report shall include, to the extent reasonably practicable: (i) the nature of the use or disclosure; (ii) the PHI used or disclosed; (iii) identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during the Breach; (iv) the person who made the use or disclosure; (v) the corrective action Business Associate took or will take to prevent further such uses or disclosures; (vi) the steps Business Associate took or will take to mitigate, to the extent practicable, the harmful effects of the use or disclosure; and (vii) such other information as L.A. Care may reasonably request or which, pursuant to 45 C.F.R. § 164.404, may be necessary to include in a notification of the Breach. An initial notification to L.A. Care shall not be delayed because the Business Associate has not confirmed a Breach or Security Incident, has not completed an investigation or does not have all the information needed to provide a complete report. Business Associate shall also notify L.A. Care in writing, within the timeframes and in the manner outlined in this Addendum, of any use or disclosure of PHI by its subcontractor(s) (or subcontractors' agent(s)) not provided for by the Agreement and this Addendum. Business Associate shall cooperate with L.A. Care to conduct any risk assessment necessary to determine whether notification of Breach is required. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known, or should reasonably have been known, to Business Associate. For purposes of this Section, the knowledge of any person, other than the individual committing the Breach, who is an employee, officer or

other agent of Business Associate shall be imputed to Business Associate. In the event of a Breach or Security Incident caused solely by Business Associate, Business Associate shall, upon the request of L.A. Care, provide assistance to L.A. Care in notifying individuals pursuant to 45 C.F.R. §§ 164.404 and 164.406, and reimburse L.A. Care for reasonable costs related to providing such notifications and mitigating the effects of the Breach or Security Incident.

u. **Business Associate's Agents.** In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), as applicable, Business Associate shall enter into a written agreement with any agent, including a subcontractor, that creates, receives, maintains or transmits PHI on behalf of Business Associate for services provided to L.A. Care. Such written agreement must include provisions that require the agent agree to the same restrictions, conditions and requirements that apply to Business Associate with respect to such PHI. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect such information. Business Associate shall implement and maintain sanctions against any agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation. If an agent or subcontractor is not subject to the jurisdiction or laws of the United States, or if any use or disclosure of PHI in performing the obligations under this Addendum or the Agreement will be outside of the jurisdiction of the United States, Business Associate must require its agent or subcontractor to agree by written contract with Business Associate to be subject to the jurisdiction of the Secretary, the laws and the courts of the United States, and waive any available jurisdictional defenses that pertain to the Parties' obligations under this Addendum, HIPAA or the HITECH Act. Business Associate will further cooperate with and timely respond to any requests for information by L.A. Care needed to fulfill its regulatory reporting obligations as a result of Business Associate's use of an agent or subcontractor that is not subject to the jurisdiction or laws of the United States.

v. **Access to Protected Health Information.** Business Associate shall provide access, within seven (7) working days of receipt by Business Associate of a request by L.A. Care for PHI in a Designated Record Set, to L.A. Care or, as directed by L.A. Care, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524, as applicable. If Business Associate provides access directly to an Individual, the Business Associate must do so in compliance with 45 CFR § 164.524, including providing electronic PHI in the electronic form and format requested by the Individual and limiting any fees to what is allowed by the HIPAA Privacy Rule.

w. **Amendment of PHI.** Within ten (10) calendar days of receipt of a request from L.A. Care for an amendment of PHI or a record relating to the Individual in a Designated Record Set, Business Associate or its agents or subcontractors shall make such PHI available to L.A. Care for amendment and incorporate any such amendment to enable L.A. Care to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.526. If any Individual requests an amendment of PHI directly from Business Associate or its agents or subcontractors, Business Associate must notify L.A. Care in writing within five (5) calendar days of the request. Any denial of amendment of Protected Health Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of L.A. Care.

x. **Documentation of Disclosures.** Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for L.A. Care to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, as applicable. Business Associate shall retain such



documentation during the term of this Agreement and for a period of six (6) years following its termination, unless a longer period is Required by Law.

y. **Accounting of Disclosures.** Business Associate shall, within ten (10) calendar days of receiving a written request from L.A. Care, provide to L.A. Care such information as is requested by L.A. Care to permit L.A. Care to respond to a request by an Individual for an accounting of disclosures of the Individual's PHI in accordance with 45 C.F.R. § 164.528, as applicable.

z. **Governmental Access to Books and Records.** Business Associate shall make its internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI received from L.A. Care (or created or received by Business Associate on behalf of L.A. Care), available to the Secretary or the Secretary's designee for purposes of determining compliance with HIPAA Rules. Business Associate shall provide to L.A. Care a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

aa. **Mitigation.** Business Associate shall mitigate, to the greatest extent practicable, any harmful effects of any use or disclosure of PHI by it or its agents or subcontractors not provided for in this Addendum of which it becomes aware.

bb. **Minimum Necessary.** Business Associate shall request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance 45 C.F.R. §§ 164.502(b), 164.514(d), and any amendments thereto.

cc. **HITECH Applicability.** Business Associate acknowledges that enactment of the HITECH Act, as implemented by the HIPAA Final Rule, amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, Business Associates under the HIPAA Rules. To the extent not referenced or incorporated herein, requirements applicable to Business Associates under the HITECH Act are hereby incorporated by reference into this Addendum. Business Associate agrees to comply with applicable requirements imposed under the HITECH Act, as of the effective date of each such requirement, including monitoring federal guidance and regulations published pursuant to the HITECH Act and timely compliance with such guidance and regulations.

dd. **Audits.** Business Associate shall, within ten (10) calendar days of a written request by L.A. Care, make available to L.A. Care during normal business hours at Business Associate's offices all records, books, agreements and policies and procedures relating to the use or disclosure of Protected Health Information for purposes of enabling L.A. Care to determine Business Associate's compliance with the terms of this Addendum.

#### **Obligations of L.A. Care.**

ee. **Notice of Privacy Practices.** L.A. Care shall provide Business Associate with a copy of the notice of privacy practices (the "Notice") that L.A. Care provides to Individuals pursuant to 45 C.F.R. § 164.520, as well as any changes in the Notice if any limitations contained in the Notice affect Business Associate's use or disclosure of Protected Health Information.

ff. **Notification of Changes Regarding Individual Permission.** L.A. Care shall inform Business Associate of any changes in, or revocation of, the consent or authorization provided to L.A. Care by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

**gg. Notification of Restrictions to Use or Disclosure of PHI.** L.A. Care shall notify Business Associate, in writing and in a timely manner, of any restriction to the use or disclosure of PHI that L.A. Care agreed to as provided for in 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

### **Term and Termination.**

hh. **Term.** The term of this Addendum shall commence as of the Addendum Effective Date, and shall terminate when all of the PHI provided by L.A. Care to Business Associate, or created or received by Business Associate on behalf of L.A. Care, is destroyed or returned to L.A. Care or, if it is infeasible to return or destroy PHI, protections are extended to such information in accordance with Section 1.jj below.

ii. **Termination for Cause.** Upon L.A. Care's knowledge of a material breach by Business Associate of this Addendum, L.A. Care shall either: (i) provide an opportunity for Business Associate to cure the breach or end the violation within the time specified by L.A. Care; or (ii) immediately terminate this Addendum and the Agreement if cure is not possible.

### **jj. Effect of Termination.**

- i. Except as provided in paragraph (ii) of this Section 1.jj, upon termination of the Agreement or this Addendum for any reason, Business Associate shall return or securely destroy all Protected Health Information received from L.A. Care, or created or received by Business Associate on behalf of L.A. Care, and shall retain no copies of the Protected Health Information. This provision also shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.
- ii. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to L.A. Care notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, so long as Business Associate maintains such Protected Health Information.

### **Indemnification.**

kk. Each Party shall indemnify the other Party against all liabilities and losses (including attorneys' fees) reasonably and properly incurred by the indemnified Party ("Losses") in connection with any actual, threatened or pending civil, criminal or administrative cause of action, claim, inquiry, investigation, lawsuit or proceeding (collectively, a "Claim") to the extent arising out of the indemnifying Party's breach of its obligations under this Addendum; provided, however, that neither Party is obligated to indemnify the other Party where such Losses have been suffered or incurred by such other Party as a result of its or its agent's negligence, willful misconduct or fraudulent or criminal acts or omissions. Each Party shall provide the other with prompt notice of any Claim that may trigger the foregoing indemnification requirements and take all necessary and appropriate actions to protect the interest of the other Party with regard to the Claim. Upon demand by the indemnified Party, the indemnifying Party shall defend any investigation,

claim, litigation or other proceeding brought or threatened against the indemnified Party, at the indemnifying Party's expense, by counsel acceptable to the indemnified Party.

ll. Neither Party shall consent to any judgment or enter into any settlement of a Claim without the prior, written consent of the other Party.

### **General Terms and Conditions.**

mm. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this Addendum. Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits L.A. Care and Business Associate to comply with the HIPAA Rules and the HITECH Act, as implemented by the HIPAA Final Rule. Where provisions of this Addendum are different from those mandated in the HIPAA Rules or the HITECH Act, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of this Addendum shall control.

nn. **Effect on Agreement.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect.

oo. **Regulatory References.** A reference in this Addendum to a section in the HIPAA Rules or the HITECH Act means the section as in effect or as amended, and for which L.A. Care's and/or Business Associate's compliance is required.

pp. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to L.A. Care, at no cost to L.A. Care, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against L.A. Care, its directors, officers or employees based upon violation of HIPAA, the HITECH Act, or regulations promulgated thereunder or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party. Business Associate shall cooperate in good faith in all respects with L.A. Care in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

qq. **Amendment.** The Parties agree to take such action to amend this Addendum from time to time as is necessary for L.A. Care and Business Associate to comply with the requirements of the HIPAA Rules and the HITECH Act.

rr. **Survival.** The respective rights and obligations of Business Associate under Section 1.jj of this Addendum shall survive the termination or expiration of this Addendum and the Agreement.

ss. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than L.A. Care, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

tt. **Disclaimer.** L.A. Care makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA, the HIPAA Rules or the HITECH Act will be adequate or satisfactory for Business Associate's own purposes. Business Associate is

solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

uu. **Injunctive Relief.** Notwithstanding any rights or remedies provided for in this Agreement, L.A. Care retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI by Business Associate or any agent, contractor, subcontractor, or third party that received PHI from Business Associate.

**In Witness Whereof**, the Parties hereto have duly executed this Addendum as of the Addendum Effective Date.

**L.A. CARE:**

Local Initiative Health Authority for Los Angeles County, a local public agency operating as L.A. Care Health Plan

**BUSINESS ASSOCIATE:**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT D**  
**INSURANCE REQUIREMENTS**

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Insurance required under this Agreement shall be:

1. **Commercial General Liability insurance** including bodily injury, property damage, personal injury, advertising injury and products/completed operations, with a limit of not less than \$1,000,000.
2. **Automobile Liability**, with a combined single limit of \$1,000,000.
3. **Worker's Compensation and Employer's Liability Insurance** covering all Vendor's personnel performing the Services pursuant to this Agreement. Worker's Compensation insurance will be in accordance with the Worker's Compensation Law of the jurisdiction where the work is performed. Employer's Liability shall be provided with limits of not less than \$500,000 each accident; \$500,000 each disease; and \$1,000,000 disease policy limit.
4. **Umbrella/Excess Liability insurance** to follow-form the terms and conditions set forth under Section 1, above with a limit of liability not less than \$5,000,000 each occurrence and annual aggregate.
5. **Professional Liability insurance** covering the negligent acts, errors or omissions committed by Vendor pursuant to rendering or failure to render professional services pursuant to the terms and conditions contained in the Agreement with limits of not less than \$5,000,000 per claim.