

AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of August, 2018, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY," and Health Monitoring Systems, Inc., a Pennsylvania corporation ("HMS"), whose address is 700 River Ave, Suite 100, Pittsburgh, PA 15212, hereinafter referred to as "CONTRACTOR."

WITNESSETH:

WHEREAS, COUNTY, through its Department of Public Health, should monitor potential disease outbreaks to help public health professionals detect and respond more effectively to changing health conditions; and

WHEREAS, COUNTY benefits from a bio-syndromic surveillance system that collects, manages, and analyzes emergency room and other data in real time from local hospitals and other healthcare providers; and

WHEREAS, CONTRACTOR has developed EpiCenter, a syndromic surveillance system which allows users to electronically access analysis of health conditions which includes the collection, display and monitoring of health-related data, automatically and in real time, providing public health professionals with instant access to up-to-date information; and

WHEREAS, CONTRACTOR standardizes, annotates, and processes data from data sources and makes it useful to county epidemiologists for review and further analysis; and,

WHEREAS, CONTRACTOR provides the technical support to maintain and troubleshoot its system through phone or email, minimizing the need for COUNTY to use its own IT personnel for this purpose; and

WHEREAS, CONTRACTOR has agreed to provide additional optional services requested by the County to modify or enhance the Surveillance System according to region-specific needs for an additional fee; and

WHEREAS, CONTRACTOR is qualified and is willing to provide such services, pursuant to the terms and conditions of this Agreement.

1 NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties
2 hereto agree as follows:

3 1. **OBLIGATIONS OF CONTRACTOR**

4 CONTRACTOR shall perform all services and fulfill all responsibilities as set forth in
5 CONTRACTOR'S "Customer Service Agreement," attached hereto as Exhibit A and by this reference
6 incorporated herein. CONTRACTOR's obligations are listed in Exhibit A, Section II: "HMS Services".

7 2. **OBLIGATIONS OF COUNTY**

8 COUNTY shall adhere to the terms of this Agreement, including any terms and
9 conditions set forth in Exhibit A, Section III: "Customer's Obligations in Regard to HMS Services."

10 3. **TERM**

11 The term of this Agreement shall be for a period of three (3) years, commencing on
12 August 18, 2018 through and including August 17, 2021 unless terminated earlier in accordance with
13 this Agreement. This Agreement may be extended for two (2) additional consecutive twelve (12)
14 month periods upon written approval of both parties no later than thirty (30) days prior to the first day
15 of the next twelve (12) month extension period. The Director of the Department of Public Health or
16 his or her designee is authorized to execute such written approval on behalf of COUNTY based on
17 CONTRACTOR'S satisfactory performance.

18 4. **TERMINATION**

19 COUNTY shall notify Customer Users, as defined in Exhibit A, in writing in advance of
20 the effective date of any expiration or termination of this Agreement that the HMS System and HMS
21 Services shall no longer be available to Customer Users through COUNTY as of that effective date.
22 At least thirty (30) days, and no more than sixty (60), days prior to the expiration of this Agreement,
23 COUNTY shall notify CONTRACTOR in writing whether it intends to extend this Agreement for and
24 additional twelve (12) month period.

25 A. **Non Allocation of Funds** -The terms of this Agreement, and the services
26 to be provided thereunder, are contingent on the approval of funds by the appropriating government
27 agency. Should sufficient funds not be allocated, the services provided may be modified, or this
28 Agreement terminated at any time by giving CONTRACTOR thirty (30) days advance written notice.

1 B. Breach of Contract - Either party may immediately suspend or terminate
2 this Agreement in whole or in part, where in the determination of the terminating party there is:

- 3 1) An illegal or improper use of funds;
4 2) A failure to comply with any term of this Agreement;
5 3) A substantially incorrect or incomplete report submitted to the COUNTY;
6 4) Improperly performed service.

7 In the event a party wishes to terminate this Agreement for such a material breach by the
8 other party, it must notify the other party in writing of such alleged breach and proposed termination
9 and if such breach is not cured within thirty (30) days of the date the written notice of breach was
10 received by the other party, this Agreement shall terminate on such thirtieth day. A Party giving
11 written notice of material breach and proposed termination may withdraw such notice at any time
12 before the end of the thirty (30) day period by giving written notice of such withdrawal received by the
13 other Party prior to the end of the thirty day period.

14 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of
15 any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR.
16 Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect to
17 the breach or default. The COUNTY shall have the right to demand of the CONTRACTOR the
18 repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this Agreement,
19 which in the judgment of the COUNTY were not expended in accordance with the terms of this
20 Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

21 C. Without Cause Under circumstances other than those set forth above, this Agreement
22 may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an
23 intention to terminate to CONTRACTOR.

24 5. COMPENSATION

25 COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive
26 compensation according to the terms and conditions set forth in Exhibit A, Section VI "Fees" and
27 detailed in Exhibit B "Fresno Cost Summary" with a total compensation amount not to exceed One
28 Hundred Twenty Five Thousand Six Hundred Twenty Five and No/100 Dollars (\$125,625.00) over the

1 five (5) year term of this Agreement, if the contract is extended to five (5) years pursuant to Section
2 Three (3) of this contract.. Annual fees may vary depending on whether, or when, additional new
3 healthcare facilities connect to the surveillance system and whether, or when, optional services are
4 provided. Funds allocated within the "Healthcare Facility Connections" and "Optional Services To Be
5 Provided" fee sections may be utilized during any agreement year as described in Exhibit B. Total
6 compensation amount not to exceed Forty Six Thousand One Hundred Twenty Five and No/100
7 Dollars (\$46,125.00) during a given year.

8 It is understood that all expenses incidental to CONTRACTOR's performance of actual
9 services under this Agreement shall be borne by CONTRACTOR.

10 Payments by COUNTY shall be in arrears within forty-five (45) days after receipt and
11 verification of CONTRACTOR's invoices by COUNTY's Department of Public Health. If
12 CONTRACTOR should fail to comply with any provision of this Agreement, COUNTY shall be relieved
13 of its obligation for further compensation.

14 6. **INVOICING**

15 CONTRACTOR shall invoice COUNTY in duplicate, addressed to the County of Fresno,
16 Department of Public Health, Community Health Division, P.O. Box. 11867, Fresno, CA 93775,
17 Attention: Division Manager.

18 7. **INDEPENDENT CONTRACTOR**

19 In performance of the work, duties, and obligations assumed by CONTRACTOR under
20 this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of
21 CONTRACTOR's officers, agents, and employees will at all times be acting and performing as an
22 independent contractor, and shall act in an independent capacity and not as an officer, agent, servant,
23 employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no
24 right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its
25 work and function. However, COUNTY shall retain the right to administer this Agreement so as to
26 verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions
27 thereof. CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules
28 and regulations, if any, of governmental authorities having jurisdiction over matters which are directly

or indirectly the subject of this Agreement.

Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

8. **MODIFICATION**

Any matters of this Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

9. **ASSIGNMENT**

CONTRACTOR may subcontract any of its responsibilities and duties under this Agreement but shall remain responsible for obligations, services and functions performed by subcontractors to the same extent as if CONTRACTOR's employees had performed such obligations, services and functions. CONTRACTOR shall be COUNTY's sole point of contact regarding this Agreement and the performance of CONTRACTOR of CONTRACTOR's obligations under this Agreement, notwithstanding any subcontracting.

10. **HOLD-HARMLESS**

CONTRACTOR agrees to indemnify, save, old harmless and at COUNTY's request defend the COUNTY, its officers, agents, and employees from any and all costs and expenses (including attorney's fees and costs) damages, liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or failure to perform, of CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of CONTRACTOR, its officers, agents, or employees under this Agreement.

11.

1 11. **INSURANCE**

2 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any
3 third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following
4 insurance policies or a program of self-insurance, including but not limited to, an insurance pooling
5 arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

6 Commercial General Liability

7 Commercial General Liability Insurance with limits of not less than Two Million Dollars
8 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
9 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
10 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
11 liability or any other liability insurance deemed necessary because of the nature of this contract.

12 Automobile Liability

13 Comprehensive Automobile Liability Insurance with limits of not less than One Million
14 Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should
15 include any auto used in connection with this Agreement.

16 Professional Liability

17 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W.,
18 M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million
19 Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

20 Worker's Compensation

21 A policy of Worker's Compensation insurance as may be required by the California Labor
22 Code.

23 Technology Professional Liability (Errors and Omissions)

24 Technology Professional Liability (Errors and Omissions) Insurance appropriate to the
25 CONTRACTOR's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000
26 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken
27 by CONTRACTOR in this agreement and shall include, but not be limited to, claims involving
28 infringement of intellectual property, including but not limited to infringement of copyright, trademark,

1 trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic
2 information, release of private information, alteration of electronic information, extortion and network
3 security. The policy shall provide coverage for breach response costs as well as regulatory fines and
4 penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

5 Cyber Liability

6 Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim,
7 \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to duties and obligation as is
8 undertaken by CONTRACTOR in this agreement and shall include, but not be limited to, claims
9 involving infringement of intellectual property, including but not limited to infringement of copyright,
10 trademark, trade dress, invasion of privacy information, alteration of electronic information, extortion and
11 network security. The policy shall provide coverage for breach response costs as well as regulatory fines
12 and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

13 CONTRACTOR shall obtain endorsements to the Commercial General Liability
14 insurance naming the County of Fresno, its officers, agents, and employees, individually and
15 collectively, as additional insured, but only insofar as the operations under this Agreement are
16 concerned. Such coverage for additional insured shall apply as primary insurance and any other
17 insurance, or self-insurance, maintained by the COUNTY, its officers, agents and employees shall be
18 excess only and not contributing with insurance provided under the CONTRACTOR's policies herein.
19 This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance
20 written notice given to COUNTY.

21 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents,
22 and employees any amounts paid by the policy of worker's compensation insurance required by this
23 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may
24 be necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation
25 under this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

26 Within thirty (30) days from the date CONTRACTOR executes this Agreement,
27 CONTRACTOR shall provide certificates of insurance and endorsements as stated above for all of the
28 foregoing policies, as required herein, to the County of Fresno, Department of Public Health, P.O. Box

1 11867, Fresno, California, 93775, Attention: Contracts Section – 6th Floor, stating that such insurance
2 coverage have been obtained and are in full force; that the County of Fresno, its officers, agents and
3 employees will not be responsible for any premiums on the policies; that such Commercial General
4 Liability insurance names the County of Fresno, its officers, agents and employees, individually and
5 collectively, as additional insured, but only insofar as the operations under this Agreement are
6 concerned; that such coverage for additional insured shall apply as primary insurance and any other
7 insurance, or self-insurance, maintained by the COUNTY, its officers, agents and employees, shall be
8 excess only and not contributing with insurance provided under the CONTRACTOR's policies herein;
9 and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days
10 advance, written notice given to COUNTY.

11 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as
12 herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate
13 this Agreement upon the occurrence of such event.

14 All policies shall be with admitted insurers licensed to do business in the State of
15 California. Insurance purchased shall be from companies possessing a current A.M. Best, Inc. rating
16 of A FSC VII or better.

17 12. **CONFIDENTIALITY**

18 All services performed by CONTRACTOR under this Agreement shall be in strict
19 conformance with all applicable Federal, State of California and/or local laws and regulations relating
20 to confidentiality.

21 13. **NON-DISCRIMINATION**

22 During the performance of this Agreement, CONTRACTOR shall not unlawfully
23 discriminate against any employee or applicant for employment, or recipient of services, because of
24 race, religion, color, national origin, ancestry, physical disability, medical condition, sexual orientation,
25 marital status, age or gender, pursuant to all applicable State of California and Federal statutes and
26 regulations.

27
28 ///

1 14. **DISCLOSURE OF SELF-DEALING TRANSACTIONS**

2 This provision is only applicable if the CONTRACTOR is operating as a
3 corporation (a for-profit or non-profit corporation) or if during the term of this agreement, the
4 CONTRACTOR changes its status to operate as a corporation.

5 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing
6 transactions that they are a party to while CONTRACTOR is providing goods or performing services
7 under this agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR
8 is a party and in which one or more of its directors has a material financial interest. Members of the
9 Board of Directors shall disclose any self-dealing transactions that they are a party to by completing
10 and signing a Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit C and
11 incorporated herein by reference, and submitting it to the COUNTY prior to commencing with the self-
12 dealing transaction or immediately thereafter.

13 15. **AUDITS AND INSPECTIONS**

14 The CONTRACTOR shall at any time during business hours, and as often as
15 the COUNTY may deem necessary, make available to the COUNTY for examination all of its records
16 and data with respect to the matters covered by this Agreement. The CONTRACTOR shall, upon
17 request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data
18 necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

19 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR
20 shall be subject to the examination and audit of the Auditor General for a period of three (3) years after
21 final payment under contract (Government Code Section 8546.7).

22 16. **NOTICES**

23 The persons and their addresses having authority to give and receive notices
24 under this Agreement include the following:

COUNTY	CONTRACTOR
Director, County of Fresno	Health Monitoring Systems, Inc.
Department of Public Health	Attn: Contract Department
P.O. Box 11867	700 River Avenue #100
Fresno, CA 93775	Pittsburg, PA 15212

1
2 17. **GOVERNING LAW**

3 The parties agree, that for the purposes of venue, performance under this Agreement is
4 to be in Fresno County, California.

5 The rights and obligations of the parties and all interpretation and performance of this
6 Agreement shall be governed in all respects by the laws of the State of California.

7 18. **FORCE MAJEURE**

8 Neither Party shall be liable for any delay or failure in performance of all or any part of
9 its obligations under this Agreement to the extent that such delay or failure is a result of any cause
10 beyond such Party's reasonable control, including any act of God, act of government, act of civil or
11 military authority, war, riot, terrorism, insurrection, civil commotion, embargo, labor dispute, fire,
12 explosion, flood, accident or interruption of power, telecommunications, or other goods or services.

13 19. **SEVERABILITY**

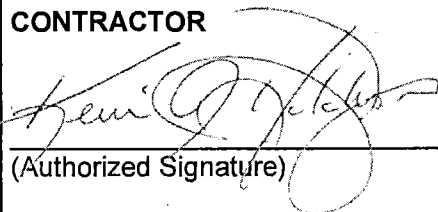
14 The provisions of this Agreement are severable. The invalidity or unenforceability of
15 anyone provision in the Agreement shall not affect the other provisions.

16 20. **ENTIRE AGREEMENT**

17 This Agreement, including all Exhibits constitutes the entire agreement between
18 the CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all
19 previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
20 understanding of any nature whatsoever unless expressly included in this Agreement.

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and
2 year first hereinabove written.

3
4 **CONTRACTOR**

5
6 
7 (Authorized Signature)

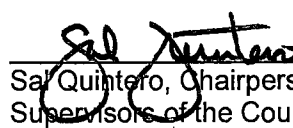
8
9 Kevin J Hutchison, CEO July 18, ,2018
10 Print Name & Title

11
12 Mailing Address:
13 Health Monitoring Systems, Inc.
14 Attn: Contract Department
15 700 River Avenue #100
16 Pittsburg, PA 15212
17 Phone #: (412)-231-2020 x115
18 Contact: John Maletta

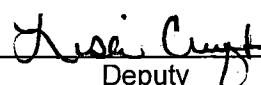
19
20
21
22
23
24
25
26
27
28
FOR ACCOUNTING USE ONLY:

ORG No.: 56201621
Account No.: 7295
Requisition No.:

COUNTY OF FRESNO

5
6 
7 Sal Quintero, Chairperson of the Board of
8 Supervisors of the County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 
Deputy

CUSTOMER SERVICE AGREEMENT

EXHIBIT A

INTRODUCTION

HMS offers Software-as-a-Service and supporting technology services for the collection, display, and monitoring of health-related data, automatically and in real time. It has developed the EpiCenter Service (described below) through which health-related data is transmitted and stored electronically from various geographically disperse data sources.

Customer requires access to information regarding the health of a geographically disperse Community and wishes to provide users access to health-related data through the EpiCenter Service.

This Agreement sets forth the terms and conditions under which the Customer may provide its users access to the HMS System (defined below).

I. DEFINITIONS

As used in this Agreement, the following terms have the following meanings. Other terms used in this Agreement may be defined where they are used and have the meaning there indicated. Those terms, acronyms and phrases utilized in the information technology services industry or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context.

- A. “Affiliate” means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity.
- B. “Applicable Law” means any and all applicable federal, state, local, common law, foreign and intergovernmental laws, rules, regulations, directives and guidelines, including but not limited to HIPAA; the Anti-Kickback provisions of the Social Security Act and related regulations; the federal Physician Ownership and Referral Law and related regulations; and state and federal pharmacy laws and regulations.

“Confidential Information” means information relating to each Party’s products, services or methods of operation; all information in any form furnished or made available directly or indirectly by one Party to the other Party by or through the Community Health Surveillance System, including patient information, IIHI and other data or information provided by Participants; information in or relating to the Community Health Surveillance System Materials; and the terms and conditions of this Agreement. Confidential Information shall not include any particular information that the receiving Party can demonstrate was at the time of disclosure to it in the public domain; after disclosure to it, is published or otherwise becomes part of the public domain through no acts or omissions of the receiving Party; was in the possession of the receiving Party at the time of disclosure to it without obligation of confidentiality; was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further use or disclosure; or was independently developed by the receiving Party without reference to Confidential Information of the furnishing Party.

- C. “Control” and its derivatives mean with regard to any entity the legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the voting rights attached to the capital stock (or other ownership or membership interest, if not a corporation) of such entity.
- D. “Customer Data” means any data or information relating to Customer, or its services or operations, provided to HMS by or on behalf of Customer.
- E. “Customer System” means the information system products or services used by Customer which includes any interface used by Customer to allow a Customer to access, provide or communicate information through the HMS System.
- F. “Customer User” means a public health professional, physician or other health care provider, entity, facility or government organization that has entered into a written agreement with Customer or HMS for Customer to provide information.
- G. “Data Source” means a healthcare provider, over-the-counter drug retailer, pharmacy, testing laboratory, health benefit payor or administrator or other similar entity which has entered into a written agreement with HMS to allow Customer and Customer Users access to information in the Data Source’s possession through the HMS System.
- H. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended, and related regulations.
- I. “HMS Data” means any data or information relating to HMS, or its services or operations, provided to Customer by or on behalf of HMS, including statistics collected by HMS regarding transactions processed by the HMS System, test data, test cases, configuration information and problem description and resolution information.
- J. “HMS Implementation Guides” means guides provided by HMS for interfacing to the HMS System and for participation in the HMS System, as such guides may be further developed or modified by HMS.
- K. “HMS Materials” means the HMS Implementation Guides, the HMS System Implementation Project Plan and other materials that HMS provides to Customer to enable its participation in the HMS System, as they may be further developed or modified by HMS.
- L. “HMS System” means the HMS Materials, interfaces, functionality and transaction maps made available by HMS to Customer pursuant to this Agreement, as they may be further developed or modified by HMS.
- M. “HMS System Implementation Project Plan” means the document that sets forth steps necessary to establish and maintain the Data Sources and User access to the HMS System.
- N. “IIHI” means all individually identifiable health information as defined by HIPAA that is provided directly or indirectly by or on behalf of one Party to the other Party.

- O. “Intellectual Property Rights” means all intellectual property and proprietary rights in and to the subject matter of such rights in any form or medium now known or later devised, including rights in copyrights, trade secrets, trademarks (including service marks), trade dress, patents, inventions, know-how, methodologies, and industrial design rights, in each case whether registered or unregistered, and including any application for registration of any of the foregoing, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these, which may exist anywhere in the world.
- P. “Participant” means the Data Sources, health care providers or facilities, public health departments, information system vendors, or other entities, each of which has entered into a written agreement with HMS, or has the right through another entity’s written agreement with HMS, to access, provide or communicate information through the HMS System.
- Q. “Services” means the services provided by HMS under this Agreement.
- R. “Service Levels” means the qualitative and quantitative performance standards set forth in this Agreement with regard to particular obligations of the Parties.
- S. “Term” means the initial term of this Agreement and any renewal terms.

II. HMS SERVICES

- A. License and Access to Services. Subject to the terms of this Agreement, commencing on the Effective Date, HMS hereby grants to Customer and Customer Users for the Term of this Agreement a limited, nonexclusive, nontransferable right and license, without the right to grant sublicenses, solely in the United States, to access the functionality of the HMS System as described on Schedule A.
- B. License Restrictions. Customer and Customer Users shall not sell, lease, assign, sublicense or otherwise transfer or disclose the HMS System or HMS Materials in whole or in part, to any third party, or allow any third party to access the HMS System. No right or license is granted by this Agreement to Customer or Customer Users to use, possess or to make any modifications or derivative works to the HMS System or HMS Materials. Licensee shall not copy the HMS Products or HMS Materials in whole or in part, except as reasonably necessary for archival back-up purposes and for training or testing purposes. All copies of the HMS System and HMS Materials must contain all proprietary marks, legends and copyright notices that appear on the original copies delivered to Customer by HMS. All rights not expressly granted pursuant to this Agreement are reserved by HMS.
- C. Implementation and Ongoing Operations. Customer and HMS shall mutually implement the HMS System Implementation Project Plan through a single contact at each Party. In implementing the HMS System Implementation Project Plan and otherwise in participating in the HMS System, Customer shall comply with and conform to the HMS Implementation Guides and any other documentation provided to Customer as part of the HMS Materials. Customer acknowledges that some Data Sources may have requirements in addition to the HMS standards. HMS will notify Customer in writing of any such additional requirements and Customer shall work directly with the Data Source in regard to satisfaction of such requirements.

- D. HMS Services and Service Levels. HMS shall provide the Services under this Agreement in accordance with the Service Levels set forth on Schedule A.
- E. HMS Account Manager. HMS shall designate an HMS Account Manager to whom Customer may address operational communications concerning this Agreement.

III. CUSTOMER'S OBLIGATIONS IN REGARD TO HMS SERVICES

- A. Provision of HMS System to Customer Users. No Customer User shall have access to the HMS System unless and until such Customer User has entered into a written agreement with Customer including at least the following terms: a provision that the Customer User will keep confidential any HMS or Participant Confidential Information; a provision that the Customer User will use or disclose any IHI obtained or sent through the HMS System only in a manner consistent with all Applicable Law, including HIPAA and including obtaining any consents or authorizations required to be obtained by such Applicable Law, and that all consents and authorizations will allow disclosure of all data elements transmitted through the HMS System whether or not Customer User intends to utilize such data elements; a provision that the Customer User will under no circumstances use or allow any use of any data accessed by the Customer User through the HMS System other than for the specific purposes identified on Schedule A; a provision that the Customer User will allow Customer and/or HMS to access, inspect and audit records of the Customer User relating to the use of the HMS System, HMS Data and data or information provided by Participants; and a provision that contains the disclaimer contained in Section VIII of this Agreement.
- B. Changes to HMS System. During the Term, if HMS makes any addition or modification to the HMS System in order to comply with Applicable Law, Customer shall complete any and all corresponding additions or modifications required to be made to the Customer System as a result of the change to the HMS System within the earlier of sixty (60) days after the date of HMS's written notice of such change to Customer or such time period required by Applicable Law. During the Term, if HMS makes any addition or modification to the HMS System that is not required to comply with Applicable Law, Customer shall complete any and all corresponding additions or modifications required to be made to the Customer System as a result of the change to the HMS System within ninety (90) days after the date of HMS's written notice of such change to Customer.
- C. Use of HMS System. Customer shall not use, and shall not permit Customer Users or any other person or entity to use, the HMS System except for the specific purposes identified on Schedule A and as expressly authorized in this Agreement. Customer shall not, and shall not permit Customer Users or any other person or entity to, reproduce, publicly display, publicly distribute, or create derivative works of the HMS System.

Data or Information Provided by Participants. Customer shall not, and shall require that Customer Users do not, make any use of any data or information provided by Participants to Customer or Customer Users by or through the HMS System except for the specific purposes identified on Schedule A and as expressly authorized in this Agreement. Customer shall not, and shall not permit Customer Users to, attempt to capture, open, examine, modify, add commercial or other messages to, repackage, distribute, license, sell or make any commercial use of any data or information provided by Participants to Customer or Customer Users by or through the HMS System other than as specifically

permitted under this Agreement. Customer shall engage in no act or omission which would interfere with, modify or delay the transmission of any data or information provided by Participants which is communicated to or from Customer Users through the Customer System. HMS may share Customer Data, and/or data or information relating to Customer Users, with other Participants to the extent necessary to fulfill the terms and conditions of this Agreement. Nothing in this Agreement is intended to restrict use of data or information provided by Participants and obtained or sent through the HMS System once such data or information has become a part of a patient's permanent record, and such data or information may be used as data in the patient's permanent record obtained other than through the HMS System may be used, subject in all cases to Applicable Law, including, without limitation, any and all consents and authorizations required by Applicable Law.

- D. Implementation Costs. Customer shall obtain any equipment, communications lines, telecommunications equipment, routers and software as described in the HMS Implementation Guides at Customer's sole expense. Customer shall bear all costs for implementation and modification of the Customer System necessary to connect to the HMS System at Customer's sole expense.
- E. Data Source Recruitment. Within thirty (30) days of the Effective Date, Customer shall designate in writing certain Data Sources, which may be eligible to be included in the HMS System. These Data Sources shall be known as "Customer-Recruited Data Sources". Customer shall be responsible for obtaining a "Commitment Letter", substantially in the form attached hereto as Schedule A-2, from an authorized representative of each Customer-Recruited Data Source within one (1) year of being designated a Customer-Recruited Data Source by Customer in the manner provided in this Section III F. HMS shall retain sole discretion to determine whether any particular Customer-Recruited Data Source shall be included in the HMS System. Customer acknowledges that in no event shall a Customer-Recruited Data Source be included in the HMS System until HMS has received and accepted an executed Commitment Letter from such Customer-Recruited Data Source.
- F. Data Provider Implementation Costs. Customer shall be responsible for all third party fees incurred by Customer Recruited Data Sources. Customer acknowledges that Customer-Recruited Data Sources may require reimbursement by Customer for costs incurred during the course of the project. Customer represents and warrants that Customer possesses adequate financial resources to fund such reimbursement.
- G. Customer Account Manager. Customer shall designate a Customer Account Manager to whom HMS may address operational communications regarding this Agreement.

IV. PROPRIETARY RIGHTS AND CONFIDENTIALITY

- A. Ownership. Except for the limited license expressly granted in Section II A of this Agreement, no license or conveyance of the HMS System or the Intellectual Property Rights in or to the HMS System, the HMS Materials, or in any modified versions or derivative works of the HMS System is granted to Customer or implied under this Agreement, and all such rights are expressly reserved by HMS. Customer acknowledges

that the HMS System has been developed and will continue to be improved through an open and collaborative process that includes the incorporation by HMS of improvements suggested by Participants. Accordingly, if Customer provides any ideas, advice, recommendations, evaluations, representations of needs, proposals, improvements or the like relating to the HMS System (“HMS System Feedback”), Customer hereby irrevocably and unconditionally grants and assigns, and shall grant and assign, to HMS all right, title and interest, including all Intellectual Property Rights, in and to all such HMS System Feedback; provided, however, that the foregoing does not grant or assign to HMS any right, title or interest in or to the Customer System.

- B. Residual Knowledge. Nothing contained in this Agreement shall restrict a Party from the use of any general ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques retained in the unaided mental impressions of such Party’s personnel relating to the work, products or services which either Party, individually or jointly, develops or discloses under this Agreement, provided that in doing so such Party does not otherwise breach any other obligations of this Agreement or infringe the Intellectual Property Rights of the other Party or of third parties who have licensed or provided materials to the other Party. Except for the licenses expressly granted in this Agreement, neither this Agreement nor any disclosure made hereunder grants any license to either Party under any Intellectual Property Rights of the other Party.
- C. Safeguarding Data. Each Party shall establish and maintain safeguards against the destruction, loss or alteration of the other Party’s data or information, including data or information provided by or through the other Party’s System, that comes into the first Party’s possession or control, and such safeguards shall be no less rigorous than those maintained by the first Party for its own information of a similar nature but no less than a reasonable standard of care. Each Party shall have in place appropriate administrative, technical and physical safeguards to protect the privacy of IIHI. Each Party shall reasonably safeguard IIHI from any intentional or unintentional use or disclosure that is or would be in violation of Applicable Law, including HIPAA, and shall limit incidental uses or disclosures made pursuant to an otherwise permitted or required disclosure. Each Party shall utilize commercially reasonable efforts, including through systems security measures, to guard against the unauthorized access, alteration or destruction of the other Party’s System, the other Party’s data and information, and data and information provided through the other Party’s System. Such measures shall include the installation of software which requires all users to authenticate their identity prior to gaining access to the information systems, controls and tracks the addition and deletion of users and controls, and tracks user access to areas and features of the information systems.
- D. Confidentiality. HMS and Customer each acknowledge that they may be furnished with, receive or otherwise have access to Confidential Information of, provided by or on behalf of, or concerning the other Party, which such Party considers to be confidential, a trade secret or otherwise restricted. Customer and HMS shall each use at least the same degree of care as it employs to avoid unauthorized disclosure of its own information, but in any event no less than commercially reasonable efforts, to prevent disclosure to unauthorized parties of the Confidential Information of the other Party, provided, however, that such information may be disclosed to properly authorized entities as and to the extent necessary for performance of obligations under this Agreement and subject to confidentiality terms no less restrictive than those set forth in this Agreement.

Upon expiration or termination of this Agreement each Party shall return or destroy, as the other Party may direct, all material in any medium that contains, refers to or relates to such other Party's Confidential Information and shall retain no copies except as may be required to comply with Applicable Law. In the event of any unauthorized disclosure or loss of, or inability to account for, any Confidential Information of the furnishing Party, the receiving Party shall promptly notify the furnishing Party and take such actions as may be necessary or as are reasonably requested by the furnishing Party and cooperate with the furnishing Party to minimize the violation and any damage resulting from the violations.

A Party may disclose Confidential Information of the other Party as required to satisfy any legal requirement of a competent government body provided that, immediately upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party of the request prior to making such disclosure in order that the other Party may interpose an objection to such disclosure or take such other action as it deems appropriate to protect the Confidential Information. This includes disclosures pursuant to the California Public Records Act.

Each Party's Confidential Information shall remain the property of that Party. Nothing contained in this section shall be construed as obligating a Party to disclose its Confidential Information to the other Party or as granting to or conferring upon a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party. Each Party acknowledges that any breach of this section may cause substantial and irreparable harm and therefore, in addition to any other remedies which may be available, a Party shall have the right to seek specific performance or other injunctive or equitable relief to prevent or remedy such breach.

V. COMMUNICATIONS

- A. Public Announcements. The Parties shall cooperate in making a public announcement regarding this Agreement, but neither Party shall issue a press release or other public announcement regarding this Agreement without the prior written approval of the other Party. Either Party may make such filings with, or disclosures to, governmental authorities as it deems appropriate regarding this Agreement.
- B. Promotional Materials. Each Party hereby grants to the other Party a non-exclusive, royalty-free license during the Term of this Agreement to state or otherwise publish in any marketing, publicity or other similar materials, including electronic documents maintained on the World Wide Web or otherwise accessible via the Internet, that Customer is a Participant in the HMS System, and to include the name of and the Uniform Resource Locator for its World Wide Web site in the other Party's marketing, publicity or other similar materials.

VI. FEES

- A. Fees Due to HMS
 - 1. Participating Data Source Initiation Fees. Customer shall pay to HMS a one- time, non-refundable fee for each new Customer-Recruited Data Source designated by

Customer pursuant to Section III F (each fee, a “Participating Data Source Initiation Fee”). Each applicable Participating Data Source Initiation Fee shall be due and payable at the time that HMS accepts from Customer the corresponding Customer-Recruited Data Source Commitment Letter. If, within one (1) year of Customer’s designation of the Customer- Recruited Data Sources in the manner provided for in Section III F, Customer fails to submit to HMS a duly executed Commitment Letter from each such Customer-Recruited Data Source, Customer shall pay to HMS fifty percent (50%) of the applicable Participating Data Source Initiation Fee for each such Customer-Recruited Data Source. In the event that Customer timely submits a Commitment Letter to HMS on behalf of a Customer-Recruited Data Source and HMS subsequently fails to connect such Customer-Recruited Data Source to the HMS System for any reason, HMS shall refund the corresponding Participating Data Source Initiation Fee to Customer. The schedule of Participating Data Provider Initiation Fees is set forth in Exhibit B.

2. Participating Data Source Annual Fees. Customer shall pay to HMS a “Participating Data Source Annual Fee”. This fee is an annual non-refundable fee payable for each Customer-Recruited Data Source and due each year on the anniversary of the Effective Date. The schedule of Participating Data Provider Annual Fees is set forth in Exhibit B.
3. Annual Service Fees. Customer shall pay to HMS an “Annual EpiCenter Service Fee.” This is an annual, non-refundable fee payable for Customer’s use of the HMS System.

- B. Taxes. Customer shall be solely responsible for any sales, use, excise, value-added, services, consumption or other tax that is assessed on the provision of any or all of HMS’s Services under this Agreement.

VII. WARRANTIES; DISCLAIMERS

- A. By Customer. Customer represents and warrants to HMS that it has the full corporate power and authority to enter into this Agreement and to perform its obligations hereunder and that it is duly authorized to execute and deliver this Agreement and has all necessary licenses, authorizations and approvals to perform its obligations as set forth herein;
- B. By HMS.
1. Warranties. HMS represents and warrants to Customer that (a) it has the full corporate power and authority to enter into this Agreement and to perform its obligations hereunder; (b) it is duly authorized to execute and deliver this Agreement and has all necessary licenses, authorizations and approvals to perform its obligations as set forth herein; (c) the execution, delivery and performance of this Agreement does not conflict with any agreement, instrument or understanding to which it is a party or may be bound nor does it violate any law or regulation of any court, governmental body or administrative or other agency; (d) HMS and HMS’s Affiliates are and shall be in compliance with all Applicable Laws; and (e) the HMS

System does not and shall not infringe any Intellectual Property Rights of a third party.

2. DISCLAIMERS. OTHER THAN AS EXPRESSLY PROVIDED IN THIS SECTION VII B, HMS DOES NOT PROVIDE ANY EXPRESS WARRANTIES OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. HMS MAKES NO REPRESENTATION OR WARRANTY REGARDING THE AVAILABILITY THROUGH THE HMS SYSTEM OF ANY PARTICULAR DATA SOURCE OR OTHER PARTICIPANT. AT ANY TIME, HMS MAY ADD AND/OR DELETE DATA SOURCES OR OTHER PARTICIPANTS FROM THE HMS SYSTEM OR MAY LIMIT CUSTOMER AND/OR ANY CUSTOMER USER ACCESS TO THEIR DATA, AND SUCH CHANGES MAY OCCUR WITHOUT PRIOR NOTICE TO CUSTOMER OR CUSTOMER USERS.

VIII. GENERAL

- A. Compliance with Applicable Law. Each Party shall perform its obligations under this Agreement in a manner that complies with Applicable Law. The Parties shall take such action as is necessary to amend this Agreement from time-to-time in order for each Party to comply with the requirements of Applicable Law.
- B. Waiver of Default. A delay or omission by either Party to exercise any right or power under this Agreement shall not be construed to be a waiver of the right or power. A waiver by a Party of any of the obligations of the other Party or of a breach by the other Party of its obligations shall not be construed to be a waiver of any later breach or of any other obligation.
- C. Third-Party Beneficiaries. Except as otherwise expressly provided in this Agreement, this Agreement shall not be deemed to create any rights in third parties, including suppliers or customers of a Party, or to create any obligations of a Party to such third parties, and this Agreement may be enforced only by Customer and HMS and the successors, heirs and permitted assigns of each Party.

SCHEDULE A-1

EPICENTER SERVICE

HMS' EpiCenter Service is designed to allow authorized Users to electronically access analysis of health conditions. This Schedule A-1 describes the EpiCenter Services and sets out additional terms and conditions applicable to them.

The EpiCenter Service and supporting technology services provide for the collection, display, and monitoring of health-related data, automatically and in real time. Health-related data can include, but is not limited to, emergency department registration, disposition, and discharge data; laboratory test orders and results; and other data as available. EpiCenter analysis applies statistical techniques that evaluate the available data. EpiCenter cannot be utilized as a substitute for clinical or epidemiological expertise.

I. SERVICES

- A. Data collection and data storage services that standardize, annotate, and process data from Data Sources such that it is usable by data analysis services.
- B. Data analysis and visualization services that apply mathematical and statistical techniques to the collected data and display the results of analysis through electronic means such as email, web page display, or other report.

II. MODULES

- A. Emergency Department Registration Module. This module incorporates emergency department registration data into the EpiCenter services.

III. SERVICE LEVELS

- A. System Availability. Including contracted modules, will be provided with at least 95% uptime measured on a monthly basis, excluding scheduled outages and network connectivity outages beyond our control. Reasonable attempts will be made to conduct outages during a maintenance window of 11:00 PM EST/EDT Friday to 1:00 AM EST/EDT Saturday, but other times may be scheduled as deemed appropriate by HMS. Reasonable efforts will be made to notify customers in advance of scheduled outages.

- B. Technical support will be available via normal business hours (9-5 M-F, excluding HMS holidays) by phone or email. Technical support will be available by voice-mail after normal business hours for Severity 1 issues (defined below). Technical support requests will receive a response from HMS in the form of phone conversation, voice message, or email to the reporting customer. The expected time of the response is documented by the table below. The severity of issues will be determined by HMS according to the definitions below.

Severity Level	Description	Expected Response
1	EpiCenter and/or Mergence are unreachable from the Internet. The user is unable to access anomalies, investigations, and charts within EpiCenter.	Within two (2) hours during normal business hours or four (4) hours outside normal business hours. While fixing the problem, user updates are provided as requested.
2	The system is reachable, but one or more major components (e.g. anomalies, charts, maps) are inaccessible. Analysis methods are producing misleading results, significantly impacting the value of the service.	Within two (2) hours during normal business hours or four (4) hours outside normal business hours. While fixing the problem, user updates are provided as requested.
3	The system is reachable and functional, but a problem significantly impairs the expected and documented behavior of the system. Analysis methods produce results with non-material mistakes. Individual facilities have lost connection to Mergence.	Within two (2) hour during normal business hours. Such issues may be fixed immediately or updated in a release scheduled at next suitable time. User updates are provided as requested.
4	The system is reachable, functional, and all major components are usable. Problems affect the use of one component in non-material ways.	Within two (2) hour during normal business hours.

SCHEDULE A-2

**COMMITMENT LETTER
(to be placed on Customer-Recruited Data Source letterhead)**

[DATE]

[Customer]

[Customer Address]

[Customer Address]

Attn: [Customer Contact]

Dear [Customer Contact]:

On behalf of [Customer-Recruited Data Source], I have reviewed the [Customer]'s Community Health Surveillance project and fully support this initiative. I authorize Health Monitoring Systems to contact the appropriate staff at my organization to begin work on our data connection.

Sincerely,

[NAME]

[TITLE (CIO or CEO)]

Administrative Contact: _____

Title: _____

Telephone Number: _____

Email Address: _____

Technical Contact: _____

Title: _____

Telephone Number: _____

Email Address: _____

Fresno County

	Year 1	Year 2	Year 3	Year 4	Year 5
Service Fees					
Annual EpiCenter Service Fee	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000
Discount	(65,625)	(65,625)	(65,625)	(65,625)	(65,625)
Insurance	2,000	2,000	2,000	2,000	2,000
	<u>\$ 11,375</u>	<u>\$ 11,375</u>	<u>\$ 11,375</u>	<u>\$ 11,375</u>	<u>\$ 11,375</u>
Healthcare Facility Connections					
Participating Data Source Initiation Fee - Amount per facility to be connected*	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Estimated (max.) new hospitals	1	1	1	1	-
	<u>\$ 5,000</u>	<u>\$ 5,000</u>	<u>\$ 5,000</u>	<u>\$ 5,000</u>	<u>\$ -</u>
Participating Data Source Annual Fee - Amount per existing facility maintenance**	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Pre-existing facility connections	6	7	8	9	10
Facilities Connected Previous Years	-	-	-	-	-
	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
	6,000	7,000	8,000	9,000	10,000
Other Services To Be Provided***					
Optional services	\$ 1,750	\$ 1,750	\$ 1,750	\$ 1,750	\$ 1,750
	\$ -	\$ -	\$ -	\$ -	\$ -
	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
	\$1,750	\$1,750	\$1,750	\$1,750	\$1,750
Total Costs					
	<u><u>\$ 24,125</u></u>	<u><u>\$ 25,125</u></u>	<u><u>\$ 26,125</u></u>	<u><u>\$ 27,125</u></u>	<u><u>\$ 23,125</u></u>
Other Items To Be Budgeted					
Third Party vendor fees (est.)	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500
Estimated (max.) new hospitals	-	-	-	-	-
	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Total Budget	<u><u>\$ 24,125</u></u>	<u><u>\$ 25,125</u></u>	<u><u>\$ 26,125</u></u>	<u><u>\$ 27,125</u></u>	<u><u>\$ 23,125</u></u>

* Amount per Facility to be Connected costs are shown as \$5,000 annually for each of Years 1 to 4, with one facility being added each of these years, in order to show the anticipated, average yearly cost. However, new healthcare facilities could be connected at any time within the contract period. Actual connection costs will be incurred during the year the new facility is connected.

** Existing Facility Maintenance costs are shown as one additional facility's costs being added during each of Years 2 to 5. If new healthcare facility connections are added more quickly than one per year, the annual existing facility maintenance costs will rise accordingly. Should this occur, associated costs will be absorbed by funding available within the "Other Services to be Provided" section, or through contract amendment approved prior to expenditures being incurred.

*** Optional Services to be Provided costs are listed as \$1,750 during each of Years 1 to 5 in order to show the anticipated, average yearly cost. However, costs during a given year may exceed the yearly average, but may not exceed the total contracted amount for these Optional Services within the contract period. Optional Services will not be provided without prior written authorization from COUNTY.

SELF-DEALING TRANSACTION DISCLOSURE FORM

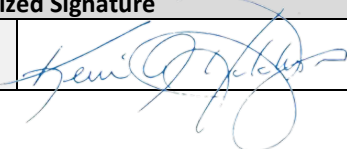
In order to conduct business with the County of Fresno (hereinafter referred to as “County”), members of a contractor’s board of directors (hereinafter referred to as “County Contractor”), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

“A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest.”

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member’s name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member’s company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the Corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation’s transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

(1) Company Board Member Information:			
Name:	Kevin J Hutchison	Date:	July 18, 2018
Job Title:	Chairman		
(2) Company/Agency Name and Address:			
None			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
None			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	