

**AGREEMENT**

THIS AGREEMENT is made and entered into this 29th day of January 2019, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and the Central Valley Health Information Exchange (CVHIE), a California nonprofit, public benefit corporation whose address is, 5629 N. Figarden Drive Suite 101, Fresno, CA 93722, hereinafter referred to as "CONTRACTOR".

**WITNESSETH:**

WHEREAS COUNTY desires to partner with universities, hospitals and other interested parties to investigate health outcomes in Fresno County; and

WHEREAS COUNTY desires for the Departments of Public Health and Behavioral Health to have the ability to monitor conditions that significantly impact the quality of life of Fresno County residents, in real-time, for the targeted application of educational interventions and materials, managing communicable diseases, and outreach for conditions of interest; and

WHEREAS COUNTY desires to improve public health surveillance abilities and response time through use of real time monitoring of chronic, acute and communicable diseases and improve patient tracking/identification during public health threat events that may result in mass injuries, mass fatalities or other medical surge conditions; and

WHEREAS health information exchanges (HIE) are a repository for patients' health information and allow health care professionals and providers to appropriately access and securely share patients' protected health information (PHI) electronically, meeting Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security and Meaningful Use requirements; and

WHEREAS access to an HIE will benefit COUNTY by providing the Departments of Public Health and Behavioral Health access to critical medical information about their clients to achieve the identified objectives; and

WHEREAS CONTRACTOR was established in 2013 to provide physicians, hospitals, clinics and other healthcare providers in California's Central Valley access to electronic health records via an HIE; and

WHEREAS CONTRACTOR's members/affiliates are located in Fresno, Madera, Tulare and Kings

Counties and include nine hospitals, four clinics in 47 locations and a provider network with numerous physicians in various locations, and another county's health department. Fresno County's Department of Public Health is also a CVHIE affiliate to the extent that it is an active participant at CVHIE's Board of Directors meetings, provides CVHIE with data pertinent to the Department's HIE related needs and has provided input as appropriate in assisting CVHIE in selecting a technology infrastructure subcontractor; and

WHEREAS CONTRACTOR is willing and able to provide COUNTY with access to an HIE which would meet COUNTY'S stated desires.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. **OBLIGATIONS OF THE CONTRACTOR**

See attached Exhibit A

2. **OBLIGATIONS OF THE COUNTY**

- A. COUNTY shall maintain data in compliance with federal and state regulations.
- B. County shall provide direction regarding which account to deposit COUNTY funds excluding annual fee account.
- C. COUNTY shall appoint (1) representative to the to the CONTRACTOR's Board of Directors.

3. **TERM**

The term of this Agreement shall be for a period of one (1) year, commencing on December 11, 2018 through and including December 10, 2019. This Agreement may be extended for two (2) additional consecutive twelve (12) month periods upon written approval of both parties no later than thirty (30) days prior to the first day of the next twelve (12) month extension period. The Director of the Department of Public Health or his or her designee is authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR'S satisfactory performance.

4. **TERMINATION**

A. **Non-Allocation of Funds** - The terms of this Agreement, and the services to be provided hereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement

terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

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

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

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

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

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

## 5. COMPENSATION

COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation as follows: up to \$150,000 annually to be used to fully fund the annual fee account with the remainder to be divided, as determined by the County, among all accounts identified in Exhibit A, Paragraph 7, except for

1 the Specialized Funding for All Counties Participating in CVHIE account. The Specialized Funding account  
2 may include a deposit(s) during the term of the agreement of up to \$500,000 if federal or state funds are  
3 made available, which may be provided to CONTRACTOR in one lump sum in any single year, or a portion  
4 of the \$500,000 may be provided to CONTRACTOR during multiple years, up to a total of \$500,000 for the  
5 term of the Agreement. In no event shall services performed under this Agreement be in excess of  
6 \$950,000 during the term of this Agreement. It is understood that all expenses incidental to  
7 CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR.

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

12         If Contract is terminated with a balance in accounts referenced in Exhibit A, County shall provide  
13 direction on final disposition of funds which may include returning funds to the County.

14         6.         **INVOICING**

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

18         7.         **INDEPENDENT CONTRACTOR**

19         In performance of the work, duties and obligations assumed by CONTRACTOR under this  
20 Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of the  
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 right  
24 to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and  
25 function. However, COUNTY shall retain the right to administer this Agreement so as to verify that  
26 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

27         CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and  
28 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

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

8 **8. MODIFICATION**

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

11 **9. NON-ASSIGNMENT**

12 Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties under  
13 this Agreement without the prior written consent of the other party.

14 **10. HOLD HARMLESS**

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

23 **11. INSURANCE**

24 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third  
25 parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance  
26 policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or  
27 Joint Powers Agreement (JPA) throughout the term of the Agreement:  
28

1                   A.     Commercial General Liability

2                   Commercial General Liability Insurance with limits of not less than Two Million Dollars  
3 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This  
4 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including  
5 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal  
6 liability or any other liability insurance deemed necessary because of the nature of this contract.

7                   B.     Automobile Liability

8                   CONTRACTOR does not own any vehicles and does not have any employees. Independent  
9 contractors conducting business on behalf of CONTRACTOR responsible for providing their own  
10 Automobile Liability Insurance coverage.

11                  CONTRACTOR's Board of Directors are comprised of employees of the Founding Organizations  
12 identified in CONTRACTOR's Bylaws (Exhibit B) and, as such, are conducting business of behalf of  
13 their respective Founding Organizations when also conducting business on behalf of CONTRACTOR.  
14 Founding Organizations are responsible for providing Automobile Liability Insurance coverage for their  
15 respective employees when conducting business jointly on behalf of the Founding Organization and  
16 CONTRACTOR.

17                  If at any time, CONTRACTOR hires any employees, CONTRACTOR shall provide Comprehensive  
18 Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per  
19 accident for bodily injury and for property damages. Coverage will include any auto used in connection  
20 with this Agreement. CONTRACTOR acknowledges and agrees that COUNTY shall not provide  
21 Automobile Liability coverage for any of CONTRACTOR's officers, agents, employees or subcontractors  
22 and shall not be responsible for any damages due to CONTRACTOR's failure to secure such coverage.

23                  C.     Professional Liability

24                  If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in  
25 providing services, Professional Liability Insurance with limits of not less than One Million Dollars  
26 (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

27                  D.     Worker's Compensation

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

1                   E.     Additional Requirements Relating to Insurance

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

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

14            Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,  
15 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the  
16 foregoing policies, as required herein, to the County of Fresno, Department of Public Health, P.O. Box  
17 11867, Fresno, CA 93775, Attention: Contracts Section – 6<sup>th</sup> Floor, stating that such insurance coverage  
18 have been obtained and are in full force; that the County of Fresno, its officers, agents and employees will  
19 not be responsible for any premiums on the policies; that for such worker's compensation insurance the  
20 CONTRACTOR has waived its right to recover from the COUNTY, its officers, agents, and employees any  
21 amounts paid under the insurance policy and that waiver does not invalidate the insurance policy; that such  
22 Commercial General Liability insurance names the County of Fresno, its officers, agents and employees,  
23 individually and collectively, as additional insured, but only insofar as the operations under this Agreement  
24 are concerned; that such coverage for additional insured shall apply as primary insurance and any other  
25 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess  
26 only and not contributing with insurance provided under CONTRACTOR's policies herein; and that this  
27 insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice  
28 given to COUNTY.

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

4 All policies shall be issued by admitted insurers licensed to do business in the State of California,  
5 and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A  
6 FSC VII or better.

7 12. **CONFIDENTIALITY**

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

10 13. **NON-DISCRIMINATION**

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

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

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

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

27 15. **AUDITS AND INSPECTIONS**

28 The CONTRACTOR shall at any time during business hours, and as often as the COUNTY may



1 deem necessary, make available to the COUNTY for examination all of its records and data with respect to  
2 the matters covered by this Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit  
3 the COUNTY to audit and inspect all of such records and data necessary to ensure CONTRACTOR'S  
4 compliance with the terms of this Agreement.

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

8 16. **NOTICES**

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

11 COUNTY

12 Director, County of Fresno  
13 Department of Public Health  
14 P.O. Box 11867  
Fresno, CA 93775

CONTRACTOR

Central Valley Health Information Exchange  
5629 N. Figarden Drive Suite 101  
Fresno, CA 93722

15 All notices between the COUNTY and CONTRACTOR provided for or permitted under this  
16 Agreement must be in writing and delivered either by personal service, by first-class United States mail, by  
17 an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by  
18 personal service is effective upon service to the recipient. A notice delivered by first-class United States  
19 mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,  
20 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one  
21 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,  
22 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by  
23 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is  
24 completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the  
25 next beginning of a COUNTY business day), provided that the sender maintains a machine record of the  
26 completed transmission. For all claims arising out of or related to this Agreement, nothing in this section  
27 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,  
28 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,

beginning with section 810).

17. **GOVERNING LAW**

Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California.

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

18. **SEVERABILITY**

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in the Agreement shall not affect the other provisions.

19. **ENTIRE AGREEMENT**

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

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

3  
4 **CONTRACTOR**

5   
6 (Authorized Signature)

7 James C Franklin  
8 Print Name & Title


9 CHAIRMAN CVHIE  
10

11 Mailing Address:  
12 Central Valley Health Information  
13 Exchange  
14 5629 N. Figarden Drive, Suite 101  
15 Fresno, CA 93722

16  
17 **FOR ACCOUNTING USE ONLY:**

18 ORG No.: 56201621  
19 ORG No.: 56201691  
20 Account No.: 7295  
21 Requisition No.:  
22  
23  
24  
25  
26  
27  
28

**COUNTY OF FRESNO**

  
Nathan Magsig, Chairman of the Board of  
Supervisors of the County of Fresno

**ATTEST:**

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

By:   
Deputy

### **Scope of Work**

The Central Valley Health Information Exchange (CVHIE) was established in October 2013 to provide physicians, hospitals, clinics and other healthcare providers in California's Central Valley access to an electronic health records network. This ongoing effort is focused on developing a network for providers in Fresno, Kings, Madera and Tulare Counties, with the potential of expanding to other surrounding counties/cities.

Potential benefits of a health information exchange (HIE), and a partnership between the County and CVHIE include:

- Improved patient care and outcomes through access to more complete patient health records.
- Decreased health costs resulting from reduction of duplicated procedures.
- Improved public health surveillance abilities and Department of Public Health's response time due to real time monitoring of chronic, acute and communicable diseases.
- Improved patient tracking /identification during public health threat events that may result in mass injuries, mass fatalities or other medical surge conditions.
- Improved assessment of community intervention efforts and development of evidence-based practices in addressing community health issues.

In order to achieve these potential benefits and assist the County in achieving its goal of improved public health and health care overall, CVHIE will:

1. Approve the County of Fresno as a CVHIE Board Member within 60 days of execution of the Agreement.
2. CVHIE shall have an HIE vendor available for County to review and receive data from within 12 months of execution of this agreement.
3. CVHIE shall have an HIE vendor available to accept data from appropriate County departments within 18 months of execution of this agreement.
4. Facilitate the provision of data transmission and related services from its subcontractor to appropriate County of Fresno Departments, including the Department of Public Health (DPH) and Department of Behavioral Health (DBH). Such data transmission and related services will allow the DPH and DBH to conduct searches for patient data and to exchange patient data identified from those searches from a centralized computer system that facilitates the sharing of patient data among healthcare facilities and providers that are connected to the HIE. Additional Departments may be provided access to the HIE as determined appropriate through mutual agreement between the County Designee and CVHIE.
5. Facilitate the access to data and related services from its subcontractor to appropriate County of Fresno Departments, including DPH and DBH for the purposes of conducting population health data analysis, public health surveillance, communicable disease investigation, community health assessment, and evaluation of health outcomes for designated populations. Data transmission and/or viewing would be consistent with Health Insurance Portability and Accountability Act, sections 45 CFR 164.512 or 45 CFR 164.514.

6. Make necessary payments to its subcontractor to ensure continued operation of the HIE.
7. Deposit all County of Fresno payments into specified accounts as stipulated by the County Designee. These accounts will include the following:
  - Annual Fee: County of Fresno's standard annual fee to participate in CVHIE.
  - New Provider Recruitment Assistance: This account is established to offset costs in adding new Fresno County providers to CVHIE. These funds may be used for initial fees for all providers within Fresno County which would otherwise be required for their participation in the HIE. The County Designee will identify the specific providers for which the funds may be used.
  - Central California Emergency Medical Services Agency (CCEMSA): This account is established to fund Pre-Hospital Data Retrieval and/or the associated annual fee for emergency medical services amongst the four county area (Fresno, Madera, Tulare, Kings) or other CCEMSA requests. These funds may be used for hardware, software, annual fees and/or necessary components to implement the requests of CCEMSA.
  - Fresno County Overall HIE System Benefit: This account is established for offsetting costs to all Fresno County providers, hospitals and clinics only.
  - Specialized Funding for all Counties Participating in CVHIE: This account is established for specialized funding made available from federal and/or state sources that is awarded to all counties participating within the CVHIE and the CCEMSA networks. This funding would equitably offset existing or future costs for all providers, clinics and hospitals participating within CVHIE.
8. Receive written approval via email or other correspondence for expenditure of all County deposited funds from the County Designee prior to expenditure of these funds.
9. Provide quarterly and annual activity reports to the County. Activity reports shall identify all deposits and activities funded with County funds during the reporting period and the respective account balances at the finish of the reporting period. Quarterly reports shall be provided within 45 days following the end of the quarter and annual reports shall be provided within 45 days following the end of the fiscal year. Quarterly reporting periods shall be: July 1<sup>st</sup> – September 30<sup>th</sup>; October 1<sup>st</sup> – December 31<sup>st</sup>; January 1<sup>st</sup> – March 31<sup>st</sup>; and April 1<sup>st</sup> – June 30<sup>th</sup>. The annual reporting period shall be July 1<sup>st</sup> through June 30<sup>th</sup>.

**BYLAWS**

**of**

**CENTRAL VALLEY HEALTH INFORMATION EXCHANGE**

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**BYLAWS**  
**of**  
**CENTRAL VALLEY HEALTH INFORMATION EXCHANGE**

**ARTICLE I**  
**PURPOSES**

**SECTION 1 - Purposes.** This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. The specific purposes for which this corporation is organized are to establish and maintain a comprehensive system of health information exchange to promote and improve the general health of all persons within Central Valley region of California by, inter alia, improving the delivery of health care services, promoting healthcare related research and the adoption of best clinical practices, improving public health surveillance and reporting, and lessening the burdens of the government by promoting the meaningful use of interoperable electronic health records in accordance with standards adopted by the U.S. Department of Health and Human Services.

**SECTION 2 - Dedication of Assets.** The Corporation's assets are irrevocably dedicated to charitable purposes. No part of the net earnings, properties or assets of the Corporation, on dissolution or otherwise, shall inure to the benefit of any private person or individual, or to any director or officer of this Corporation. On liquidation or dissolution, all properties and assets of the Corporation remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed one or more nonprofit funds, foundations, or corporations that are organized and operated exclusively for charitable purposes and which has established its tax-exempt status pursuant to §501(c)(3) of the Internal Revenue Code (or the corresponding provision of any future federal internal revenue law).

**SECTION 3 - No Members.** This Corporation shall have no members.

**SECTION 4 - Governing Law.** The provisions of the California Nonprofit Public Benefit Corporation Law ("Law") shall govern the conduct of the affairs of the Corporation, except

as otherwise provided or modified herein or in the Articles of Incorporation to the extent permitted by the Law. This Corporation shall have and exercise all rights and powers conferred on nonprofit corporations under the Law.

## **ARTICLE II OFFICES**

**SECTION 1 - Principal Office.** The principal office for the transaction of the business of the Corporation shall be located at 1625 E. Shaw Avenue, Suite 139, Fresno, California. The Board of Directors may change the principal office from one location to another in said county, by resolution duly adopted and entered in the minutes of the Corporation. The Corporation may establish or maintain additional offices at such other places as the Board of Directors may determine.

## **ARTICLE III BOARD OF DIRECTORS**

**SECTION 1 - General Powers.** Subject to limitations of the Articles of Incorporation, these Bylaws, the Law, and any other applicable laws, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be controlled by, the Board of Directors. The Board of Directors may delegate the management of the activities of the Corporation to any person or persons, or committee or committees, however composed, provided that the activities and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, under the ultimate direction of the Board of Directors.

**SECTION 2 - Specific Powers.** Without prejudice to the general powers set forth in Section 1, Article III, of these Bylaws, but subject to the same limitations, the board shall have the power to do the following:

a. Appoint and remove, at the pleasure of the board, all corporate officers, agents, and employees; prescribe powers and duties for them as are consistent with the law, the Articles of Incorporation, and these Bylaws; fix their compensation; and require from them security for faithful service.

b. Change the principal office or the principal business office in California from one location to another; cause the Corporation to be qualified to conduct its activities in any other state, territory, dependency, or country; conduct its activities in or outside California; and designate a place in or outside California for holding any meeting of the board.

c. Borrow money and incur indebtedness on the Corporation's behalf and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities.

**SECTION 3 - Number of Directors.** The Board of Directors of the Corporation shall consist of not less than eleven (11) and no more than twenty (20) directors until changed by amendment of the Articles of Incorporation or by amendment to these Bylaws. The exact number of authorized directors within such range shall be determined by the Board of Directors. Until the Board fixes a different number, the number of Director shall be thirteen (13).

**SECTION 4 - Qualification of Directors.**

a. Each participating institution or government entity, listed on Exhibit A to these Bylaws, ("Founding Organization") shall designate an individual for appointment to the Board of Directors. Directors shall be designated from those persons in each Founding Organization who have the ability to participate effectively in fulfilling the Board of Directors' responsibilities and whose background, training and experience would enable them to fulfill such responsibilities. An organization shall cease to be a "Founding Organization," and shall cease to have the right to designate a director if it fails to enter into an agreement to participate in the Corporation's health information exchange, or if it ceases for any cause or reason to participate in the Corporation's health information exchange.

b. Not more than forty-nine percent (49%) of the persons serving on the Board of Directors at any time may be "interested persons" within the meaning of §5227 of the Law. Under §5227 of the Law, an interested person is (i) any person currently being compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor or otherwise,

excluding any reasonable compensation paid to a director as a director; and (ii) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person. However, any violation of the provisions of this Section shall not affect the validity or enforceability of any transaction entered into by this Corporation.

#### **SECTION 5 - Designated Directors.**

a. Each director shall be designated by a Founding Organization. Each director shall serve at the pleasure of the Founding Organization that designated the director, and shall only be removed by that Founding Organization, or by the Board of Directors for cause.

b. All designations of directors and removals of directors by a Founding Organization shall be in writing, signed by an authorized officer of the Founding Organization, and directed to the Secretary of the Corporation or the Chair of the Board. The power to designate a director is not transferable.

c. The Board may approve additional organizations as Founding Organizations, and each organization so approved shall have the rights of a Founding Organization under these Bylaws.

**SECTION 6 - Attendance.** Because full attendance at meetings of the Board of Directors is necessary, the Board of Directors may remove, without cause, any director who is absent from three (3) or more regular meetings in any twelve (12) month period.

**SECTION 7 - Vacancies.** A vacancy or vacancies on the Board of Directors shall be deemed to exist in case of death, resignation or removal of any director, or if the authorized number of directors is increased. A director shall cease to hold office without further action if the Founding Organization that designated him or her ceases to participate in the health information exchange operated by the Corporation, or if he or she ceases to be an officer, director or employee of the Founding Organization that designated him or her. No reduction of the authorized number of directors shall have the effect of removing any director without the approval of the Founding Organization that designated the director.

**SECTION 8 - Removal.** Any director may be removed from office without cause by the Founding Organization that designated him or her. The Board of Directors may by resolution declare vacant the office of any director who has been declared of unsound mind by a final order of court, or convicted of a felony, or found by final order or judgment of any court to have breached a duty under the Law, or who fails to attend meetings of the Board of Directors as specified in this Article III, Section 6. The Board of Directors may by resolution adopted by a majority of the directors who meet all of the qualifications to be a director declare vacant the office of any director who fails or ceases to meet any required qualification that was in effect at the beginning of that director's current term of office.

**SECTION 9 - Resignation.** Any director may resign effective upon giving written notice to the Chair of the Board, the President, the Secretary or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. If the Board of Directors accepts the resignation of a director tendered to take effect at a future time, the Founding Organization that designated the resigning director may designate a successor to take office when the resignation is to become effective. Except upon notice to the California Attorney General, no director may resign if the Corporation would then be left without a duly elected director or directors in charge of its affairs.

**SECTION 10 - Meetings.** Regular meetings of the Board of Directors shall be held at least quarterly. All meetings of the Board of Directors shall be held at the principal office of the Corporation or at such time and place within the Central Valley area as may be designated from time to time by resolution of the Board of Directors or by written consent of all members of the Board of Directors.

**SECTION 11 - Annual Meeting.** The Board of Directors shall hold an annual meeting for the purpose of the designation of directors and appointment of officers of the Corporation, the appointment of directors to committees of the Board of Directors, and for the transaction of other business. The annual meeting of the Board of Directors shall be held in the second quarter of each calendar year at such date and at such time as shall be designated by the Board of Directors. Notice of date, time and place of the annual meeting shall be given in accordance with Section 12 below.

**SECTION 12 - Special Meetings.** Special meetings of the Board of Directors for any purpose or purposes shall be called at any time by the Chair of the Board, the Vice Chair of the Board, the President, the Secretary, or by any four (4) directors. Written notice of the time and place of special meetings shall be delivered personally to the directors or sent to each director by mail or other form of written communication, charges prepaid, or by telephone (including voice messaging or other system designed to record and communicate messages), or by facsimile, email or other means of electronic transmission permitted by California Corporations Code §20. If the notice is mailed, it shall be deposited in the United States mail at least ten (10) days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or by facsimile, email or other means of electronic transmission, it shall be delivered at least forty-eight (48) hours prior to the time of the holding of the meeting. Oral notice given personally or by telephone may be communicated either to the director or a person at the office of the director, who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose of the meeting.

**SECTION 13 - Waiver of Notice.** Notice of a meeting need not be given to any director who, either before or after the meeting, signs a waiver of notice, a written consent to the holding of the meeting or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting need not be given to any director who attends the meeting without protesting, prior thereto or its commencement, the lack of notice to that director. All such waivers, consents and approvals shall be made a part of the minutes of the meeting.

**SECTION 14 - Adjournment.** A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the date, time and place for the reconvened meeting shall be given prior to the time the adjourned meeting is reconvened, in accordance with Section 12 of this Article III, to the directors who were not present at the time of the adjournment.

**SECTION 15 - Action Without Meeting.** Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if all voting members of the Board of Directors shall individually or collectively consent in writing to such action. Such action by written consent shall have the same force and effect as any other action taken by the Board of Directors at a duly called meeting at which a quorum is present. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

**SECTION 16 - Entry of Notice.** Whenever any director has been absent from any special meeting of the Board of Directors, an entry in the minutes to the effect that notice has been duly given shall be prima facie evidence that due notice of such special meeting was given to such director, as required by the Law and these Bylaws.

**SECTION 17 - Quorum.** A majority of the authorized directors shall constitute a quorum of the Board of Directors for the transaction of business, except adjournment. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, unless a greater number is required by the Articles of Incorporation, these Bylaws, or the Law, including, without limitation, those provisions relating to (a) approval of contracts or transactions in which a director has a direct or indirect material financial interest, (b) approval of certain transactions between corporations having common directorships, (c) creation of and appointments to committees of the Board, and (d) indemnification of directors. Except as otherwise provided in these Bylaws or the Law, a meeting at which a quorum is initially present may continue to transact business despite the withdrawal of some directors if any action taken or decision made is approved by at least a majority of the required quorum for that meeting.

**SECTION 18 - Participation in Meetings by Conference Telephone.** Members of the Board of Directors may participate in a meeting of the Board of Directors through use of conference telephone or other communications equipment if all of the following shall apply: (a) each director participating in the meeting can communicate with all other directors concurrently; (b) each director is provided the means of participating in all



matters before the Board of Directors, including the capacity to propose or to interpose an objection to a specific action to be taken by the Corporation; and (c) the Corporation adopts and implements some means of verifying both that (i) a person communicating by telephone, video or other communications equipment is a director or other person entitled to participate in the Board meeting, and (ii) all actions of, or votes by, the Board of Directors are taken or cast only by the director and not by any other person not permitted to participate as a director. Participation in a meeting pursuant to this Section constitutes presence in person at that meeting.

**SECTION 19 - Compensation.** Directors shall not be compensated for their service on the Board of Directors or on any committee of the Board of Directors.

**SECTION 20 - Conflict of Interest.** The Board of Directors shall adopt and enforce a policy on conflicts of interest and self-dealing that requires disclosure by all directors and officers of the Corporation, and other persons who are in a position to influence corporate decisions, of actual and potential conflicts of interest, and that will assure that no person holding such a position is permitted to vote on any issue, motion or resolution that directly or indirectly inures to his or her benefit financially or with respect to which he or she may have any other conflict of interest, except that a director who has a conflict of interest may be counted in order to constitute a quorum, and may, with the consent of the Board, present information to the Board on the issue, motion or resolution to the extent permitted by the conflict of interest policy or as otherwise determined by the Board of Directors, but may not participation in the deliberation or vote on the matter.

## **ARTICLE IV**

### **OFFICERS**

**SECTION 1 - Officers.** The officers of the Corporation shall be a Chair of the Board and/or President, a Secretary and a Treasurer and/or Chief Financial Officer. If no President is appointed, the Chair shall act as President. The Chair of the Board and the Secretary shall not be employed by the Corporation or otherwise accept any consulting, advisory or other compensatory fee from the Corporation. If there is no Chief Financial Officer, the Treasurer shall serve as Chief Financial Officer. The Corporation may also

have, at the discretion of the Board of Directors, one or more Vice Chairs, one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article IV. Any number of offices may be held by the same person, except that neither the Secretary, the Treasurer, nor the Chief Financial Officer may serve concurrently as President or Chair of the Board.

**SECTION 2 - Election; Term of Office.** The officers of the Corporation (other than an executive President, the Chief Financial Officer and the Executive Director) shall be elected annually by the Board of Directors. Unless the Board appoints the Chief Executive Officer as President, the Chair of the Board shall serve as President. The Chief Executive Officer, Executive Director and Financial Officer of the Corporation shall be appointed by the Board of Directors and shall serve at the pleasure of the Board. Subordinate officers appointed by the President shall serve at the pleasure of the President. Unless otherwise provided by resolution of the Board of Directors, officers elected at the annual meeting of the Board of Directors shall assume their office as of the annual meeting at which they are appointed and shall hold office until the annual meeting following the expiration of the term for which they were elected and until their successor is elected and qualified.

**SECTION 3 - Subordinate Officers.** The Board of Directors may appoint or authorize the President, the Chief Executive Officer or the Executive Director of the Corporation to appoint such other officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the Bylaws or as the Board of Directors or President may from time to time determine.

**SECTION 4 - Removal and Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors or to the Chair of the Board, or to the President or Secretary of the Corporation, without prejudice, however, to the rights, if any, of the Corporation under any contract to which such officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and

unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**SECTION 5 - Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or any other cause, shall be filled in the manner prescribed in these Bylaws for regular election or appointments to such office, provided that such vacancies shall be filled as they occur and not on an annual basis.

**SECTION 6 - Chair of the Board; President.** The Chair of the Board or, in his or her absence (or if there is no Chair), the Vice Chair or the President shall preside at all meetings of the Board of Directors. The Chair of the Board or President shall exercise and perform such other power and duties as may be designated by the Board of Directors. He or she shall act as the duly authorized representative of the Board of Directors in all matters in which the Board of Directors has not formally designated some other person to so act.

**SECTION 7 - Vice Chair of the Board.** The Vice Chair of the Board shall perform the duties of the Chair of the Board in his or her absence. He or she shall exercise and perform such other power and duties as may be designated by the Board of Directors.

**SECTION 8 - Chief Executive Officer.** If the Board appoints a Chief Executive Officer, he or she shall have general supervision, direction and control of the business and affairs of the Corporation. If the Board so determines, the Chief Executive Officer shall also serve as President.

**SECTION 9 - Executive Director.** In addition to or in lieu of the Chief Executive Officer, the Corporation may have an Executive Director who is selected and appointed by the President. The Executive Director shall serve as the chief operating officer and administrator of the Corporation, and have such authority and perform such other duties as the Board of Directors or the President may from time to time determine.

**SECTION 10 - Vice Presidents.** The Corporation may have one or more Vice Presidents as such positions are approved by the Board of Directors. Each Vice President shall serve as a vice president of the Corporation unless otherwise determined by the Board of Directors. The individuals appointed to fill such positions shall be selected and appointed

by the President of the Corporation. The Vice Presidents shall have such authority and perform such duties as the Board of Directors or the President may from time to time determine. In the event of the death, disability or other absence of the President, the then most senior Vice President, as determined based upon his or her tenure in office as Vice President, shall assume and perform the duties of the President until otherwise determined by the Board of Directors.

**SECTION 11 - Secretary.** The Secretary shall serve as the secretary of the Corporation. The Secretary shall keep, or cause to be kept, at the principal office of the Corporation or such other place as the Board of Directors may order, a book of minutes of all meetings of directors with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at directors' meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal office of the Corporation in the State of California, the original or a copy of the Articles of Incorporation and Bylaws, as amended to date, of the Corporation.

The Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors required by the Bylaws or by the Law to be given, and he or she shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors, the Bylaws, or the Law.

**SECTION 12 - Chief Financial Officer; Treasurer.** The Chief Financial Officer or Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation. The Chief Financial Officer or Treasurer shall cause to be given to the directors such financial statements and reports as are required to be given by law, these Bylaws or by the Board of Directors. The Chief Financial Officer or Treasurer shall deposit, or cause to be deposited, all monies and other valuables in the name and to the credit of the Corporation with such banks, trust companies and/or other depositories as may be designated by the Board of Directors. The Chief Financial Officer or Treasurer shall disburse, or cause to be disbursed, the funds of the Corporation and shall render or cause to be rendered to the Board of Directors, whenever requested, an account of all transactions of the Corporation

and an account of the financial condition of the Corporation. The Chief Financial Officer or Treasurer shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the President or the Chair of the Board.

## **ARTICLE V COMMITTEES**

**SECTION 1 - Committees of the Board.** The Board of Directors may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two (2) or more directors, to serve at the pleasure of the Board. Appointments to such committees shall be by a majority vote of the number of directors then in office provided a quorum is present. The Board of Directors may appoint one or more directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Any such committee shall have all the authority of the Board of Directors to the extent provided in the board resolution or resolutions (including any committee charter adopted by board resolution) creating and empowering the committee; provided that no committee may do any of the following:

- a. Take any final action on any matter that, under the Law, requires the approval of the members or approval of a majority of members of a nonprofit public benefit corporation;
- b. Elect directors or fill vacancies on the Board of Directors;
- c. Fix compensation of the directors for serving on the Board of Directors or any committee of the Board of Directors;
- d. Amend or repeal bylaws or adopt new Bylaws for the Corporation;
- e. Amend or repeal any resolution or action taken by the Board of Directors that by its express terms is not so amendable or repealable;

f. Create any other committees of the Board of Directors or appoint the members of committees of the Board, including any appointments to fill vacancies on committees of the Board of Directors;

g. Expend corporate funds to support a nominee for director; or,

h. Approve any contract or transaction in which one or more directors has a direct or indirect material financial interest, except as provided for in §5233(d)(3) of the Law.

The chair of each committee of the Board of Directors shall cause to be kept adequate minutes of committee proceedings and provide copies of such minutes to the members of the Board of Directors in a timely fashion and regularly report to the Board of Directors on the actions taken by such committee.

**SECTION 2 - Governance Committee.** The Governance Committee shall be responsible for the review and update of these Bylaws, to be submitted for adoption to the Board of Directors, and for identifying and recommending to the Board of Directors candidates for election to the Board of Directors when vacancies arise.

**SECTION 3 - Special Committees.** A special committee may be appointed at any time by the vote of a majority of the directors then in office, provided a quorum is present, for the purpose of reviewing and reporting on a particular matter. The committee shall serve until its report has been rendered to the Board of Directors.

## **ARTICLE VI**

### **TRANSACTIONS WITH DIRECTORS OR OFFICERS**

**SECTION 1 - Contracts with Directors.** No director of this Corporation, nor any other corporation, firm, association, or other entity in which one or more of this Corporation's directors are directors or in which they have a material financial interest, shall be interested, directly or indirectly, in any contract or transaction with this Corporation, unless (a) the material facts regarding that director's financial interest in such contract or transaction or regarding such common directorship, officership, or financial interest are fully disclosed in good faith and noted in the minutes, or are known to all members of the

Board of Directors prior to the Board of Directors' consideration of such contract or transaction; (b) such contract or transaction is authorized in good faith by a majority of the Board of Directors by a vote sufficient for that purpose without counting the votes of the interested directors; (c) before authorizing or approving such contract or transaction, the Board of Directors considers and in good faith decides after reasonable investigation that the Corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and (d) the contract or transaction is fair and reasonable to the Corporation at the time the transaction is entered into.

**SECTION 2 - Loans to Directors or and Officers.** This Corporation shall not lend any money or property to nor guarantee the obligation of any director or officer without the approval of the California Attorney General; provided, however, that the Corporation may advance money to a director or officer of the Corporation for expenses reasonably anticipated to be incurred in the performance of his or her duties if that director or officer would be entitled to reimbursement for such expenses by the Corporation. The above provision shall not apply to (a) the payment of premiums in whole or in part by the Corporation on a life insurance policy on the life of a director or officer so long as repayment to the Corporation of the amount paid by the Corporation is secured by the proceeds of the policy and its cash surrender value, and (b) a loan of money to or for the benefit of an officer in circumstances where the loan is necessary, in the judgment of the Board of Directors, to provide financing for the purchase of a principal residence of the officer in order to secure the services or continued services of the officer, and the loan is secured by the real property.

## **ARTICLE VII**

### **INDEMNIFICATION, INSURANCE AND DIRECTOR LIABILITY**

**SECTION 1 - Definitions.** For the purposes of this Article VII, "agent" means any person who (a) is or was a director, officer, employee, or other agent of the Corporation, or (b) is or was serving at the request of the Corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or (c) was a director, officer, employee, or agent of a foreign or domestic

corporation which was a predecessor corporation of the Corporation, or (d) was a director, officer, employee, or agent of another enterprise at the request of such predecessor corporation; “proceeding” means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and “expenses” includes without limitation attorneys’ fees and any expenses of establishing a right to indemnification under Section 4 or Section 5(b) of this Article VII of these Bylaws.

**SECTION 2 - Indemnification in Actions by Third Parties.** The Corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Corporation to procure a judgment in its favor, an action brought under §5233 of the Law, or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust) by reason of the fact that such person is or was an agent of the Corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Corporation or that the person had reasonable cause to believe that the conduct was unlawful.

**SECTION 3 - Indemnification in Actions by or on the Right of the Corporation.** The Corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the Corporation, or brought under §5233 of the Law, or brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the Corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such



action if such person acted in good faith, in a manner such person believed to be in the best interests of the Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances; provided that no indemnification shall be made under this Section 3 of Article VII if otherwise prohibited under §5238 or any other provision of the Law.

**SECTION 4 - Indemnification of Expenses.** To the extent that an agent of the Corporation has been successful on the merits in defense of any proceeding referred to in Section 2 or Section 3 of this Article VII of these Bylaws or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

**SECTION 5 - Required Determinations.** Except as provided in Section 4 of this Article VII of these Bylaws, any indemnification under this Article VII shall be made by the Corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Section 2 or Section 3 of this Article VII of these Bylaws, by:

- a. A majority vote of a quorum consisting of directors who are not parties to such proceeding; or
- b. The court in which such proceeding is or was pending upon application made by the Corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the Corporation.

**SECTION 6 - Advance of Expenses.** Expenses incurred in defending any proceeding may be advanced by the Corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this Article VII.

**SECTION 7 - Other Indemnification.** No provision made by the Corporation to indemnify its directors or officers for the defense of any proceeding, whether contained in the Articles of Incorporation, Bylaws, a resolution of directors, an agreement or otherwise, shall be valid unless consistent with this Article VII. Nothing contained in this Article VII shall affect any right to indemnification to which persons other than such directors and officers may be entitled by contract or otherwise.

**SECTION 8 - Forms of Indemnification Not Permitted.** No indemnification or advance shall be made under this Article VII, except as provided in Sections 4 or 5(b), in any circumstances where:

a. It would be inconsistent with a provision of the Articles of Incorporation, these Bylaws, a resolution of the Board of Directors, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

b. It would be inconsistent with any condition expressly imposed by a court in approving a settlement.

**SECTION 9 - No Personal Liability of Volunteer Directors or Executive Officers.** To the fullest extent permitted by the Law, as it is now in effect or as it may hereafter be amended, there shall be no personal liability to a third party for monetary damages on the part of a volunteer director or volunteer executive officer of the Corporation, caused by the director's or officer's negligent act or omission in the performance of that person's duties as a director or officer, provided that the person's act or omission was (a) within the scope of the director's or executive officer's duties, performed in good faith and was not reckless, wanton, intentional or grossly negligent, and (b) the damages caused are covered pursuant to a liability insurance policy issued to the corporation (either in the form of a general liability policy or a director's and officer's liability policy) or issued personally to the director or executive officer. In the event the damages are not covered by a liability insurance policy, the volunteer director or volunteer executive officer shall not be personally liable for the damages if the Board of Directors and the person have made all reasonable efforts in good faith to obtain available liability insurance. "Volunteer" means

the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a person who otherwise qualifies as a volunteer director or volunteer executive officer shall not affect that person's status as a volunteer within the meaning of this Section. Nothing in this section shall limit the liability of the Corporation for any damages caused by acts or omissions of the volunteer director or volunteer executive officer.

**SECTION 10 - Insurance.** The Corporation shall have the power to purchase and maintain insurance on behalf of any agent of the Corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the Corporation would have the power to indemnify the agent against such liability under the provisions of this Article VII, provided, however, that the Corporation shall have no power to purchase and maintain such insurance to indemnify any agent of the Corporation for a violation of §5233 of the Law (or any successor provision thereto).

**SECTION 11 - Non-Applicability to Fiduciaries of Employee Benefit Plans.** This Article VII does not apply to any proceeding against any director, investment manager, or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an agent of the corporation as defined in Section 1 of this Article VII of these Bylaws. The corporation shall have the power to indemnify such director, investment manager, or other fiduciary to the extent permitted by subdivision (f) of §207 of the California General Corporation Law.

If any part of this Article VII shall be found in any action, suit or proceeding to be invalid or ineffective, the validity and the effectiveness of the remaining parts shall not be affected.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

**SECTION 1 - Checks, Drafts, Notes.** All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the

Corporation, shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by resolution of the Board of Directors.

**SECTION 2 - Contracts; Instruments.** The Board of Directors shall determine, from time to time, who shall be authorized to enter into any contract or execute an instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**SECTION 3 - Representation of Shares of other Corporations.** The President or any Vice President and the Secretary or Assistant Secretary of this Corporation are authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares held by this Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

**SECTION 4 - Seal.** The Corporation may have a corporate seal setting forth the name of the Corporation and the state and date of incorporation. **Maintenance of the Corporate Records.** The Corporation shall keep the following:

- a. Adequate and correct books and records of account, and
- b. Written minutes of the proceedings of its Board and committees of the Board.

Minutes shall be kept in written form. Other books and records shall be kept in either written form or in any other form capable of being converted into written form or other clearly legible tangible form.

**SECTION 7 - Rights of Inspection.** Subject to the Corporation's obligation to keep healthcare information confidential as a matter of law and such obligations of confidentiality as exist under written agreement, every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind

and to inspect the physical properties of the Corporation. The inspection may be made in person or by the director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

**SECTION 8 - Annual Report.** The Board of Directors shall cause an annual report with respect to the Corporation to be sent to the members of the Board of Directors within 120 days after the end of the fiscal year of the Corporation. That report shall contain the following information in appropriate detail:

- a. The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year;
- b. The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- c. The revenues or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year;
- d. The expenses or disbursements of the Corporation for both general and restricted purposes during the fiscal year;
- e. Any information required by Section 8 of this Article VIII; and
- f. An independent accountant's report or, if none, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

The annual report and accompany materials, including the annual statement of certain transactions and indemnifications referenced in Section 8 below, may be sent by electronic transmission.

**SECTION 9 - Annual Statement of Certain Transactions and Indemnifications.** As part of the annual report provided pursuant to Section 8 above, the Corporation shall, within 120 days after the end of the fiscal year, annually prepare and furnish to the Board

of Directors and each director a statement of any transaction or indemnification of the following kind:

a. Any transaction in which the Corporation or any parent or subsidiary was a party, (i) in which an “interested person” had a direct or indirect material financial interest, and (ii) which involved more than Fifty Thousand Dollars (\$50,000) or was one of several transactions with the same interested person involving, in the aggregate, more than Fifty Thousand Dollars (\$50,000). For this purpose, an “interested person” is any director or officer of the Corporation or any parent or subsidiary of the Corporation (but mere common directorship shall not be considered such an interest). The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the Corporation or any parent or subsidiary thereof, the nature of their interest in the transaction and, if practical, the amount of that interest, provided that if the transaction was with a partnership in which the interested person is a partner, only the interest of the partnership need be stated.

b. Any indemnifications or advances aggregating more than Ten Thousand Dollars (\$10,000) paid during the fiscal year to any officer or director of the Corporation under Sections 2 and 3 of Article VII of these bylaws, unless the indemnification or advance was previously approved by the Board of Directors under Section 5238(e)(2) of the Law.

## **ARTICLE IX AMENDMENT**

**SECTION 1 - Amendment of Articles of Incorporation and Bylaws.** The Articles of Incorporation and the Bylaws of the Corporation may be restated, altered, amended or repealed in whole or in part, or new bylaws adopted, only by the approval of the Board of Directors.

IN WITNESS WHEREOF, these Bylaws are hereby certified to be the duly enacted and currently in force Bylaws of the Corporation by the signature of its Secretary set forth below:

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Signature

\_\_\_\_\_  
Print name

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

## **EXHIBIT A**

### FOUNDING ORGANIZATIONS

Clinica Sierra Vista  
Coalinga Regional Medical Center  
Community Medical Centers  
Family Health Care Network  
Kaweah Delta Health Care District  
Key Medical Group  
Madera Community Hospital  
San Joaquin Valley Rehabilitation Center  
Sierra View Local Health Care District  
St. Agnes Medical Center  
Tulare Community Health Clinic  
Valley Children's Healthcare  
Visalia Medical Clinic



## 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).

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	