

**ESSEX COUNTY CONTRACT**

\*\*\* PLEASE KEEP THIS FORM ATTACHED TO CONTRACT AT ALL TIMES \*\*\*

# ESSEX COUNTY

## Contract Routing Form

Department	Sheriff	Contract No	S-15-0005
		Contract Term	11/1/14-10/31/15
		Contract Cost	See Appendix A

Contractor Legal Name	Primonics
Address	500 Morgan, Suite 100, Baie d'Urfe, Quebec, Canada H9X 3V1
Services to be Performed	Video Visitation

<b>STEP 1 - To the Department</b>	Date Sent	September 11, 2014
Enclosed in triplicate is the contract you requested be prepared for your department. Please review Appendices A and B to make sure that the services/work to be performed by the Contractor, and the compensation to be paid by the County, are correct. If any changes are needed, please note the same on one contract and return all 3 to our office. If satisfactory, please forward to the Contractor for signing.		

<b>STEP 2 - To the Contractor</b>	Date Sent	11/19/14
Enclosed in triplicate is your contract with <b>ESSEX COUNTY</b> referenced above. Please execute all three copies and return to the County Attorney's Office as soon as possible <b>along with an insurance certificate</b> showing the required coverages (if any) <b>plus any required bonds</b> . Once all copies have been fully executed, one original will be sent to you for your records. <b>All payment vouchers must include the above Contract No. AND your Federal Tax ID #.</b>		

<b>STEP 3 - To County Attorney</b>	Date Sent	
Returned herewith are all 3 executed contracts, <u>insurance certificates</u> and bonds, as required, for approval prior to the County Manager's execution.		

<b>STEP 4 - To County Manager</b>	Date Sent	
The attached contract is hereby approved as being in proper form for your execution. County Attorney's Office: _____		

<b>STEP 5 - Distribution</b>	Date Sent	COMPLETED DEC 18 2014
<input checked="" type="checkbox"/>	To the Department - 2 original contracts. It is your responsibility to furnish 1 original contract to the Contractor. Retain 1 contract for your records.	
<input checked="" type="checkbox"/>	Scanned to Shared Drive	

**RECEIVED**  
DEC 4 2014

BY: .....

AGREEMENT

PARTIES

**Essex County**  
Address: 7551 Court Street, P.O. Box 217, Elizabethtown, NY 12932

**Contractor: Primonics**  
Address: 500 Morgan, Suite 100, Baie d'Urfe, Quebec, Canada H9X 3V1

DATE: November 1, 2014

**WITNESSETH:**

**1. WORK/SERVICES TO BE FURNISHED**

Contractor agrees to provide, perform and furnish to Essex County the work, labor, services, material and/or equipment more fully described and set forth in Appendix A annexed hereto and made a part hereof.

**2. CONTRACT PRICE**

Contractor agrees to accept, and Essex County agrees to pay to Contractor, the contract price set forth in Appendix A annexed hereto and made a part hereof.

**3. CONTRACT TERM**

The term of this agreement is from November 1, 2014 through October 31, 2015.

**4. CONTRACT TERMS & CONDITIONS**

The parties hereto agree that the following terms and conditions are included in, a part of, and incorporated into this agreement:

- Insurance Requirements – Appendix B
- Essex County Standard Clauses – Appendix C

In the event that there is a conflict between Essex County's Insurance Requirements and Essex County's Standard Clauses and any Contractor's proposal, the terms and conditions of the Essex County Insurance Requirements and Essex County Standard Clauses shall supercede and apply.

**5. NOTICES**

Notices or communications are to be given or directed to either party at its address specified in this agreement, or to such other addresses as either party may from time to time designate by written notice to the other party.

**6. ENTIRE AGREEMENT**

This agreement, including the Appendices referred to hereinabove, constitutes the entire agreement between the parties; and there are no other agreements, either written or oral, between the parties pertaining to the work/services or the funds encompassed by this agreement.

**IN WITNESS WHEREOF** this agreement has been executed by the parties hereto to be effective as of the date set forth above.

ESSEX COUNTY SHERIFF,

By: Richard C. Cutting  
Richard C. Cutting, Sheriff

ESSEX COUNTY

By: Donald H. Palmer  
County Manager or Chairman

PRIMONICS

By: John McAllister  
John McAllister



Appendix A

**PRIMONICS**

---

500 Morjan, suite 100, Baie d'Urfe, Quebec, Canada, H9Y 3U1  
Tél: (514) 694-4866 Fax: (514) 694-4280

**Essex county jail  
Sales Agreement**

#1011

# PRIMONICS

500 Morgan, suite 100, Baie d'Urfe, Québec, Canada, H9X 3V1  
TÉ: (514) 694-4856 Fax: (514) 694-4280

MEMORANDUM OF AGREEMENT (hereinafter, the "Agreement") is made as of September 1, 2011,

**BETWEEN:**

**Primonics (2006) Inc.**  
a corporation duly incorporated under the laws of Canada, having its head office at 500 Morgan Blvd., Suite 100, Baie d'Urfe, Québec H9X 3V1, (hereinafter referred to as "Primonics")

**AND:**

**Essex county jail.**  
having its head office at 702 Stowerville Road, Lewis, New York, 12950, (hereinafter referred to as the "Customer")

**RECITALS**

- A. WHEREAS Primonics is engaged in the development, design, manufacture and commercialization of information technology products, including a client-server video visitation system called TeleCorrections® specifically designed for jails and prisons (the "Solution");
- B. WHEREAS the Solution system allows visitors to securely communicate with an inmate directly in their housing unit from anywhere an Internet connection is available, and also provides inmates with controlled access to information such as court appearances, etc.;
- C. WHEREAS the Solution consists in specialized hardened computer terminals, audio and video communications software and applications which consists of a scheduling module and inmate information module;
- D. WHEREAS Primonics may also sell to the Customer, certain Hardware Components to be used in connection with the Solution;
- E. WHEREAS the Customer wishes to purchase certain Hardware Components and to purchase Licenses to use the Solution in accordance with the provisions of this Agreement.



## PRIMONICS

500 Morgan, suite 100, Bois d'Urfe, Quebec, Canada, H9K 3V1  
Tel: (514) 694-1066 Fax: (514) 694-4280

This warranty shall be conditional on the Customers' compliance with the provisions of this Section 6.

6.1. Primonics makes no warranty with respect to low performance, damages or defects in any Hardware Component caused by misuse, misapplication, neglect or accident, nor does Primonics make any warranty as to any Hardware Component that has been repaired or altered in any way, which, in the sole judgment of Primonics affects the performance or purpose for which the Hardware Component was manufactured.

6.2. When applicable, Primonics shall provide the required replacement parts and components free of charge.

~~6.3. THE WARRANTY OBLIGATIONS OF PRIMONICS ARE STRICTLY LIMITED TO THE REPLACEMENT OF ANY DEFECTIVE HARDWARE COMPONENT. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL THE LIABILITY OF PRIMONICS EXCEED THE UNIT PRICE PAID BY THE CUSTOMER FOR ANY DEFECTIVE HARDWARE COMPONENT OR PART THEREOF. IN NO EVENT SHALL PRIMONICS BE LIABLE, WHETHER IN CONTRACT, IN TORT OR ON ANY OTHER BASIS FOR ANY DAMAGES WHATSOEVER (INCLUDING ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES OR LIABILITIES, COSTS, LOSS OF REVENUE OR OF BUSINESS OR OTHER FINANCIAL LOSS) SUSTAINED BY ANY PERSON (INCLUDING ANY EMPLOYEE, AGENT, REPRESENTATIVE, INWITNESS OR THE CUSTOMER) AND/OR IN ANY WAY ARISING FROM OR RELATING TO THE SALE, MAINTENANCE, USE, PERFORMANCE, FAILURE OF ANY HARDWARE COMPONENT, INCLUDING INADEQUACY OF ANY PRODUCT FOR ANY PURPOSE AND NON-MERCHANTABILITY OF SAME.~~

7. **Absence of Waiver.** No waiver of any provision of these Terms and Conditions (or any right or default hereunder) shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. Any such waiver shall be effective only for the instance given, and shall not operate as a waiver with respect to any other rights or obligations under this document or applicable law in connection with any other instances or circumstances.
8. **Assignment.** Neither these Terms and Conditions, the Sales Invoice, nor any interests thereunder may be assigned or delegated by the Customer without the prior written consent of Primonics.
9. **Accurate Books and Records.** The Customer will maintain complete and accurate books and records, properly and accurately recording all payments made by the Customer as well as the use of the Solution.
10. **Compliance Certification.** The Customer will, when and as may be requested by Primonics from time to time, provide to Primonics a written certification in form and substance satisfactory to Primonics that the Customer is in compliance with the terms of the Software License Agreement, including compliance with respect to the number of Licenses in use.

## PRIMONICS

500 Morgan, suite 100, Bale d'Urfé, Québec, Canada, H3X 3V1  
Tél: (514) 694-1866 Fax: (514) 694-1280

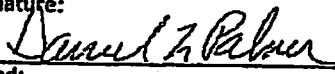
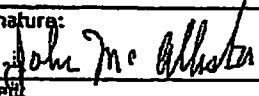
11. **Inspection.** To ascertain that the terms of the Customer License Agreement and of any Sales Invoice is complied with, all TeleCorrections Terminals and all User Accounts shall be subject to onsite inspection by Primonics or its representatives, at all reasonable times and places as set forth beforehand.
12. **Entire Agreement.** These Terms and Conditions, together with the Sales Invoice issued hereunder, the Agreement between Primonics and the Customer and the Software License Agreement, constitute the final and entire agreement between Primonics and the Customer with respect to the purchase of the Hardware Components and the Licenses. These Terms and Conditions may be amended only by a written instrument duly executed by both parties, and may not be amended orally or in the course of performance.
13. **Force Majeure.** If performance of any of the obligations contained in these Terms and Conditions is delayed, prevented, restricted, or otherwise hindered by legislative action, act of God, action of the elements, serious fire, labor disturbance, delays in transportation, shortage of materials or supplies, government restrictions, war, riots, flood, earthquake, epidemic, Internet or telecommunications failure, or other conditions beyond the control of either party, performance hereunder by such party, to the extent so hindered, shall be excused, provided such party has taken all proper precautions, due care, and reasonable alternative measures with the objective of avoiding or otherwise minimizing the hindrance and promptly resumes performance hereunder, provided that nothing herein contained shall require a party to settle or compromise a strike, boycott, lockout, industrial dispute, or other labor difficulty if to do so would, in its sole discretion, be contrary to its best interests. Any party claiming the benefit of this provision shall promptly give notice thereof, including sufficient information as to the cause, to the other party. In such an event, the parties hereto shall consult with each other with a view to suspending or amending this Agreement. If the parties are unable to agree on the manner in which this Agreement should be suspended or amended, any party may withdraw from these Terms and Conditions by providing a prior written notice of at least 3 months to the other party of its intention to terminate this Agreement if performance is not resumed within this period, in which case, this Agreement shall be deemed terminated. Termination of this Agreement for force majeure shall not release either party from any sum due to the other party prorated to the date of termination.
14. **Governing Laws.** This Agreement is governed by and is to be construed in accordance with laws of the State of New York applicable therein. The parties irrevocably submit to the exclusive jurisdiction of the courts of the State of New York, to resolve any disputes arising under or related to this Memorandum of Agreement.
15. **English Language.** This Agreement has been drafted in the English language at the request of the parties. *À la demande des parties, cette convention a été rédigée en langue anglaise.*
16. **United Nations Convention on Contracts Exclusion.** The Parties hereby exclude application of the *United Nations Convention on Contracts for the International Sale of Goods* to this Agreement or any of the documents incorporated herein.



# PRIMONICS

500 Morgan, suite 100, Bate d'Urfc, Quebec, Canada, H2X 3V1  
Tél: (514) 694-4866 Fax: (514) 694-4280

The parties have executed this Agreement.

	For Primonics (2006) Inc.
Printed name: Daniel L. Palmer	Printed name: John McAllister
Title: County Manager	Title: President
Signature: 	Signature: 
Dated: October 27, 2011	Dated: November 7, 2011

**Schedule A****Software License Agreement****A. Ownership**

The Software described in the Sales Invoice (the "Licensed Products") and any accompanying documentation (the "Documentation") are the sole and exclusive property of Primonics and ownership of the Licensed Products and the Documentation shall at all times remain with Primonics. Copies are provided to the Customer only to allow the Customer to exercise its rights under this Agreement. This Agreement does not constitute a sale of the Licensed Products or the Documentation, or any portion thereof. Without limiting the generality of the foregoing, the Customer shall have no rights to any patents, copyrights, trade secrets, trademarks or other intellectual property rights in or relating to the Licensed Products or the Documentation, other than as expressly set forth in this Agreement. All rights not expressly granted to the Customer under this Agreement are reserved by Primonics.

**B. Grant of License Applicable To any Licensed Products**

Subject to the terms and conditions set out in this Agreement, Primonics grants the Customer a limited, non-exclusive, non-transferable, non-sublicensable and revocable right to use the Licensed Products solely in accordance with the following terms and conditions:

1. **Use of Licensed Products.** The Customer may download and internally use the Licensed Products on multiple TeleCorrections<sup>®</sup> terminals or user computers owned, leased or rented by the Customer; however, the Customer shall only be permitted to run the Licensed Products on as many computers as the Customer has purchased licenses to use the Licensed Products, as listed on the Sales Invoice.
2. **Distribution Prohibited.** The Customer may not use any copies of the Licensed Products except on those TeleCorrections<sup>®</sup> terminals or in connection with those user accounts in the TeleCorrections<sup>®</sup> database for which the Customer has purchased licenses. Distribution of the Licensed Products to any third party and allowing any third party access to or use of the Licensed Products (or any part thereof) by the Customer (or any of its users) is hereby expressly prohibited.

**C. Prohibited Conduct**

The Customer represents and warrants that the Customer will not violate any of the terms and conditions set forth in this Agreement and that:

The Customer will not, and will not permit others to: (i) reverse engineer, decompile, disassemble, derive the source code of, modify, or create derivative works from the Licensed Products; or (ii) use, copy, modify, alter, or transfer, electronically or otherwise, the Licensed Products or any of the Documentation except as expressly permitted in this Agreement; or (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to or commercialize the Licensed Products whether in a stand-alone configuration or as incorporated with other software code written by any party, except as expressly permitted in this Agreement.

# PRIMONICS

500 Morgan, suite 100, Bois d'Arce, Quebec, Canada, H8X 3V1  
Tel: (514) 694-1656 Fax: (514) 694-4280

The Customer will not use the Licensed Products to engage in any activity that will violate the rights of third parties, including, without limitation, through the use, public display, public performance, reproduction, distribution, or modification of communications or materials that infringe copyrights, trademarks, publicity rights, privacy rights, other proprietary rights, or rights against defamation of third parties.

The Customer will not transfer the Licensed Products or utilize the Licensed Products in combination with third party software authored by the Customer or others to create an integrated software program which the Customer transfers to unrelated third parties.

#### D. Updates

All updates, if any, shall be deemed to be part of the Licensed Products and will be subject to this Agreement.

#### E. Disclaimer of Warranty

THE LICENSED PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES THAT IT IS FREE OF DEFECTS, VIRUS FREE, ABLE TO OPERATE ON AN UNINTERRUPTED BASIS, MERCHANTABILITY, FIT FOR A PARTICULAR PURPOSE, WITH CLEAR TITLE OR NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS LICENSE AGREEMENT. NO USE OF THE LICENSED PRODUCTS IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER. PRIMONICS DOES NOT GUARANTEE THAT ANY OF THE LICENSED PRODUCTS SHALL MEET THE CUSTOMER'S SPECIFIC NEEDS.

#### F. Limitation of Liability

IN NO EVENT WILL PRIMONICS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED PRODUCTS BY THE CUSTOMER OR ANY END-USERS, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

#### G. Export Control

The Licensed Products may contain encryption and is subject to Canada and United States export control laws and regulations and may be subject to export or import regulations in other countries, including controls on encryption products. The Customer agrees not export, re-export or transfer the Licensed Products in violation of any applicable laws or regulations of Canada and the United States.

#### H. Legends and Notices

The Customer agrees not to remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Licensed Products or any of the Documentation.

## PRIMONICS

500 Morgan, suite 100, Bois d'Urfe, Quebec, Canada, H9X 3V1  
Tél: (514) 694-4866 Fax: (514) 694-4280

### I. Term and Termination

This Agreement is effective upon the Customer's acceptance, as provided herein, and payment of the applicable fees set forth in the Sales Invoice and will remain in force until terminated in accordance of the provisions hereof. The Customer may terminate the licenses granted in this Agreement at any time upon a 30-day prior written notice by destroying the Licensed Products and the Documentation, together with any and all copies thereof. The licenses granted under this Agreement will terminate automatically if the Customer (a) breaches any of its terms or conditions or any of the terms or conditions of any other agreement between the Customer and Primonics, (b) ceases to function as a going concern or to conduct its operations in the normal course of business, or (c) becomes insolvent, bankrupt, takes any steps with respect to the dissolution or winding-up of its legal entity, or takes any steps to make an assignment for the benefit of creditors or otherwise admits its inability to pay its debts as they become due. The licenses granted in this Agreement may be terminated by Primonics upon written notice to the Customer if the Customer (i) merges, amalgamates or otherwise combines with any other entity, without the prior written consent of Primonics, or (ii) sells all or substantially all of its (or any of its subsidiaries') assets (except in the context of a corporate reorganization), without the prior written consent of Primonics, which consent shall not be unreasonably withheld.

Sections A, C, E, F, G, H, J and K shall survive the termination of this Agreement (subject to their terms and conditions).

### J. Licensed Products Suggestions

Primonics welcomes suggestions for enhancing the Licensed Products and the accompanying Documentation that may result in computer programs, reports, presentations, documents, ideas or inventions relating to or useful to Primonics' business. The Customer acknowledges that the title, ownership rights, and intellectual property rights concerning any such suggestions shall become the exclusive property of Primonics and may be used for its business purposes, in its sole discretion, without any payment (royalty, fee or any other type of remuneration) or accounting to the Customer and the Customer hereby irrevocably assigns all such rights to Primonics. The Customer hereby waives any moral rights it may have in connection with any such suggestions.

### K. Miscellaneous

This Agreement constitutes the entire agreement between the parties concerning the Licensed Products, and may be amended only by a writing signed by both parties that expressly references this Agreement.

The Customer agrees to defend and indemnify Primonics and hold Primonics harmless from and against all claims, losses, damages, complaints, or expenses connected with or resulting from the Customer's business operations.

## PRIMONICS

---

500 Morgan, suite 100, Baie d'Urfe, Quebec, Canada, H9X 3V1  
Tél: (514) 694-4865 Fax: (514) 694-4280

This Agreement shall be governed, construed and enforced in accordance with the laws in force in the Province of Quebec. The parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of the Province of Quebec, District of Montreal.

This Agreement has been drafted in the English language at the request of the parties. *À la demande des parties, cette convention a été rédigée en langue anglaise.*

The parties covenant and agree that this Agreement and the terms hereof are confidential and shall be treated as such. At no time shall this Agreement be used to obtain better conditions from or with a third party.

[June, 2011]

**APPENDIX C**  
**INSURANCE REQUIREMENTS - SERVICE PROVIDERS**

I. The Contractor shall procure and maintain during the entire term of the contract the following required insurance:

- **Commercial General Liability Insurance**  
\$1,000,000 per occurrence/ \$2,000,000 aggregate.
- **Excess/Umbrella Liability Insurance**  
\$1,000,000 per occurrence / \$2,000,000 aggregate.
- **Workers' Compensation**  
Statutory Workers' Compensation and Employers' Liability Insurance for all employees, *except that in the event the Contractor has no employees and is exempt by law from having such insurance coverage the Contractor may provide an exemption statement.*

II. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Contractor hereby agrees (except as to workers' compensation insurance coverage) to either effectuate:

- (a) the naming of the County as an "additional insured as funding source for contract services" on the contractor's insurance policies, or
- (b) the inclusion of a contractual liability endorsement covering the Contractor's contract with the County.

III. The policy/policies of insurance furnished by the Contractor shall:

- be from an A.M. Best rated "A" New York State licensed insurer; and
- contain a 30-day notice of cancellation

IV. The Contractor agrees to indemnify the County for any applicable deductibles.

V. Contractor acknowledges that failure to obtain such insurance on behalf of the County constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the County. Prior to commencement of work or use of facilities, the Contractor shall provide to the County proof that such requirements have been met by furnishing certificate(s) of such insurance, and the declarations pages from the policies of such insurance. The failure of the County to object to the contents of the certificate(s) and/or declarations pages, or the absence of same, shall not be deemed a waiver of any and all rights held by the County.

VI. All certificates of insurance will provide 30 days notice to the county of cancellation or non-renewal.

VII. Contractor and subcontractor waives all rights of subrogation against the owner and will have the General Liability, Umbrella Liability Workers' Compensation policies endorsed setting forth this Waiver of Subrogation.

VIII. All policies will also contain no exclusions with respect to Section 240 and 241 of the NYS Labor Law.

IX. The County shall be listed as an additional insured on a primary and non-contributory basis.

## **APPENDIX D - STANDARD CLAUSES FOR ESSEX COUNTY CONTRACTS**

### **1. Independent Contractor Status**

The parties each acknowledge, covenant and agree that the relationship of the Contractor to the County shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, further covenants and agrees that it:

- (a) will conduct itself in accordance with its status as an independent contractor;
- (b) will neither hold itself out as nor claim to be an officer or employee of the County; and
- (c) will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the County, including but not limited to workers' compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

### **2. Contractor To Comply With Laws/Regulations**

The Contractor shall at all times comply with all applicable state and federal laws, rules and regulations governing the performance and rendition of the services to be furnished under this agreement.

### **3. Licenses, Permits, Etc.**

The Contractor shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certificates required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by the Contractor under this agreement.

### **4. Termination**

This agreement may be terminated without cause by either party upon 30 days prior written notice, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and mileage expenses actually incurred prior to such termination. Notwithstanding the foregoing, this agreement may be immediately terminated by the County:

- (a) for the Contractor's breach of this agreement, by serving written notice of such termination stating the nature of the breach upon the Contractor by personal delivery or by certified mail, return receipt requested, and upon such termination either party shall have such rights and remedies against the other as provided by law; or
- (b) upon the reduction or discontinuance of funding by the State or Federal governments to be used in furnishing some or all of the work, labor and/or services provided for under this agreement, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and expenses (if the same are to be paid under this agreement) actually incurred prior to such termination.

### **5. Defense & Indemnification**

The Contractor shall defend, indemnify and hold harmless the County to the fullest extent allowed by law, and notwithstanding any insurance requirements, from and against any and all liability, losses, claims, actions, demands, damages, expenses, suits, judgments, orders, causes of action and claims, including but not limited to attorney's fees and all other costs of defense, by reason of any liability whatsoever imposed by law or otherwise upon the County for damages to person, property or of any other kind in nature, including but not limited to those for bodily injury, property damage, death arising out of or in connection with its officers, employees, agents, contractors, sub-contractors, guests or invitees negligence or its/their performance or failure to perform this agreement.

### **6. Discrimination Prohibited**

The services to be furnished and rendered under this agreement by the Contractor shall be available to any and all residents of Essex County without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment; and under no circumstances shall a resident's financial

ability to pay for the services provided be considered unless such consideration is allowed by State and/or Federal law, rule or regulation.

**7. Non-Discrimination In Employment**

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. In the event that this is a contract to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building or public work, (b) for the manufacture, sale or distribution of materials, equipment or supplies, (c) for building service, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin:

- (1) discriminate in hiring against any citizen who is qualified and available to perform the work; or
- (2) discriminate against or intimidate any employee hired for the performance of work under this contract.

The Contractor agrees to be subject to fines of \$50.00 per person per day for any violation of this paragraph, as well as to possible termination of this contract or forfeiture of all moneys due hereunder for a second or subsequent violation.

**8. Damage/Injury To Persons & Property**

The Contractor shall promptly advise the County of all damages to property of the County or of others, or of injuries incurred by persons other than employees of the Contractor, in any manner relating, either directly or indirectly, to the performance of this agreement.

**9. Records**

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter collectively "the Records") in accordance with the following requirements:

- (a) the Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter;
- (b) the County Auditor, State Comptroller, the Attorney General or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

The County shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation.

**10. Claims For Payment**

All invoices or claims for which payment is sought from the County must be submitted in accordance with the following:

- (a) each claim for payment must include
  - (1) an invoice detailing the claim,
  - (2) copies of all documentation supporting the claim,
  - (3) a properly completed County standard voucher, which includes
    - (i) the County contract number under which payment is being claimed, **AND**
    - (ii) the payee's Federal employer identification number or Federal social security number, or both



such numbers when the payee has both such numbers. *[Failure to include this number or numbers will prevent and preclude payment by the County; except that where the payee does not have such number or numbers, the payee, on the invoice or County voucher, must give the reason or reasons why the payee does not have such number or numbers and such reasons constitute a valid excuse under law.]*

- (b) Unless otherwise provided in this agreement, each claim for payment must be submitted to the County no later than 30 days after the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (c) Notwithstanding any other provision of this agreement, no claim for payment shall be valid, and the County shall not be liable for payment thereof, unless it is submitted to the County within 30 days of the close of the calendar year in which the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (d) Unless otherwise provided in this agreement, the requirements of this paragraph 10, and/or of any other provisions of this agreement which supersede the same, shall constitute conditions precedent to the County's payment obligation, and failure to comply with any or all of said requirements shall entitle the County to deny payment.
- (e) As a further condition of payment, each claim of payment shall be accompanied by a Contractor and Sub-Contractor Progress Payment Waiver, Release and Discharge, and each Final Payment shall be accompanied by a Contractor and Sub-Contractor Final Payment, Waiver and Release form. As well as a Contractor Affidavit relative to Final Payment. Copies of these forms are attached and made a part hereof. (Please disregard if these forms do not pertain).

11. **Consent**

In the event that State or Federal law requires the recipient of services to be furnished and rendered under this agreement to give his/her prior consent thereto, the contractor shall obtain such person's consent and furnish proof thereof to the County.

12. **Executory Clause**

The County shall have no liability under this contract to the Contractor or to anyone else beyond the funds appropriated and available for this contract.

13. **Public Work & Building Service Contract Requirements**

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof:

- (a) neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department; and
- (b) the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

14. **Public Work Contracts – Hazardous Substances**

If this is a contract for public work, the Contractor agrees as follows:

- (a) the Contractor acknowledges that the County uses and/or produces various substances which may be classified as hazardous under OSHA's Hazard Communication Standard;
- (b) the Contractor recognizes the use of said substances by the County and acknowledges that the County has provided, or upon request will provide, the Contractor with a description of such substances which may be present in the area of the County's facility/facilities to which the Contractor may have accessed during the performance of this contract;
- (c) the Contractor acknowledges that the County has provided, or upon request will provide,

suggestions for appropriate protective measures which should be observed when the Contractor is in the area of any such hazardous substances;

- (d) the Contractor agrees to be solely responsible for providing training and information to its employees regarding any such hazardous substances, as well as of any protective measures suggested by the County;
- (e) the Contractor agrees to be solely responsible to ensure that the Contractor's employees observe protective measures during the performance of their duties in the performance of the contract, and that all such protective measures will be at least as stringent as those suggested or which would have been suggested by the County;
- (f) in the event that the Contractor's performance of the work under this contract requires the use of any hazardous substances, the Contractor shall notify the County in advance of bringing in and/or using such substances in or upon County property and suggest to the County appropriate measures to be observed by the County, its officers and employees, and/or the public; and
- (g) in the event the Contractor fails in whole or in part to comply with the terms of this paragraph, the County shall have the right to interrupt the Contractor's work and/or terminate this contract, and the Contractor shall be prohibited from renewing such work until all applicable safety and health procedures and practices are implemented by the Contractor.

15. **Disputes**

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction within the State of New York.

16. **Non-Assignment**

This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by the Contractor, without the prior written consent of the County, and any attempts to assign the contract without the County's written consent are null and void.

17. **No Collusion**

If this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that:

- (a) its bid was arrived at independently and without collusion aimed at restricting competition; and
- (b) at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on Contractor's behalf.

18. **International Boycott**

In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000.00, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation, has participated, is participating, or shall participate in an International boycott in violation of the federal Export Administration Act of 1979, or regulations thereunder. If such contractor, or any of the aforesaid affiliates of Contractor, is convicted, or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the County Manager within five (5) business days of such conviction, determination or disposition of appeal.

19. **County's Rights of Set-Off**

The County shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold for the purposes of set-off any moneys due to the Contractor under this agreement up to any amounts due and owing to the County with regard

to this contract, any other contract with any County department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the County for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The County shall exercise its set-off rights in accordance with normal County practices, including, in cases of set-off pursuant to an audit, the acceptance of such audit by the County Board of Supervisors or its designated representative.

20. **Contractor Defined**

Whenever the term "Contractor" is used in this agreement, such term shall include and apply to all employees, all officers, directors and agents, if any, of the Contractor.

21. **Amendment**

This agreement may not be amended, modified or renewed except by written agreement signed by the Contractor and the County.

22. **Ownership Of Work Products**

All final and written or tangible work products completed by the Contractor shall belong to the County. In the event of premature discontinuance of performance, the Contractor agrees to deliver all existing products and data files to the County.

23. **Executive Order Debarment/Suspension**

In the event that this contract involves the Contractor furnishing goods and services in excess of \$100,000.00, or constitutes a subaward to subrecipients, under any Federal program, grant or other funding source, then by executing this agreement the Contractor certifies that neither it nor any of its principals are suspended or debarred within the scope or meaning of Executive Orders 12549 and 12689, any Federal or State regulation implementing or codifying the same, or any other Federal or State law, rule or regulation.

24. **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

In the event that this contract involves the use or disclosure of protected health information within the meaning or application of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the regulations thereunder, the following provisions of this paragraph shall apply.

(a) **Definitions.** The terms used, but not otherwise defined, in this Agreement shall have the same meaning as given such terms in 45 CFR §160.103 and §164.501, as the same may be amended from time to time, including but not limited to the following.

(1) "Business Associate" shall mean the Contractor, its officers, employees, agents and subcontractors.

(2) "Covered Entity" shall mean Essex County (the "County"), its departments, agencies, officers and employees.

(3) "Individual" shall have the same meaning as given such term in 45 CFR §164.501 and shall also include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.

(5) "Protected Health Information" shall have the same meaning as given such term in 45 CFR §164.501, limited to the information created or received by Contractor from or on behalf of the County.

(6) "Required by law" shall have the same meaning as given such term in 45 CFR §164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

**(b) Obligations and Activities of Contractor.**

Contractor agrees to:

- (1) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;
- (2) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
- (3) mitigate, to the extent practicable, any harmful effect that is known, should have been known, and/or discovered to/by Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement;
- (4) report to the County any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware;
- (5) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of the County agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information;
- (6) provide access, at the request of the County, and in the time and manner designated by the County or the Secretary, to Protected Health Information in a Designated Record Set, to the County or, as directed by the County, to an Individual in order to meet the requirements under 45 CFR §164.524;
- (7) make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to pursuant to 45 CFR §164.526 at the request of the County or an Individual, and in the time and manner designated by the County or the Secretary;
- (8) make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, the County available to the County, and/or to the Secretary, in a time and manner designated by the County or by the Secretary, for purposes of the Secretary determining the County's compliance with the Privacy Rule;
- (9) document such disclosures of Protected Health Information and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528;
- (10) provide to the County or an Individual, in time and manner designated by the County or the Secretary, information collected in accordance with the above subparagraph (b)(9) of this Agreement, to permit the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

**(c) Permitted Uses and Disclosures by Contractor.**

Except as otherwise limited in this Agreement, Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the persons entitled to services under this Agreement:

- (1) solely for the purposes of performing Contractor's obligations under this Agreement, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the County or the minimum necessary policies and procedures of the County; or
- (2) provided that such use or disclosures are required by law; or
- (3) Contractor
  - (A) obtains written authorization(s) from the individual to which the information pertains permitting the specific uses or disclosures of such information to third persons,
  - (B) represents and agrees in writing with such individual that the information to be used and/or disclosed will remain confidential and used or further disclosed only as required by law or for the purposes specified in the written authorization(s), and
  - (C) such third persons agree in writing to notify the County as soon as practicable and in writing of any instances of which such third person(s) is/are aware in which the confidentiality of

the information has been breached; or

(4) provide Data Aggregation services to the County as permitted by 42 CFR §164.504(e)(2)(i)(B); or

(5) report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

**(d) County To Inform Contractor of Privacy Practices and Restrictions.**

The County agrees to notify the Contractor of any

(1) limitation(s) in its notice of privacy practices of the County in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Contractor's use or disclosure of Protected Health Information;

(2) changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Contractor's use or disclosure of Protected Health Information; and/or

(3) restriction to the use or disclosure of Protected Health Information that the County has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

**(e) Permissible Requests by County.**

The County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the County; except that in the event that the services to be furnished by the Contractor under this Agreement requires data aggregation by the Contractor, the Contractor may use or disclose protected health information for such data aggregation or management and administrative activities of Contractor.

**(f) Survival of Provisions.**

The obligations of the Contractor under this paragraph 24 shall survive the expiration of the term of this Agreement and/or the termination of this Agreement, and said obligations shall remain effective and shall not terminate until all of the Protected Health Information provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in subparagraph (g) below.

**(g) Return or Destruction of Protected Health Information.**

Except as otherwise provided below, upon termination of this Agreement for any reason, Contractor shall return or destroy all Protected Health Information received from the County, or created or received by Contractor on behalf of the County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.

In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon determination by the County that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

**(h) Termination for Cause.**

Upon the County's knowledge of a material breach of this paragraph by Contractor, the County shall:

(1) either:

(A) provide an opportunity for Contractor to cure the breach or end the violation and terminate

- this Agreement within the time specified by the County, or  
(B) immediately terminate this Agreement if cure is not possible; and  
(2) report the violation to the Secretary.

(I) **Miscellaneous.**

- (1) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.  
(2) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.  
(3) Survival. The respective rights and obligations of Contractor under this paragraph 24 of this Agreement shall survive the termination of this Agreement.  
(4) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the County to comply with the Privacy Rule.

25. **Severability**

If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

26. **Entire Agreement**

This agreement is the entire agreement between the parties, and the same shall be construed in accordance with the laws of the State of New York.

27. **For Medicaid/Federal Health Care Related Work**

**Excluded/Debarred Party Clause**

The Vendor/Contractor represents and warrants that it, nor its employees or contractors, are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program.

In the event Vendor/Contractor, or one of its employees or contractors, is excluded from participation, or becomes otherwise ineligible to participate in any such program during the Term, Vendor/Contractor will notify Essex County in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to the Vendor/Contractor, Essex County reserves the right to immediately cease contracting with the Vendor/Contractor.

If Vendor/Contractor is an Employment Agency, the Vendor/Contractor represents and warrants that its employees and contractors are not excluded from participation in a "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f) or debarred from participation in any federal or other program. The Vendor/Contractor further represents and warrants it will, at a minimum, check monthly all of its employees and subcontractors against:

- The General Services Administration's Federal Excluded Party List System (or any successor system,
- The United States Department of Health and Human Services's Office of the Inspector General's Lists of Excluded Individuals and Entities or any successor list,
- The New York State Department of Health's Office of the Medicaid Inspector General's list of Restricted, Terminated or Excluded Individuals or Entities.

In the event an excluded party is discovered the Vendor/Contractor will notify Essex County in writing within three (3) days after such event.

Upon the occurrence of such event, whether or not such notice is given to the Vendor/Contractor, Essex County reserves the right to immediately cease contracting with the Vendor/Contractor.