

**THIS AMENDMENT** to contract **10-167-HE**, made this 15<sup>th</sup> day of January 2014 by and between

**THE COUNTY OF ERIE**, a municipal corporation of the State of New York, having an office and place of business at 95 Franklin Street, Buffalo, New York 14202 (hereinafter referred to as the "County"), and

**Common Cents Systems, Inc.**, a [corporation of the State of Tennessee], having its offices and principal place of business at 4701 Trousdale Drive, Suite 119, Nashville, TN, 37220

(hereinafter referred to as the "VENDOR")

**WHEREAS**, on or about December 21, 2010, the County, acting by and through its HEALTH DEPARTMENT/Public Health Laboratories (the "Department"), entered into an agreement (the "Agreement") with VENDOR; and

**WHEREAS**, the term of the Agreement was for a period of 1 year, commencing on January 1, 2011 and continuing through December 31, 2011, with an option, at the County's sole discretion, to renew the agreement for up to *5 consecutive terms of 1 year each*; and

**WHEREAS**, the County would like to exercise its renewal option for the period of **January 1, 2014 through December 31, 2014**,

**NOW, THEREFORE**, in consideration of the promises and covenants herein, the parties agree as follows:

1. The Agreement between the County and The VENDOR is hereby extended for a period of 1 year commencing on January 1, 2013 and continuing through December 31, 2013.
2. In consideration for services rendered during the term of this Amendment, The County shall pay the VENDOR the amount set forth in Schedule "A", a copy of which is attached hereto and made a part. All fees shall be paid via a monthly invoicing system.
3. Except as otherwise provided herein, all other terms and conditions of the Agreement shall remain in full force and effect.

4. This Amendment shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment.

**THE COUNTY OF ERIE**

**COMMON CENTS, INC.**

By:  
Name:  
Title:

By:   
Name: ROBERT D Ringenberg  
Title: President

Approved as to content:

By: \_\_\_\_\_  
Name: Gale R. Burstein, M.D.  
Title: Commissioner of Health

Approved as to form:

Assistant County Attorney  
Doc. No.: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attachment A**

## Attachment A

### Current Software Licenses and Budget Requirements - 2012:

	License Cost	Maintenance
<b>Apollo 24 Users</b>	\$ 161,380.00	\$ 29,048.40
- Advanced Reporting	n/a	n/a
- Quality Control	n/a	n/a
- Instrument Manager	n/a	n/a
HL7 Interface Manager	\$ 9,990.00	\$ 1,798.20
- Patient Demographics Import	n/a	n/a
- ECLAIRS Results Export	n/a	n/a
Instrument Interface(s)		
- Instrument # 1	\$ 4,995.00	\$ 899.10
- Instrument # 2	\$ 4,995.00	\$ 899.10
- Instrument # 3	\$ 4,995.00	\$ 899.10
Quality Assurance	\$ 14,995.00	\$ 2,699.10
Specimen Storage	\$ 4,995.00	\$ 899.10
Web Portal - Reporting / Inquiry	\$ 14,995.00	\$ 2,699.10
ZetaFax - 2 Port Fax Reporting	\$ 4,995.00	\$ 899.10
<b>Total</b>		<b>\$ 40,740.30</b>
<b>Preventative Maintenance</b>		
<b>Description</b>	<b>Each Visit</b>	<b>Annual Total</b>
2 Quarterly Site Visits	\$ 2,500.00	\$ 5,000.00
<b>Total Annual &amp; Preventative Maintenance</b>		<b>\$ 45,740.30</b>

*NOTE: NO change in amount from 2011 contract.*



## **Software Maintenance Agreement:**

This Software Maintenance Agreement made and entered into between **Erie County** (Purchaser) on behalf of the **Erie County Public Health Laboratory** (User) and **Common Cents Systems, Inc.** (Vendor), sets forth the terms and conditions under which the Vendor will provide certain consulting services to the User.

### **1. TERM**

This agreement shall become effective January 1st, 2011 -or- the date referenced by signature, and shall remain in effect for a period of twelve (12) calendar months -or- until terminated by either party pursuant to Article 5. Purchaser shall have the option to extend this agreement for five (5) consecutive terms, each for a period of twelve (12) calendar months. An updated payment schedule (Article 9) will be amended to each of these extensions.

### **2. CHARGES AND PAYMENTS**

Vendor shall be paid by the Purchaser for the services provided hereunder pursuant to Article 9. Vendor is not required to perform the services during a fixed hourly or daily time; however, it is expected that the Vendor will expend the time and energy necessary to perform the responsibilities and complete the duties contracted for hereunder.

Vendor shall submit a detailed invoice to the Purchaser monthly. The Purchaser shall make payments of all undisputed amounts in accordance to Article 9. Vendor shall be responsible for the payment of any and all taxes imposed or assessed by reason of the Agreement. Vendor and the Purchaser specifically agree that Vendor or representatives of Vendor are not employees of either the Purchaser or the User.

### **3. VENDOR'S REPRESENTATION**

Vendor represents that it shall at all times exert its best efforts to diligently perform and complete its assignments in an acceptable and timely manner.

Vendor represents that all Developed Items shall be the original work product of Vendor, and Vendor shall, both during and after the termination of this agreement, defend and hold the User harmless for and against any claims, suits or proceedings brought against the User that any Developed Item or the use thereof infringes upon or constitutes a misappropriation of any patent or copyright, or the trade secret or other proprietary right of a third party, and Vendor shall pay all losses, costs and damages incurred by the User relating to or arising from such claims, suits or proceedings.

#### **4. CONFIDENTIALITY**

Vendor acknowledges that in connections with the performance of its duties hereunder it may learn, be provided or have access to information which is confidential and proprietary to the User or third party the User contracts with, including (but not limited to): research; development; trade secrets; business plans; computer programs and related documentation.

Vendor agrees that without the express written consent of the User, Vendor shall not distribute, sell, assign, disclose, disseminate, give or transfer any such Confidential Material or any portion or derivative thereof to any third party, at any time.

#### **5. TERMINATION**

Termination does not cancel any previous obligations (incurred before termination) to either party under this or other agreements. This agreement may be terminated in the following manner:

- (a) by mutual written consent of the parties; or
- (b) by either party upon giving the other sixty (60) days prior written notice.

Vendor understands and agrees that upon the termination of the Agreement it will surrender or destroy all Confidential Material and all related notes and papers.

#### **6. LIABILITY**

Except for breach under this Agreement, neither party shall be liable for any actual damages including but not limited to: direct, indirect, punitive, special or consequential damages.

#### **7. INDEPENDENT CONTRACTOR**

It is specifically agreed by the parties that the relationship of Vendor to the User is that of an independent contractor. Vendor and its employees is not and shall not be deemed to be employees of the User or the Purchaser. Nor shall the Vendor be entitled to any of the employee benefits provided by either the User or the Purchaser to employees. The Purchaser, on behalf of the User, is hereby contracting with Vendor for the services described in Article 8. Vendor reserves the right to determine the method, manner and means by which those services will be performed. Vendor will, however, work with the User or the User's designee(s) in defining the specific and/or conceptual services to be performed hereunder.

## **8. SCOPE OF SERVICES**

This Software Maintenance Agreement entitles the User to any regularly schedule release of updates and enhancements to the portions of the products *M/Lab Enterprise Edition* and *ApolloLIMS (LIMS)* that the User has Licensed. In addition, the User will have unlimited access to telephonic customer support. After hours emergency support is available via pager but an hourly Support Fee will be assessed for Emergency Support.

Vendor will work with top level management of the User to determine priorities and complement operations plans with information system related support. Vendor will work towards meeting all realistic time frames that the User's management designates by providing highly competent technical resources to assist the User's staff.

## **9. PAYMENT**

Payment for services rendered under this Agreement will be made on the following basis:

### **a) Maintenance**

The Purchaser will be billed monthly for Software Maintenance of the **LIMS**. At the time of this Agreement, the User is utilizing a 24 user **LIMS** license with additional options. The Purchaser will be billed \$ 2,274.67 per month for routine updates to the Software (see Attachment A, Vendor's Software Maintenance Policy and current **LIMS** Price Guide).

### **b) Technical Support**

The User will have unlimited access to telephonic technical support between the hours of 8:30am and 5:30pm, Central Standard Time. Technical Support includes basic help desk response, troubleshooting and remedial software remedies (see Attachment A, Vendor's Software Maintenance Policy and current **LIMS** Price Guide). The Purchaser will be billed \$ 1,120.36 per month for Technical Support (after the warrantee period - see Software License Agreement).

### **c) Onsite Visit**

The User agrees to pay the Vendor \$ 2,500 for onsite visits for Software Maintenance and periodic training as well as strategic meetings with local management. These visits are typically quarterly and at the request of the User.

### **d) 7x24 Support**

In the event that the User has a need for Emergency (after hours) support, Vendor agrees to have technical staff available by pager. The Purchaser will be assessed an additional fee of \$ 125/hr with a minimum of one (1) hour for each occurrence.

**e) Hourly Customizations**

The Purchaser will be billed at a rate of \$ 125.00 per hour for "*fee for service*" type of work. A quotation for work to be performed will be provided prior to commencement of billable work. If a Purchase Order is required by the Purchaser to accompany Invoices then a Purchase Order must be supplied prior to the commencement of any billable work.

**f) Interfaces**

Interfaces are billed on a flat fee basis per occurrence. A quotation for any interface will be given to the User and the Purchaser prior to commencement of programming activities. In the case of the LIMS, most interfaces are priced based on the current price sheet.

**g) Terms**

Vendor will invoice the Purchaser monthly. The Purchaser will be expected to pay each invoice within sixty (60) days from receipt. All amounts in this agreement are in U.S. Dollars.

**10. EXECUTORY CLAUSE**

This Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the Agreement, and no liability on account thereof shall be incurred by the County of Erie beyond the amount of such monies. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the Agreement.

**11. INSURANCE**

The CONTRACTOR shall obtain and maintain at its own cost and expense, insurance coverages with insurance companies licensed in the State of New York. The Contractor shall submit a standard Erie County Insurance Certificate or Certificates evidencing the coverage required under the professional services category of the Erie County Standard Certificate, and after approval by the Erie County Department of Law, said Certificate(s) shall be attached to and be made a part of this Agreement. Any default of the terms of this provision shall render this Agreement void and of no effect.

**12. ASSIGNMENT**

This agreement may not be assigned, in whole or in part, without the prior written consent of the other party hereto.

**13. NY LAW**

This Agreement shall be governed by, and construed in accordance with, the laws of the County of Erie and State of New York



## APPENDIX E: BUSINESS ASSOCIATE AGREEMENT TEMPLATE

### ERIE COUNTY BUSINESS ASSOCIATE AGREEMENT

The Business Associate Agreement (Business Associate Agreement) entered into by the Erie County Department of Health ("Covered Entity") and Business Associate BAT Technologies ("Business Associate") is made and entered into effective the 15th day of January 2014 ("Business Associate Agreement Effective Date").

#### I. RECITALS

- A. As set forth in the Erie County Privacy Policy, Erie County is a Hybrid Entity, which has designated the Department of Health as a Covered Entity for the purpose of compliance with Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder (45 CFR Part 160 and Part 164) by the U.S. Department of Health and Human Services (the "Privacy and Security Rules").
- B. Covered Entity and Business Associate wish to Use and Disclose certain information, some of which may be Protected Health Information ("PHI"), whereby Business Associate may be providing services to or performing functions on behalf of Covered Entity that involve the Use and Disclosure of PHI. The services and functions performed by Business Associate on behalf of Covered Entity are set forth in a Service Agreement entitled Software Maintenance Agreement executed on or about December 21, 2010 ("Service Agreement").
- C. Covered Entity and Business Associate intend to protect the privacy and provide for security of PHI Disclosed between the parties pursuant to the Service Agreement in compliance with HIPAA, the Privacy and Security Rules, and with the requirements of Subtitle D, the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery & Reinvestment Act of 2009 42 U.S.C. Sections 17921-17954 ("HITECH"), and other applicable federal and state laws.
- D. In consideration of the mutual promises below and the exchange of information pursuant to the Service Agreement and this Business Associate Agreement, the parties agree to the terms and conditions set forth in this Business Associate Agreement.

#### II. DEFINITIONS

- A. **Breach** means unauthorized acquisition, access, Use or Disclosure of PHI which compromises the security or privacy of such information, EXCEPT where: (1) the covered entity or business associate has a good faith belief that an unauthorized person to whom such information is Disclosed would not reasonably have been



able to retain such information; (2) any unintentional acquisition, access, or Use of PHI by an employee or individual acting under the authority of a covered entity or business associate if the acquisition, access, Use (i) was made in good faith and within the course and scope of authority; and (ii) such information is not further acquired, accessed, or Used or Disclosed; (3) there is an inadvertent Disclosure from an individual who is otherwise authorized to access PHI at a facility operated by a covered entity or business associate to another similarly situated individual at the same facility and any such information received as a result of such Disclosure is not further acquired, accessed, Used, or Disclosed without authorization by any person; and (4) unauthorized Disclosure is limited to encrypted or otherwise technologically secured data.

- B. **Business Associate** shall have the same meaning as the term "business associate" under the Privacy and Security Rules. In reference to the party to this Business Associate Agreement, the term "Business Associate" shall mean COMMON CENTS SYSTEMS, INC.. The parties acknowledge and agree that Business Associate is an independent contractor and is not an agent of Covered Entity.
- C. **Covered Account** means: (1) an account primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account; or (2) any other account for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks.
- D. **Covered Entity** shall generally have the same meaning as the term "covered entity" under the Privacy and Security Rules. In reference to the party to this Business Associate Agreement, the term "Covered Entity" shall mean Erie County Department of Health.
- E. **Data Aggregation** means the combining of PHI by a Business Associate created or received in its capacity as a Business Associate of another Covered Entity, to permit the creation of data for analyses that relate to the health care operations of the respective Covered Entities.
- F. **Designated Record Set** means a group of records maintained by or for a Covered Entity that is: (i) the individual's medical and billing records or (ii) used in whole or in part, by or for the Covered Entity to make decisions about the individual. A Designated Record Set does not include: (a) duplicate information maintained in other systems; (b) data collected and maintained for research; (c) data collected and maintained for peer review purposes; (d) psychotherapy notes; (e) information compiled in reasonable anticipation of litigation or administrative action; (f) employment records; (g) student records; and (h) source data



interpreted or summarized in the individual's medical record such as pathology slides and diagnostic film.

- G. **Disclosure** means the release, transfer, provision of access to, or divulging in any other manner, of PHI, outside Business Associate's organization (i.e., to anyone other than its employees who have a need to know or have access to the PHI).
- H. **Electronic Health Record** is an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- I. **Electronic Protected Health Information or "EPHI"** means Protected Health Information, as defined herein, that is transmitted by or maintained in electronic media. For purposes of this Business Associate Agreement, unless otherwise specified, any obligations of Business Associate relating to PHI shall also apply to EPHI.
- J. **Health Care Operations** shall have the meaning given to such term under HIPAA's Privacy and Security Rules and includes quality assessment and improvement, credentialing health care professionals, conducting or arranging for medical review, legal services and auditing functions, business planning and development and business management and general administrative duties. The term Health Care Operations does not include marketing and fundraising activities of the Covered Entity or Business Associate.
- K. **Health Insurance Portability and Accountability Act of 1996 (HIPAA)** is a federal law that sets forth standards for how Covered Entities and Business Associates may Use and Disclose PHI. HIPAA also establishes patient rights with regard to PHI.
- L. **Hybrid Entity** means an entity whose business activities include covered and non-covered functions, and that has designated specific departments, divisions or programs as Designated Health Care Components.
- M. **Identity Theft** is a fraud committed or attempted using the identifying information of another person without authority.
- N. **Identifying Information** is any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number.
- O. **Individual** means the person who is the subject of the PHI.



- P. **Individually Identifiable Health Information** means information that is a subset of health information, including demographic information collected from an Individual, that: (i) is created or received from a health care provider, health plan, employer or health care clearinghouse; and (ii) relates to the past, present or future physical or mental health or condition of an Individual, the provision of health care to a patient, or the past, present, or future payment for the provision of health care to an Individual.
- Q. **Limited Data Set** means information that excludes names, postal address (other than city, state, and zip code), telephone and fax numbers, email address, social security and medical record numbers, health plan numbers, account numbers, certificate license numbers, vehicle identifiers and serial numbers including license plate numbers, device identifiers and serial numbers, Web Universal Resource Locators, Internet Protocol address numbers, biometric identifiers including finger and voice prints and full face photographic images and any comparable images.
- R. **Personal Health Record** means an electronic record of Individually Identifiable Health Information on an Individual that can be drawn from multiple sources and that is managed, shared, and controlled by or for the Individual.
- S. **Protected Health Information** or “**PHI**” means any information, whether oral or recorded in any form or medium that: (i) relates to the past, present or future physical or mental condition of an Individual, the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual; and (iii) was received from Covered Entity or created or received by Business Associate on behalf of Covered Entity.
- T. **Red Flag** means a pattern, practice or specific activity that indicates the possible existence of Identity Theft.
- U. **Secured PHI** means PHI rendered unusable, unreadable or indecipherable to unauthorized individuals when one or more of the following security measures are in place:
1. Encryption of electronic PHI as specified in the HIPAA Security Rule by the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key and such confidential process or key that might enable decryption has not been breached;
  2. Encryption processes that are tested by National Institute of Standards and Technology (NIST) and judged to meet this standard including:



- a) Valid encryption processes for data at rest consistent with NIST Special Publication 800-111, Guide to Storage Encryption Technologies for End User Devices;
  - b) Valid encryption processes for data in motion that comply with Federal Information Processing Standards (FIPS) 140-2 including standards described in NIST Special Publications 800-2, guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations; 800-77, Guide to IPsec VPNs; or 800-113, Guide to SSL VPNs, and may include others which are FIPS 140-2 validated;
3. The media on which the PHI is stored or recorded has been destroyed on one of the following ways:
- a) Paper, film, or other hard copy media have been shredded or destroyed such that the PHI cannot be read or otherwise cannot be reconstructed; or
  - b) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization, such that the PHI cannot be retrieved.

V. **Security Incident** means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information or interference with systems operations in an information system.

W. **Subcontractor** means a person or organization to whom a Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate, regardless of whether Business Associate has entered into a contract with the person or organization.

X. **Unsecured Protected Health Information** means PHI that is not secured through technology or methodology that HHS has stated renders the PHI unusable, unreadable, or indecipherable to unauthorized Individuals.

Y. **Use** means, with respect to PHI, the sharing, employment, application, utilization, transmission, examination, or analysis of such information to, from or within Business Associate's organization.

### III. OBLIGATIONS OF BUSINESS ASSOCIATE

#### A. Permitted Uses and Disclosures.



1. Business Associate may Use and/or Disclose PHI received from Covered Entity only as permitted or required by the Business Associate Agreement, and only when necessary to perform the services set forth in the Service Agreement.
2. Business Associate may Use or Disclose PHI as required by law.
3. Business Associate agrees that all Uses, Discloses and/or requests for PHI will be consistent with Covered Entity's minimum necessary policies and procedures.
4. Business Associate may not Use or Disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity. In addition, Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of HIPAA, HITECH, the Privacy and Security Rules or any state law (including but not limited to the Identity Theft Rules).
5. Business Associate may Disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate provided that (a) the Disclosures are required by law, or (b) Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that (i) the information will remain confidential and used for further Disclosure only as required by law or for the purpose for which it was Disclosed to the person, and (ii) the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been compromised or Breached.
6. Business Associate may provide Data Aggregation services relating to the Health Care Operations of the Covered Entity only if necessary to fulfill the terms of the Service Agreement.
7. Business Associate may store, analyze, access and use components of PHI that have been de-identified and that do not contain any Individually Identifiable Health Information, provided that any such use is (a) necessary to fulfill the terms of the Service Agreement; and (b) consistent with applicable law.
8. Business Associate acknowledges that sections of HIPAA, HITECH, the Privacy and Security Rules, and state law apply directly to Business Associate and Business Associate's Subcontractors as they apply to Covered Entity. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of HIPAA, HITECH, the Privacy and Security Rules or state law. Business Associate agrees to comply with these and other applicable laws and regulations, and agrees to monitor Subcontractors to ensure compliance with the same.



## **B. Appropriate Safeguards**

Business Associate acknowledges that Covered Entity is relying on the administrative, physical and security standards of Business Associate and Subcontractors of Business Associate in selecting Business Associate. Business Associate and Subcontractors of Business Associate must:

1. Protect and safeguard from Disclosure all PHI and other confidential information regardless of the type of media on which it is stored;
2. Implement appropriate safeguards as are necessary to prevent the Use or Disclosure of PHI other than as permitted by this Business Associate Agreement, HIPAA, HITECH, the Identity Theft Rules and other applicable federal and state laws;
3. Maintain a privacy and security program that includes administrative, technical and physical safeguards and security policies, procedures, and documentation of security activities; and
4. Implement safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI and EPHI created, received, maintained, or transmitted on behalf of the Covered Entity.

## **C. Identity Theft Compliance**

Business Associate and Subcontractors of Business Associate will have policies and procedures in place designed to detect, prevent and mitigate the risk of Identity Theft with regard to any Covered Accounts.

## **D. Reporting Obligations**

Business Associate agrees to report to Covered Entity's Chief Privacy Officer verbally and in writing any Use or Disclosure of PHI other than as permitted by this Business Associate Agreement, and agrees to report any known pattern of activity or practice that may constitute a material breach or violation of this Business Associate Agreement, within five (5) days of the date Business Associate knew or should have known of such Use, Disclosure, pattern or practice. The obligation to report includes, but is not limited to, any Security Incident or Breach involving Unsecured PHI, and/or any violation of HIPAA, HITECH or the Privacy and Security Rules. Business Associate shall also report any known pattern of activity or practice of a Subcontractor that constitutes a material breach or violation of the Subcontractor's obligation under the Business Associate Agreement, or any federal or state laws.

Such report shall include, to the extent possible:



1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
2. A description of the types of Unsecured PHI that were involved in the Breach.
3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
5. Contact procedures for Covered Entity to contact Business Associate to ask questions or learn additional information.

In the event of a Breach, Business Associate's notice to Covered Entity must also include the identification of and contact information for each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, or Disclosed during such Breach. In addition, if Business Associate is a service provider of Personal Health Records, as defined under HITECH, and discovers a Breach of security, it must notify Individuals whose unsecured Identifying Information was acquired by an unauthorized person, and must comply with any other applicable requirements concerning notification of individuals and/or federal and state agencies.

Business Associate shall take prompt corrective action to mitigate the harmful effects of any Security Incident, Breach, improper Use or Disclosure or unauthorized access of PHI in violation of this Business Associate Agreement, federal law and/or state law, and shall take additional action to mitigate harm as requested by Covered Entity. Upon request, Business Associate shall also assist Covered Entity in the performance of a risk assessment to determine whether a Breach occurred.

#### **E. Business Associate's Agents/Subcontractors**

Business Associate may Disclose PHI to and permit the Use of PHI by its employees, Subcontractors, agents, or other representatives only if and to the extent directly related to, and necessary for, the performance of services performed for or on behalf of the Covered Entity under the terms of the Service Agreement and the Business Associate Agreement. Business Associate shall ensure that any agents, including Subcontractors to whom it provides Covered Entity's PHI, agree in writing to:

1. the same restrictions and conditions that apply to Business Associate with respect to such PHI;



2. hold PHI in a confidential and secure manner as provided pursuant to this Business Associate Agreement and only disclose PHI as required by law or for the purposes for which it was disclosed; and
3. immediately notify Business Associate of any Breaches of confidentiality of the PHI.

Business Associates shall implement and maintain sanctions against agents and Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation. Business Associate shall indemnify, defend and hold harmless Covered Entity and its respective employees, directors, officers, Subcontractors and agents from and against all claims, actions, damages, losses, liabilities, fines, penalties, costs or expenses (including without limitation reasonable attorney's fees and costs incurred in notifying Individuals of a Breach caused by Business Associate or its subcontractors or agents) suffered by Covered Entity in connection with Business Associate's failure to obtain and maintain a written agreement with such Subcontractors or agents, and/or to ensure that the Subcontractors or agents complied with all applicable federal and state laws and regulations.

#### **F. Access to PHI**

To comply with New York State Public Health Law § 18 and HIPAA, Business Associate shall make PHI maintained by Business Associate or its agents or Subcontractors in Designated Record Sets or in the Electronic Health Record in an electronic format, available to Covered Entity, or as directed by Covered Entity to an Individual, for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under HIPAA, HITECH, New York Public Health Law § 18 and any other applicable federal and state laws.

#### **G. Amendment of PHI**

Within ten (10) days of receipt of a request from Covered Entity for an amendment of PHI or a record about an Individual contained in a Designated Record Set or in the Electronic Health Record in an electronic format, Business Associate or its agents or Subcontractors shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under HIPAA, HITECH, and/or state law. If any Individual requests an amendment of PHI directly from Business Associate or its agents or Subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any grant or denial of a request for an amendment of PHI maintained by Business Associate or its agents or Subcontractors shall be the sole responsibility of Covered Entity.

#### **H. Accounting Rights**



Within ten (10) days of notice by Covered Entity of a request for an accounting of Disclosures of PHI, including Disclosures for treatment, payment and healthcare operations, Business Associate and its agents or Subcontractors shall make available to Covered Entity or, as directed by Covered Entity directly to an Individual, the information required to provide an accounting of Disclosures to enable Covered Entity to fulfill its obligations under HIPAA, HITECH and state law. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate for at least six (6) years prior to the request, or at least three (3) years prior to the request if the records are maintained in an Electronic Health Record. At minimum, such information shall include: (i) the date of Disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of the purpose of the Disclosure that reasonably informs the Individual of the basis for the Disclosure, or a copy of the Individual's authorization, or a copy of the written request for Disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agent or Subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing, so that the Covered Entity may prepare and deliver the requested accounting.

#### **I. Access to Records by the Federal Government**

Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary of HHS and the FTC for purposes of determining Business Associate's compliance with HIPAA, HITECH and the Identity Theft Rules. Business Associate shall concurrently provide to Covered Entity a copy of any PHI, policies and procedures or other documentation that Business Associate provides to HHS and/or the FTC.

#### **J. Minimum Necessary**

Business Associate and its agents or Subcontractors shall only request, Use and Disclose, to the extent practicable, a Limited Data Set, or the minimum amount of PHI necessary to accomplish the intended purpose of the request, Use or Disclosure.

#### **K. Documentation of Disclosures**

Business Associate shall document such Disclosures of PHI and information related to such Disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI.

#### **L. Retention of PHI**

Business Associate and its agents or Subcontractors shall retain all PHI and documentation containing Disclosures of PHI throughout the term of the Service Agreement and for a period of six (6) years after termination of the Service Agreement.



#### **M. HIV/AIDS**

If the Service Agreement requires the Use or Disclosure of PHI that contains HIV/AIDS information, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F. Business Associate shall notify its agents and/or Subcontractors concerning all applicable confidentiality requirements.

#### **IV. OBLIGATIONS OF COVERED ENTITY**

Covered Entity shall:

- A. Provide Business Associate with Covered Entity's Notice of Privacy Practices for PHI, and notify Business Associate of any substantive changes to its Notice of Privacy Practices;
- B. Notify Business Associate of any changes in, or revocation of, the permission by an Individuals to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's permitted or required Use or Disclosure of PHI; and
- C. Notify Business Associate of any restriction to the Use or Disclosure of PHI that Covered Entity has agreed to or is required to abide by under HIPAA or HITECH, to the extent that such restriction may affect the Business Associate or its agents or Subcontractor's Use or Disclosure of PHI.

#### **V. TERM AND TERMINATION**

##### **A. Term**

This Business Associate Agreement shall become effective on the Business Associate Agreement Effective Date and shall continue until terminated by Covered Entity, or the date that the Service Agreement expires or is terminated. However, the following provisions and requirements of this Business Associate Agreement shall survive the expiration or other termination of the Business Associate Agreement: Sections III, V, VI, VII and X.

##### **B. Termination for Cause**

1. Material Breach by Business Associate: Business Associate shall take reasonable steps to mitigate and cure a breach of this Business Associate Agreement. Business Associate authorizes the Covered Entity to terminate this Business Associate Agreement and the Service Agreement if Covered Entity determines that Business Associate or its agents or Subcontractors have violated a material term of the Business Associate Agreement. In the event



Covered Entity determines that Business Associate or its agents or Subcontractors have violated a material term of the Business Associate Agreement, Covered Entity shall have the right to immediately terminate the Service Agreement and Business Associate Agreement upon written notice to Business Associate.

2. Material Breach by Covered Entity: If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the Business Associate Agreement, Business Associate must take reasonable steps to cure the Breach or end the violation. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of Covered Entity that Business Associate believes constitutes a material breach or violation of Covered Entity's obligations under this Business Associate Agreement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation. If such steps are unsuccessful, Business Associate shall either (a) terminate the Service Agreement and the Business Associate Agreement, if feasible or (b) if termination of the Service Agreement and Business Associate Agreement is not feasible, Business Associate shall report the problem to the Secretary of HHS.

### **C. Obligations of Business Associate Upon Termination**

Upon termination of this Business Associate Agreement for any reason, Business Associate shall return or destroy all PHI that Business Associate or its agents or Subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall continue to extend the protections of Section III of this Business Associate Agreement to such information, and limit further Use of such PHI to those purposes that make the return or destruction of such PHI infeasible. If Business Associate elects to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

### **D. Indemnification for Violations**

Any violation of this Business Associate Agreement may cause irreparable harm to the Covered Entity. Therefore, Covered Entity may seek any legal remedy for such harm, including an injunction or specific performance. Business Associate shall indemnify and hold the Covered Entity harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this Business Associate Agreement. Business Associate shall be fully liable for the actions of its agents, employees, partners and/or Subcontractors. Business Associate shall fully indemnify and save harmless the Covered Entity from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 or State Technology Law § 208, caused by



any intentional act or negligence of Business Associate, its agents, employees, partners and/or Subcontractors; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Covered Entity.

## **VI. AMENDMENT**

### **A. Amendment to Comply with Law**

The parties agree to take such action as is necessary to implement the standards and requirements of HIPAA, HITECH and other applicable laws relating to the security or confidentiality of PHI.

### **B. Written Amendment Required**

The Business Associate Agreement may not be modified or amended except by a writing duly signed by an authorized representative of each party.

## **VII. NO THIRD-PARTY BENEFICIARIES**

Nothing express or implied in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associates and their respective successors or assigns, any rights, remedies, obligations or liability whatsoever.

## **VIII. NO WAIVER**

No waiver of a breach of any provision of this Business Associate Agreement shall be construed to be a waiver of any breach of any other provision of this Business Associate Agreement or of any succeeding breach of the same provision. No delay in action with regard to any breach of any provision of this Business Associate Agreement shall be construed to be a waiver of such breach.

## **IX. INDEPENDENT CONTRACTOR RELATIONSHIP**

This Business Associate Agreement is not intended to create, and will not be construed to create, any relationship between the parties other than that of independent contractors. Neither of the parties nor any of their respective representatives will be construed to be the agent, employee, or representative of the other.

## **X. NOTICE**

Any notices required to be given pursuant to the terms and conditions hereof shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the respective parties at their addresses stated below. Notices shall be deemed to be effective on the date when they are mailed.



**TO: Erie County Department of Health**  
95 Franklin Street  
Room  
Buffalo New York 14202  
**Attn:** Gale Burstein

**TO: COMMON CENTS SYSTEMS, INC.**  
4701 Trousdale Drive  
Nashville, Tennessee  
  
**Attn:**

#### **XI. SEVERABILITY**

If any section or portion of this Business Associate Agreement shall be determined to be invalid, such determination shall not affect the enforceability or validity of the remainder of this Business Associate Agreement.

#### **XII. INTERPRETATION**

The terms and conditions of this Business Associate Agreement shall supersede any conflicting terms and conditions in the Service Agreement between the parties and shall supersede the terms and conditions of any existing Business Associate Agreement between the parties. This Business Associate Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, HITECH, the Identity Theft Rules and state law. The parties agree that any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with HIPAA, HITECH, the Privacy and Security Rules, the Identity Theft Rules, and other applicable state and federal laws.

#### **XIII. STATE LAW**

Nothing in this Business Associate Agreement will be construed to require Business Associate to Use or Disclose PHI in violation of New York State law.

#### **XIV. GOVERNING LAW**

To the extent not superseded by Federal law, the rights and obligations of the Parties hereto under this Business Associate Agreement shall be governed by the laws of the State of New York without regard for its conflicts of laws provisions. Any action arising out of or related to this Business Associate Agreement shall be brought in, and the parties agree to the jurisdiction of, the Supreme Court, located in Erie County, State of New York. If the matter is brought in Federal Court, the parties agree to the venue of the Western District of New York.



**XIV. GOVERNING LAW**

To the extent not superseded by Federal law, the rights and obligations of the Parties hereto under this Business Associate Agreement shall be governed by the laws of the State of New York without regard for its conflicts of laws provisions. Any action arising out of or related to this Business Associate Agreement shall be brought in, and the parties agree to the jurisdiction of, the Supreme Court, located in Erie County, State of New York. If the matter is brought in Federal Court, the parties agree to the venue of the Western District of New York.

**IN WITNESS WHEREOF**, the parties hereto have duly executed the Business Associate Agreement as of the Business Associate Agreement Effective Date.

**ERIE COUNTY DEPARTMENT OF HEALTH**

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

Electronically Approved  
Greg Kammer  
Assistant County Attorney

**COMMON CENTS SYSTEMS, INC.**

By: [Signature]  
Print Name: Robert D. Ringenberg  
Title: President  
Date: 1-27-2014

Electronically Approved  
Gale R. Burstein, MD, MPH  
Commissioner of Health of the  
County of Erie

\\10673.0034\363662.doc

EXHIBIT B  
Erie County Health Department  
Contractual Service Rates for Fee-For-Service Personnel  
Annual Compensation May be \$10,000 or More

Rates for 2013

Physician – 2	90.00/hour
Physician – 3	110.00/hour
Physician Assistant – 1	38.00/hour
Physician Assistant – 2	43.00/hour
Physician Assistant – 3	48.00/hour
Physician Assistant – 4	53.00/hour
Physician Assistant – 5	58.00/hour
Public Health Consultant #1	10.00/hour
Public Health Consultant #2	20.00/hour
Public Health Consultant #3	30.00/hour
Public Health Consultant #4	40.00/hour
Public Health Consultant #5	50.00/hour
Refugee Health Assessment Language Interpreter	50.00/assessment
Toxicologist – 1	30.00/hour
Toxicologist – 2	40.00/hour
Toxicologist – 3	50.00/hour

23. WHEREAS, the Erie County Department of Health contracts with various entities to provide Public and Correctional Health Services, within the Professional Services appropriations.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Executive is hereby authorized to enter into contracts and amendments to those contracts with the following organizations in whatever form of incorporation they maintain along with their subsidiaries, affiliates and practice groups to provide Public and Correctional Health Services in order to assure continuation of vital services:

American Cancer Society  
American Heart Association  
American Red Cross  
Amherst Radiology/Diagnostic X-ray Services  
AT&T Language Line  
BAT Technologies  
Buffalo Computer Graphics  
Buffalo Pediatrics Associates  
Calspan-UB Research Center  
Catholic Health System  
Common Cents Systems  
Community Connections of NY, Inc.  
Community Health Center of Buffalo  
Cornell Cooperative Extension  
Erie County Community College