

AGREEMENT

PARTIES

Hamilton County
County Office Complex
102 County View Dr.
Lake Pleasant, NY 12108

Contractor: Regional Office of Sustainable Tourism
Lake Placid Convention and Visitor's Bureau
2608 Main Street
Lake Placid, NY 12946

DATE: January 1, 2015

WITNESSETH:

1. WORK/SERVICES TO BE FURNISHED

Contractor agrees to provide, perform and furnish to Hamilton 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 Hamilton County agrees to pay to Contractor, the contract price set forth in Appendix B (for fiscal year 2015) annexed hereto and made a part hereof. For contract years 2016 and 2017, ROOST and Hamilton County will agree on a contract budget, and a new fiscal year specific Appendix B will be developed, subject to the annual appropriation of the Hamilton County Board of Supervisors.

3. CONTRACT TERM

The term of this agreement is from January 1, 2015 through December 31, 2017.

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 C
- Hamilton County Standard Clauses – Appendix D

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.


7. EXECUTION IN COUNTERPARTS

This agreement may be executed in counterparts, and when so executed the same shall be effective to the same extent as though the parties had signed the same document.

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

HAMILTON COUNTY

By: _____


Chairman, Board of Supervisors

REGIONAL OFFICE OF SUSTAINABLE TOURISM,
LAKE PLACID CONVENTION AND VISITOR'S
BUREAU,

By: _____


James McKenna

APPENDIX A
DESCRIPTION OF SERVICES

1. The Contractor warrants, covenants and represents that it has the staff, experience and qualifications to provide and perform professional publicity, promotion and advertising services for and on behalf of Hamilton County (County) for the purpose of publicizing the advantages of the County pursuant to subdivision fourteen of section two hundred twenty-four of the County Law, and the County desires to retain the Contractor to perform such services upon the terms and conditions herein contained.

2. The County hereby hires, retains and engages the Contractor to provide and perform professional publicity, promotion and advertising services for and on behalf of County for the purpose of publicizing the advantages of the County pursuant to subdivision fourteen of section two hundred twenty-four of the County Law, said services to include but not be limited to:

- (a) advertising, phone calls, mailings, internet, public relations, marketing and other types of solicitations, contacts and endeavors;
- (b) solicitation and securing of tourism in general, within the area of the Hamilton County;
- (c) provision of service, assistance and advice to all visitors utilizing visitor oriented facilities within the County;
- (d) promotion of Hamilton County and its visitor oriented enterprises by implementing strategic marketing plans prepared by the Contractor and approved by the County's Board of Supervisors as hereinafter provided;
- (e) coordinating, encouraging and generating activities, efforts and the exchange of information from and among the various motels, hotels, restaurants, commercial businesses, and/or tourist attractions (including but not limited to the natural attractions within the County), as well as the promotion of visitor business opportunities within the County; and
- (f) development of advertising and marketing programs, and the scheduling and placement thereof.

3. All staff and personnel hired or employed by the Contractor shall be employees of the Contractor and not of the County, and said employees shall be solely and exclusively under the control and direction of the Contractor. The Contractor agrees that at its own cost and expense it will procure and keep in full force and effect policies for workers' compensation for all such employees, and shall fully comply with all provisions of the Labor Law and the Workers' Compensation laws of the State of New York applicable to it and its employees at all times during the term of this Agreement.

4. This Agreement is not intended to create, nor shall it be construed as creating a joint venture or partnership.

5. The Contractor warrants, covenants and agrees that:

- (a) all expenditures and disbursements of the funds paid to the Contractor by the County under this agreement shall only be made for the purposes set forth in an approved strategic marketing plan and/or as approved by the County;
- (b) it shall maintain each of the types/sources of funds provided under this contract in a separate bank account from which all expenditures shall be

- made; and
- (c) it shall provide to the County true and complete copies of any and all audits secured by the Contractor during the term of this Agreement;
 - (d) it shall secure and maintain proper and sufficient documentation substantiating its uses and expenditures of the funds provided herein consistent with the financial and auditing practices and procedures utilized by the County, and that all such documentation shall be made available to the County, or its designated representatives, at any time during the term of this Agreement upon request;
 - (e) it shall provide a quarterly written expenditure report in such form and content as the County may require, separately detailing the specific expenditures of each type/source of contract funds;
 - (f) it shall provide regular performance reports to the County, at least quarterly, said report to be in the nature of a narrative of the progress of all marketing programs to date, an outline of all marketing program objectives for the future, and statements as to the financial aspects of past, present and future marketing programs;
 - (g) it shall submit an annual written report to the County no later than December 1st of each year of this agreement, setting forth in detail a narrative statement of the Contractor's performance of its obligations and duties pursuant to this Agreement, as well as a reasonable estimate of the financial impact of the Contractor's performance and the benefits derived by Hamilton County and its citizens, selected copies of advertisements and literature evidencing the work product of the Contractor over the preceding months, and any other information requested by the County;
 - (h) it shall furnish to the County documentation of all expenditures to third parties for work, materials and services which are paid or reimbursed out of the County funds furnished under this agreement; and it shall provide the County with an annual audited financial statement not later than November 1st of each year of this agreement; and

6. The County hereby designates the Chairman of the Board of Supervisors or designee, to serve as its' liason with the Contractor.

7. The County shall have the right to audit all of the books and records of the Contractor relating to the uses and expenditures of funds provided by this Agreement at any time, upon reasonable notice to the Contractor. The Contractor agrees to cooperate and comply fully with all such audits and/or requests by the County for information and/or documentation.

8. The Contractor agrees that it shall not assign, transfer, convey or otherwise dispose of any rights, interests or contractual obligations of the Contractor to the County provided for in this Agreement, including but not limited to the use and expenditure of the I Love New York grant funds, without the express prior written consent of the County. This provision shall not be construed to prevent the Contractor from delegating certain promotional functions to third party subcontractors; provided, however, that the Contractor shall be solely responsible for the payment thereof and for the satisfactory performances of such subcontractors, and shall defend, indemnify and hold harmless

the County from and against any and all claims, losses, damages, judgments, etc. arising out of the Contractor's arrangements with such subcontractors, including but not limited to claims, etc. of said subcontractors, the Contractor and/or third parties.

9. The Contractor warrants, covenants and represents that:
- (a) it is aware of and familiar with the provisions of the Hamilton County Code of Ethics, a copy of which has been provided to the contractor; and
 - (b) at no time during the term of this Agreement shall it knowingly permit or allow performance of its services for the County under this Agreement to involve any violation of said statutory provisions or of the Code of Ethics; and
 - (c) it shall fully comply with all other general and special laws and regulations of the State of New York, as well as with all local laws and resolutions of the County, applicable to the services to be performed by the Contractor under this agreement.

10. The Tourism Committee of the Board of Supervisors shall serve as the Advisory Committee to advise and recommend expenditures. Said Advisory Committee shall review proposed strategic marketing plans, budgets, programs and promotion/marketing activities developed by the Contractor and furnish advice and recommendations to the Director regarding the same.

11. It is understood and agreed by the parties that all services to be provided and furnished by the Contractor, and all purchases of media advertising and of publicity, advertising, marketing, sales and promotional materials, shall be in accordance and compliance with a strategic marketing plan(s) and budget(s) prepared by the Contractor and submitted to the County and approved by County's Board of Supervisors. All strategic marketing plans shall provide in detail the following information:

- (a) the publicity, advertising, marketing, sales and promotional efforts to be conducted by the Contractor during the period for which such proposed plan has been developed, together with the names of any contractors with whom or which the Contractor intends to contract for work, labor, services, products, etc.; and
- (b) the proposed budget for such plan, the same to comply with paragraph 12 below.

The draft budget and marketing plan shall be presented by the Contractor to the Hamilton County Board of Supervisors no later than December 1st.

12. The budget shall contain detailed and specific line item expenditures by marketing segment and program as may be required by the County (see Appendix B).

13. Upon approval by County's Board of Supervisors of such strategic marketing plan(s) and budget(s), the Contractor shall

- (a) implement and carry out the same; and
- (b) at all times cooperate with the County and the Director, and keep the same informed of the Contractor's efforts to carry out the approved marketing plan(s) and budget(s).

14. The Contractor shall not allow or permit any third party to use in any manner whatsoever the name and/or logo of the County, or of any County Department or Agency without prior approval of the Board of Supervisors.

15. Notwithstanding any other provision of this agreement, the County may terminate this agreement and/or enter into other contracts with third persons or parties to publicize the advantages of the County, in the event that the Contractor

- (a) dissolves, or
- (b) ceases to adequately perform this contract in the determination of the County's Board of Supervisors.

16. During the first year of this agreement the County and the Contractor will develop performance indicators to be utilized in subsequent years to measure the overall effectiveness of the County's publicity expenditures. These performance indicators shall include but are not limited to:

Performance Indicators

Tracking Mechanisms

1. Economic Impact of Tourism

Visitor Profile

2. Sales tax Collection

County Records

3. Length of Stay

Visitor Profile

4. Per-party expenditure

Visitor Profile

5. Attraction Attendance

Compilation of Industry Records

APPENDIX B
COST OF SERVICES

1. The parties acknowledge, understand and agree that the amounts to be expended by the County for the services and the publicizing to be provided and performed by the Contractor shall be paid from funds appropriated and available in County's adopted budget attached, and that County shall have no liability under this contract to the Contractor or to anyone else beyond the funds appropriated and actually available for this contract.

2. Provided that the Contractor has otherwise complied with all requirements of this agreement, and subject to the terms of this agreement, the County shall make payments to the Contractor on a quarterly basis upon submission of a properly completed County voucher, subject to the availability of funds.

3. All funds received by the Contractor from the County under this agreement shall be used and expended by the Contractor for the payment of expenses directly incurred for the purpose of publicizing the advantages of the County pursuant to subdivision fourteen of section two hundred twenty-four of the County Law; and, provided that the same are approved as part of a strategic marketing plan and directly incurred in the actual performance of this agreement, may include, among other things, fees, office supplies, travel expenses, telephone expenses, radio, television, newspaper and magazine advertisements, brochures, expenses related to or incurred in the securing and servicing of tourism, conventions and conferences, insurance premiums, and other expenses incurred for the services provided by the Contractor to Hamilton County pursuant to this Agreement. In accordance with the foregoing, the Contractor agrees to expend such funds in compliance with the budget attached hereto and with the strategic marketing plan.

4. It is understood and agreed by the Contractor that modification of any strategic marketing plan will require written approval of the County's Board of Supervisors. Requests by the Contractor for modification of a strategic marketing plan shall first be presented to the County's Advisory Committee for consideration and recommendation to the County's Board of Supervisors.

HAMILTON COUNTY
2015 PUBLICITY BUDGET

General Publicity	\$250,000.00*
Publicity Administration	<u>25,000.00</u>
2015 Total	= \$275,000.00

*Includes I Love NY matching funds grant

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.

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 declaration pages from the policies of such insurance. The failure of the County to object to the contents of the certificate(s) and/or declaration pages, or the absence of same, shall not be deemed a waiver of any and all rights held by the County.

APPENDIX D - STANDARD CLAUSES FOR HAMILTON 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 from and against any and all liability, suits, judgments, orders, causes of action, and claims, including but not limited to those for bodily injury, property damage, death, and reasonable attorney's fees, arising out of or in connection with the Contractor's negligence and/or its 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 Hamilton 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.

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 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 Hamilton 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.