



Erie County Medical Center Corporation
RFP # 21822
Addendum 2

Erie County Medical Center Corporation

Addendum 2 to RFP # 21822

THIRD PARTY ACCOUNTS RECEIVABLE COLLECTIONS

The deadline for submission still remains:

Friday, June 29, 2018 at 11:00 a.m. EST

- A. ECMCC's RFP# 21822, Third Party Accounts Receivable Collections is hereby amended to include the following:
Accounts will be assigned on an as-needed basis. ECMCC may remove an account from placement with a respondent at any time within its discretion.
- B. The following questions were submitted to the Designated Contact:
1. Whether companies from Outside USA can apply for this? (like, from India or Canada)
No.
 2. Whether we need to come over there for meetings?
Yes.
 3. Can we perform the tasks (related to RFP) outside USA? (like, from India or Canada)
No.
 4. Can we submit the proposals via email?
No. One (1) sealed paper copy and one (1) electronic copy (on flash drive or CD-ROM) of the proposal must be submitted to the address listed on the front page of the RFP.
 5. Please reconfirm the due date for this procurement by providing it in response to answers to questions.
The deadline for submission still remains Friday, June 29, 2018 at 11:00 a.m. EST.
 6. Please describe your level of satisfaction with your current or recent vendor(s) for the same purchasing activity, if applicable.



We are requesting services for aged Third Party Payers / Commercial Insured accounts and do not have a current vendor for this service.

7. What collection attempts are performed or will be performed internally prior to placement?
Routine follow up billing.
8. Will the selected vendor be allowed to litigate balances exceeding a certain dollar amount on your behalf, with your explicit approval?
No, if the successful respondent recommends litigation, we expect them to work with our Office of General Counsel and already-assigned outside counsel.
9. Will data be provided on a daily basis including demographics and transactions?
Data will provided monthly and a process for regular data updates will be determined.
10. Can you provide an Aged Trial Balance of the inventory of accounts?
We will not provide any detailed information that may include PHI at this time. A summary if the number of accounts by major third party payer, by aging category and by inpatient, outpatient and nursing home services will be provided.
11. Can you provide historical aged cash collections on an annual basis for the inventory of accounts?
No.
12. Is this an ongoing placement? If so, for how long?
We envision it to be but it depends on the results we achieve.
13. Hospital & Nursing Home accounts only or is there a Pro-Fee component?
We are excluding professional fees at this time, however, may add it by amendment at a later date depending on the success of this activity.
14. What is an estimated volume and number of accounts placed?
See response to 10 above.
15. What is the approx. age at turnover?
See response to 10 above.
16. What is the current recovery?
Note response to number 6 and the services we are seeking.
17. Do you currently use an early-out vendor?
Note response to number 6 above and the services we are seeking.
18. Does ECMC receive cell phone consent from patients?
No.



19. To generate pricing, can we get an ATB by payor that reflects number of accounts and dollars associated?
See response to 10 above.
20. How many collection vendors are you planning to select under this procurement?
It depends on the responses we receive and we make no commitments about number of firms or a firm at this time.
21. What are the names of your incumbent collection vendors?
See response to number 6 above.
22. What is the average age of accounts that will be assigned for collection (by account type)?
See response to number 10 above.
23. What are the fee rates of your incumbent collection vendor(s)? How are the fees calculated?
See response to number 6 above.
24. What metrics, results, and/or processes are you seeking to improve or enhance under this contract?
Overall reduction in the amount of accounts receivable and increased cash flow.
25. On average, how much does your current vendor collect monthly (expressed as dollars recovered and liquidation rate)?
See response to number 6 above.
26. What is the total number of delinquent accounts (expressed as number and dollar amount) that will be assigned for collections?
See response to 10 above.
27. How often will accounts be assigned with the vendor(s) (e.g., daily, weekly, monthly, quarterly)?
We anticipate a large upfront placement with ongoing monthly placements thereafter.
28. On average, how many accounts (expressed as number and dollar amount) do you anticipate placing with the successful vendor monthly?
See response to number 10 above.
29. What is the current vendor's historical recovery rate (liquidation rates) on accounts over the last three years?
See response to number 6 above.
30. What are the dollar amounts and contingency fees paid to your incumbent vendor(s) over the last three years (please include by account type if applicable)?
See response to number 23 above.



31. What are your target or anticipated fee rates for this contract?
We will not provide an anticipated fee rate. As a public benefit corporation, we are issuing this RFP to ensure we get the best pricing respondents can offer.
32. Will the winning collection vendor(s) use its own collection platform, or will a preferred platform be provided?
Please propose what you believe will generate the best results in light of ECMCC's goals.
33. Does an agency still qualify without demonstrated NYS experience, specifically?
An agency will still qualify, however, as noted in our evaluation criteria, a proposal without this experience may not be scored as great as others with NYS experience.
34. What collection attempts were performed internally prior to placement?
Routine follow up collection.
35. What is the total number of accounts available for placement?
See response to number 10 above.
36. What is the average balance of accounts?
See response to number 10 above.
37. What is the average age of accounts at placement (at time of award and/or on a going-forward basis)?
See response to number 10 above.
38. What has been the historical rate of return or liquidation rate?
Accounts receivable have historically liquidated at over 100% after 24 months.
39. Scope of services, page 3. Will selected Vendor have remote access to all necessary ECMCC systems (including medical records and clearinghouse information) to obtain relevant collection information to work with third party payors?
This will depend on the security of the IT system being used by the vendor and their work with our IT department.
40. Scope of services, page 3. Does ECMCC expect all a/r follow-up activity be done within ECMCC's system or in the Vendor's system?
Propose what you believe will provide the greatest results give our stated goals.
41. Scope of services, page 3. Can Vendor submit claims directly from ECMCC systems?
See response to number 39.
42. Scope of Services, page 3. Does ECMCC use any systems other than Meditech for claim generation?
No.



43. Scope of Services, page 3. What clearinghouse does ECMCC use? Will Vendor be given access to ECMCC's clearinghouse(s)?
SSI. Yes, successful respondent will be given access.
44. Scope of Services, page 3. Will ECMCC provide a main contact at ECMCC as coordinator/facilitator for the engagement?
Yes.
45. Scope of Services, page 3. Can ECMCC provide expected volumes of placements?
See response to number 10 above.
46. Scope of Services, Page 3. Does ECMCC have a preferred layout for the data for the placement of accounts, subsequent activity (notes and payments), and closing of accounts?
Not at this time, though we will work with the successful respondent to develop this.
47. Will ECMC share the 835s (electronic remittances) from Payors with the winning Vendor on a going forward basis?
Yes. Vendors will be required to enter into ECMCC's standard BAA, attached to and included with this addendum.
48. Please define the geographic scope of Western New York in Exhibit A, Question 8:
- Describe all contracts, affiliations, referral arrangements or other business relationships the respondent has with any hospital, health care system or health care provider with offices or facilities in Western New York.
- Please refer to a map for determining geographic scope.**
49. Is this a one-time clean up or this a clean-up and ongoing program?
We anticipate a large one time placement and ongoing monthly placements thereafter.
50. Does the anticipated placement of aged A/R only for the 583 inpatient beds and 390 Long-Term Care beds?
Yes, however, we intend to include our outpatient claims as well.
51. Does the placement include only contracted payers, or will out-of-network payers also be included?
All third party accounts with the exception of no fault and accounts currently in payer appeal.
52. Any behavioral health placements?
Yes.
53. Are the aged accounts all denied claims?
Many have a denial but not all.
54. Can you provide an estimated payer mix?



See response to number 10 above.

55. Can you please provide the mix of aged accounts between Clinical Denials and Technical Denials?

We will not provide at this time but will provide to the successful respondent.

56. Can you please provide the case mix of Denials between Inpatient and Outpatient Denials?

We will not provide at this time but will provide to the successful respondent.

57. Total estimated volume and dollars of placement?

See response to number 10 above.

58. Top payers and percent of total outstanding inventory?

See response to number 10 above.

59. Top denial reasons by payer?

We will not provide at this time but will provide to the successful respondent.

60. Can you provide any historical data? For example, historical success and write off percentages by denial type?

We will not provide at this time but will provide to the successful respondent.

61. Do you have a timeframe on when you would expect the services to be implemented and in live production?

Responses are due by June 29, 2018 at 11 a.m. EST. We anticipate award will be made within two weeks of this date, with services to begin as soon as possible after award and establishment of a process for transmitting necessary data to the respondent. Ideally, we would see services begin August 1, 2018.

62. Please confirm the balance range to be placed – is this based upon total charges or denied amount?

See response to number 10 above.

63. Will the team working the aged inventory have access to Meditech and medical documentation?

See response to number 39 above.

64. Can you provide volume information on charges, payments and adjustments by month for the past 12 months and by year for the past three years for the business we will be working?

No.

65. Can you tell us what type of accounts will be assigned (i.e., aging)?

See response to number 10 above.



66. What system will the work be performed in? Do we need to work in your system or can we use our system?

See response to number 39 above.

67. What are your current HIS and/or practice management system(s) and version?

Meditech version 5.67

68. Please provide your past six (6) to twelve (12) months of gross charges, by financial class and by month.

We will not provide this proprietary information at this time.

69. Please provide your past six (6) to twelve (12) months of contractual adjustments, by financial class and by month.

We will not provide this proprietary information at this time.

70. Please provide your past six (6) to twelve (12) months of other adjustments, by financial class and by month.

We will not provide this proprietary information at this time

71. Please provide your past six (6) to twelve (12) months of gross collections, by financial class and by month.

We will not provide this proprietary information at this time

72. What are your current accounts receivable (AR) aging by financial class including dollars and number of patient accounts?

See response to number 10 above.

73. What are your current AR credit balance aging by financial class including dollars and number of patient accounts?

See response to number 10 above.

74. What's your current insurance payor denial report by financial class (if available)?

We maintain systems that provide reports on demand for this information that the selected respondent(s) will have access to.

75. What's your estimate of any existing backlog or delays in coding, registration entry, charge entry, payment posting, and correspondence processing?

We will not provide this information. It is not applicable to the scope of services being requested.

76. Please provide a summary of any unique payment arrangements we should consider as part of this RFP.

None.



77. Please provide other financial data Erie County Medical Center Corporation (“ECMC”) feels we should be aware of related to this RFP.
None.
78. Does the >180 Day AR portfolio include professional (Part B) claims or only facility (Part A)?
We are placing technical claims only and, depending on success of this project, may place professional claims at a later date.
79. What’s the current patient accounting system platform for ECMC? Will ECMC switch to a new billing platform in the next three years?
Meditech. We cannot predict billing platform changes or upgrades to the current platform for this period of time. We do not see a change in the next 18 months.
80. Will ECMC allow the use of offshore resources for third party follow up (non-patient/non-client facing functions)?
No.
81. Please summarize the reasons for outsourcing consideration for the third-party AR >180 days. Does ECMC anticipate expanding the AR outsourcing to earlier aging buckets?
We do not consider this to be an outsourcing, but rather, the placement of 3rd party and commercial insurance accounts for collections. That said, we do not envision any expansion of the aging categories.
82. Are the service lines listed in RFP currently provided by an outsourced vendor? Who is the current vendor?
See response to number 6 above.
83. Is there a required initial term for the proposed services? Is a three-year term acceptable?
A 3 year proposal is acceptable.
84. Is there a projected go-live date for these service lines?
See response to number 61 above.
85. If the account is under appeal, it will not be outsourced- therefore, are we to understand that all avenues of appeal will be exhausted by the primary agency?
No, the selected respondent(s) may identify additional appeal opportunities that we have not identified.
86. Is this in-patient, out-patient or combination?
Combination.
87. Your statement says greater than 180, is there an expectation of an average day age will the computer be set to outsource?



This is not an outsourcing arrangement. It is intended to be collection for aged 3rd party / commercial insured accounts.

88. If any of the accounts fall out of contract (greater than 6 months) is it the expectation that the agency would quantify the issues and submit to the hospital to pursue through the managed care area, and or will litigation be allowed?

All areas for follow up are allowable, however, if litigation is recommended then the respondent(s) will be required to work with our Office of General Counsel.

89. If the work is giving out greater than 180 days- what are the contracts length? It sounds like the accounts will be out of time frame.

We anticipate a large initial placement and monthly placements thereafter. Once placed, we anticipate that the accounts will remain with the selected firm for no less than 6 months following the date of placement, irrespective of the contract length and believe that we can structure contract language to support this concept.

90. In the full scope of the first referral how old do you expect the accounts to be?

Varies.

91. Question 5.2 states "Continuity plan to assure continuous service." Please confirm that you are asking about our disaster recovery aka continuity plan, not our technical process for collection continuity.

Correct, we are seeking business continuity and disaster recovery information.

92. In the evaluation criteria it states "Demonstrated Experience of Respondent, Including Collection Billed Ratio." Please elaborate on what you mean by "collection billed ratio."

Demonstrated rate of success.

93. Can you please provide a breakdown of patient accounts assigned to agencies for either CY2017 or FY2017, whichever is applicable?

See response to number 6 above.

94. For reference, the Product Line detail cited below, or something similar, would be helpful in calculating a pricing structure.



Product Line	Contractual		
	# of Accounts	Gross Charges	Allowances Net Revenues Avg./Month
Early Out Insurance			
Denials			
Secondary Placement			
Early Out Self Pay			
Bad Debt			
Out-Of-State Medicaid			
International Collections			
Legal Collections			
Audit/Collection of Underpayments			

95. Can you please provide a breakdown of Gross Revenues by Payor Category for CY2017 or FY2017, whichever is applicable?

See table as noted below. Self-pay is not within the scope of this request.

For reference, the payor categories cited below, or something similar, would be helpful in calculating a pricing structure.

Payor	Gross Revenue	Percent Recovered
Commercial		
Managed Care Medicaid		
Managed Care Medicare		
Medicaid		
Medicare		
Other		
Potential Medicaid		
Self Pay		
SYSTEM WIDE		

96. Can ECMCC provide a breakout of both Inpatient and Outpatient visits for CY2017 or FY2017, whichever is applicable?

This information can be found in the public authority reporting section of our web site.

97. As a suggested revision to RFP# 21822, would ECMCC consider splitting out a ‘Zero Balance’ Managed Care Payment Review as an independent component of the Request for Proposal from “Live” 180+ Aged Accounts Receivable Collections?

Yes. Please feel free to propose whatever services you believe will drive the greatest value to ECMCC.

98. Is the Proposer expected to process ‘Rebills’ or, alternately, submit a list of accounts the require ‘Rebills’ to ECMCC for processing?



Please feel free to propose whatever structure you believe will drive the greatest value to ECMCC.

99. Is the Proposer expected to process 'Corrected Claims' or, alternately, submit a list of accounts we recommend for 'Corrected Claims' to ECMCC for review and processing, if in agreement?
Please feel free to propose whatever structure you believe will drive the greatest value to ECMCC.

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) by and between **ERIE COUNTY MEDICAL CENTER CORPORATION**, a New York public benefit corporation with a principal address of 462 Grider Street, Buffalo, New York 14215 (“**Covered Entity**”) and _____ (“**Business Associate**”) is entered into as of _____ (“Effective Date”). Each of Covered Entity and Business Associate may be referenced in this Agreement as a “**Party**” and collectively as the “**Parties.**”

The Parties, intending to be legally bound, hereby agree as follows:

1. Definitions.

- 1.1. Except as otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings set forth in HIPAA.
- 1.2. “**Breach**” shall mean the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the HIPAA Privacy Rule that compromises the security or privacy of the Protective Health Information as defined, and subject to the exceptions set forth, in 45 CFR § 164.402.
- 1.3. “**Electronic Protected Health Information**” shall mean Protected Health Information that is transmitted or maintained in Electronic Media.
- 1.4. “**HIPAA**” shall mean the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended and supplemented by the HITECH Act and its implementing regulations, as each is amended from time to time.
- 1.5. “**HIPAA Breach Notification Rule**” shall mean the federal breach notification regulations, as amended from time to time, issued under HIPAA and set forth in 45 C.F.R. Parts 160 and 164 (Subpart D).
- 1.6. “**HIPAA Privacy Rule**” shall mean the federal privacy regulations, as amended from time to time, issued under HIPAA and set forth in 45 C.F.R. Parts 160 and 164 (Subparts A & E).
- 1.7. “**HIPAA Security Rule**” shall mean the federal security regulations, as amended from time to time, issued under HIPAA and set forth in 45 C.F.R. Parts 160 and 164 (Subparts A & C).
- 1.8. “**HITECH Act**” shall mean Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921-17954, and all its implementing regulations, when and as each is effective and compliance is required.
- 1.9. “**Protected Health Information or PHI**” shall mean Protected Health Information, as defined in 45 CFR § 160.103, and is limited to the Protected Health Information received, maintained, created or transmitted on behalf of, Covered Entity by Business Associate in performance of the Underlying Services.
- 1.10. “**Underlying Services**” shall mean, to the extent and only to the extent they involve the creation, maintenance, use, disclosure or transmission of Protected Health Information, the services performed by Business Associate for Covered Entity pursuant to the Underlying Service Agreement.

1.11 **“Underlying Service Agreement”** shall mean the written agreement(s) (other than this Agreement) by and between the Parties pursuant to which Business Associate accesses, receives, maintains, creates or transmits PHI for or on behalf of Covered Entity in connection with the provision of the services described in that agreement(s) by Business Associate to Covered Entity or in performance of Business Associate’s obligations under such agreement(s).

2. Permitted and Required Uses and Disclosures of Protected Health Information by Business Associate.

2.1 Business Associate may use or disclose Protected Health Information solely (1) as necessary to provide the Underlying Services to Covered Entity and in compliance with each applicable requirement of 45 CFR §164.504(e), (2) as Required by Law or (3) as expressly otherwise authorized under this Agreement or the Underlying Service Agreement. Business Associate shall not use or disclose Protected Health Information for any other purpose or in any other manner. In the event that Business Associate is authorized by Covered Entity to de-identify PHI, Business Associate must specify to Covered Entity the manner in which Business Associate will de-identify information.

2.2 Business Associate may, if necessary, use or disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate; provided, that (1) any disclosure is Required by Law or (2) Business Associate obtains reasonable advance written assurances from the person or party to whom the Protected Health Information is disclosed that (Y) the Protected Health Information will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person or party, and (Z) the person or party immediately notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3. Obligations of Business Associate

3.1 Business Associate shall use appropriate safeguards, and comply, where applicable, with the HIPAA Security Rule and Subpart C of 45 CFR §164 with respect to Electronic Protected Health Information, to prevent use or disclosure of the information other than as provided for by this Agreement.

3.2 Business Associate shall mitigate any harmful effect of a Use or Disclosure of Protected Health Information or a Security Incident caused by Business Associate in violation of the requirements of this Agreement.

3.3 Business Associate shall immediately report to Covered Entity: (i) any use or disclosure of Protected Health Information not provided for by this Agreement (including a use or disclosure of Unsecured Protected Health Information) of which it becomes aware in accordance with 45 CFR §164.410; and/or (ii) any Security Incident of which Business Associate becomes aware in accordance with 45 CFR §164.314(a)(2)(i)(C).

3.4 Business Associate shall provide to the Covered Entity the names and contact information of all individuals whose Protected Health Information was or is believed to have been involved, all other information reasonably requested by the Covered Entity to enable the Covered Entity to perform and document a risk assessment in accordance with the HIPAA Breach Notification Rule with respect to the incident to determine whether a Breach occurred, and all other information reasonably necessary to provide notice to Individuals, the Department of Health and Human Services and/or the media in accordance with the

HIPAA Breach Notification Rule. In the event of an incident that is required to be reported under this Section 3.4, Covered Entity shall elect in its sole discretion whether Covered Entity, Business Associate or a third party shall be responsible for conducting an investigation of that incident and providing any required notices as set forth in this Section 3.4. In accordance with this election, and notwithstanding anything to the contrary in this Agreement and without limiting in any way any other remedy available to Covered Entity at law, equity or contract, including but not limited to under Section 5.1 of this Agreement, Business Associate shall (i) conduct, or pay the costs of conducting, an investigation of any incident required to be reported under this Section 3.4, (ii) shall reimburse and pay Covered Entity for all expenses and costs incurred by Covered Entity that arise from an investigation of any incident required to be reported under this Section 3.4 and (iii) shall provide, and/or pay the costs of providing, the required notices as set forth in this Section III(d).

- 3.5 In accordance with 45 CFR 164.502(e)(1)(ii) and 45 CFR 164.308(b)(2), Business Associate shall ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate, agree to the same restrictions and conditions, in writing, that apply through this Agreement to Business Associate with respect to such Protected Health Information, including but not limited to the condition that, to the extent that Subcontractor creates, receives, maintains, or transmits Electronic Protected Health Information on behalf of the Business Associate, Subcontractor shall comply with the HIPAA Security Rule.
- 3.6 To the extent Business Associate is to carry out Covered Entity's obligations under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of the HIPAA Privacy Rule that apply to Covered Entity in the performance of such obligations.
- 3.7 Business Associate shall provide access to Covered Entity, no later than ten (10) calendar days after receipt of a request from Covered Entity, to an Individual, all in accordance with the requirements under 45 CFR §164.524 and New York Public Health Law § 18, including providing or sending a copy to a designated third party and providing or sending a copy in electronic format, to the extent that the Protected Health Information in Business Associate's possession constitutes a Designated Record Set.
- 3.8 Business Associate shall make available and make any amendment(s) to Protected Health Information in a Designated Record Set within fifteen (15) days after receipt of a request from Covered Entity or an Individual, all in accordance with the requirements of 45 CFR § 164.526. If any Individual requests an amendment of PHI directly from Business Associate or its Subcontractors, Business Associate must notify Covered Entity in writing within five (5) business days of the request. Any denial of amendment of PHI maintained by Business Associate or its Subcontractors shall be the responsibility of Covered Entity.
- 3.9 Business Associate shall document disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR §164.528 and, as of the date compliance is required by final regulations, 42 U.S.C. §17935(c).
- 3.10 Business Associate shall make available to Covered Entity, within fifteen (15) calendar days after receipt of a request, information collected in accordance with Section 3.9 of this Agreement to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information, or make that information

available directly to an Individual, all in accordance with 45 CFR § 164.528 and, as of the date compliance is required by final regulations, 42 U.S.C. § 17935(c).

- 3.11 Business Associate shall notify Covered Entity in writing within three (3) days after Business Associate's receipt directly from an Individual of any request for access to or amendment of Protected Health Information, or an accounting of disclosures, as contemplated in Sections 3.7, 3.8 and 3.10 of this Agreement.
- 3.12 Business Associate agrees to make its 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 Business Associate on behalf of, Covered Entity available to the Covered Entity or to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA.
- 3.13 Business Associate shall request, use and/or disclose only the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure; provided, that Business Associate shall comply with 45 CFR §§ 164.502(b) and 164.514(d).
- 3.14 Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information as prohibited by 45 CFR § 164.502(a)(5)(ii).
- 3.15 Business Associate shall not make or cause to be made any communication about a product or service that is prohibited by 45 CFR §§ 164.501 and 164.508(a)(3).
- 3.16 Business Associate shall not make or cause to be made any written fundraising communication that is prohibited 45 CFR §164.514(f).
- 3.17 Business Associate shall take all necessary steps, at the request of Covered Entity, to comply with requests by Individuals not to send Protected Health Information to a Health Plan in accordance with 45 CFR § 164.522(a).
- 3.18 Business Associate shall take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement or violate provisions of HIPAA that apply to Business Associate.
- 3.19 To the extent the Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR § 164, Business Associate will comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations. Business Associate may not Use or Disclose PHI in a manner that would violate Subpart E of 45 CFR § 164 if done by Covered Entity.
- 3.20 Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

4. Term and Termination

- 4.1 The term of this Agreement shall commence as of the Effective Date and shall terminate concurrently with the Underlying Services Agreement unless earlier terminated, by mutual written agreement of the Parties, or in accordance with this Section 4.

- 4.2 In the event that Covered Entity determines that Business Associate has violated a material term of this Agreement, or becomes aware of a pattern of activity or practice of Business Associate that would constitute a material breach or violation of this Agreement, Covered Entity shall provide written notice of the breach or violation to Business Associate specifying the nature of the breach or violation and the timeframe within which Business Associate must cure the breach or end the violation. In the event that Business Associate fails to cure the breach or violation to Covered Entity's reasonable satisfaction within the specified timeframe, Covered Entity may terminate this Agreement and the Underlying Service Agreement. Notwithstanding the foregoing, in the event that a breach or violation is reasonably incapable of cure, or Covered Entity possesses a reasonable belief of imminent harm, Covered Entity may terminate this Agreement and the Underlying Agreement without providing Business Associate with an opportunity to cure.
- 4.3 Within thirty (30) days after termination or expiration of this Agreement and/or the Underlying Service Agreement, Business Associate shall return (or destroy, if authorized by Covered Entity) to Covered Entity all Protected Health Information received from Covered Entity, or otherwise created, maintained or received by Business Associate (including all Protected Health Information in possession of Business Associate's agents or subcontractors), on behalf of Covered Entity. To the extent that return (or destruction, if applicable) of Protected Health Information is not feasible, Business Associate shall notify Covered Entity in writing of the reasons return or destruction is not feasible and, if Covered Entity agrees, may retain the Protected Health Information subject to this Section. Under any circumstances, Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any Protected Health Information retained after the expiration or termination of this Agreement, and shall limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible.
- 4.4 The obligations of Business Associate under this Section shall survive the termination of this agreement.

5. Indemnification.

- 5.1 Business Associate shall defend, hold harmless and indemnify Covered Entity, its trustees, officers, faculty employees, students, against all expenses, liabilities, damages, claims, costs, fines, penalties and losses (including attorneys' and consultant fees) (collectively, "Losses") reasonably incurred by Covered Entity in connection with, related to or arising from (i) a violation of HIPAA by Business Associate, its agents, delegates, representatives or Subcontractors and (ii) a breach of this Agreement by Business Associate, its agents, representatives or Subcontractors. Upon demand by Covered Entity, Business Associate shall defend any investigation, claim, litigation or other proceeding brought or threatened against Covered Entity, at Business Associate's expense, by counsel acceptable to Covered Entity. Business Associate shall not enter into any settlement without the written consent of Covered Entity. This Article 5.1 shall survive the expiration or termination of this Agreement for any reason.
- 5.2 The Parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section and Section 4.3 of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Service Agreement, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

6. Miscellaneous.

- 6.1 This Agreement may be amended or modified only in a writing signed by the Parties, No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effective the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement shall be governed by the laws of the State of New York. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion. The Parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides Underlying Services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information. This Agreement, together with the Underlying Services Agreement, constitutes the entire agreement of the Parties relating to Business Associate's use or disclosure of Protected Health Information.
- 6.2 The terms of this Agreement to the extent they are unclear, shall be construed to allow for compliance by Covered Entity with HIPAA and the HITECH Act. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement with remain in full force and effect. In addition, in the event Covered Entity believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HIPAA, Covered Entity shall notify Business Associate in writing. For a period of up to thirty (30) days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the requirements of HIPAA, then Covered Entity has the right to terminate upon written notice to the Business Associate.
- 6.3 Business Associate understands and agrees that it will not assign, delegate, or subcontract any of its rights or obligations under this Agreement to individuals or entities residing outside the United States.
- 6.4 This Agreement may be executed in counterparts, each of which will constitute an original and all of which will be one and same document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

BUSINESS ASSOCIATE

ERIE COUNTY MEDICAL CENTER CORPORATION

By: _____

By: _____

Name: _____

Thomas J. Quatroche Jr., Ph.D.
President and Chief Executive Officer

Title: _____

Date: _____

Date: _____

Approved as to Form:

By: _____

Anthony J. Colucci, III, ECMCC Counsel

Date: _____