

APPROVED

First Reading: 12/15/10

Passed 8-0: 01/12/11

**COUNTY OF LEHIGH, PENNSYLVANIA
COMMISSIONERS BILL 2010-130
SPONSORED BY COMMISSIONER CREIGHTON
REQUESTED DATE: DECEMBER 1, 2010
ORDINANCE NO. 2011-103**

**APPROVING A SOFTWARE SERVICE AGREEMENT WITH
WESCOM SOLUTIONS, INC.**

WHEREAS, on behalf of Cedarbrook Nursing Homes, the County of Lehigh has contracted for over ten (10) years with RH Positive Computer Systems, 246 East Campus View Boulevard, Columbus, Ohio, 43235 for software services to secure payment for services to residents qualified for payments from Medicare and Medicaid; and

WHEREAS, The United State Department of Health and Human Services has promulgated rules and regulations for standardized assessment and for facilitating care management in nursing homes through use of a software program known as MDS 3.0, which became effective on October 1, 2010; and

WHEREAS, Cedarbrook is in immediate need of this program to continue to bill and receive payment for services to its residents qualifying for Medicare or Medicaid; and

WHEREAS, RH Positive Computer Systems has advised Cedarbrook that it is unable to produce the MDS 3.0 program and that the company has been purchased by PointClickCare ("PCC") which does provide MDS 3.0 subscription services; and

WHEREAS, a review by Cedarbrook of suppliers of the MDS 3.0 program has lead to the conclusion that to develop the proper specifications and to issue requests for proposals or to advertise for a bidding package would take several months; and

WHEREAS, Wescom Solutions, Inc. owner of PointClickCare, has agreed to provide these services on a month to month basis until a new contract is secured by Cedarbrook; and

WHEREAS, §801.1(2) of the Administrative Code of the County of Lehigh requires ordinance approval for nonbid professional service agreements over ten thousand dollars (\$10,000.00).

NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH, PENNSYLVANIA, THAT:

1. The proposed agreement for professional services with Wescom Solutions, Inc., marked Exhibit "A" attached hereto and made a part hereof by this reference, is hereby approved.

2. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Ordinance.

3. The County Executive shall distribute copies of this Ordinance to the proper offices and other personnel of Lehigh County whose further action is required to achieve the purpose of this Ordinance.

4. Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed insofar as the same affects this Ordinance.

5. This Ordinance shall become effective in ten (10) days after enactment.

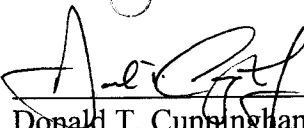
ADOPTED this 12th day of January, 2011, by the following vote:

<u>Commissioners</u>	<u>AYE</u>	<u>NAY</u>
Dean N. Browning	X	
Thomas C. Creighton, III (absent)		
Percy H. Dougherty	X	
Glenn Eckhart	X	
Gloria L. Hamm	X	
William H. Hansell	X	
David S. Jones, Sr.	X	
Daniel K. McCarthy	X	
Andy Roman	X	

ATTEST: _____

CLERK TO THE BOARD OF COMMISSIONERS

APPROVED this 14th day of January, 2011.


Donald T. Cunningham, Jr.
Lehigh County Executive

ENACTED this 14th day of January, 2011.

Contract Number: _____

Copy ID#: _____

Completed: _____

COUNTY OF LEHIGH

CONTRACT FOR PROFESSIONAL SERVICES

**PURPOSE OF CONTRACT: A LIMITED LICENSE TO USE ONLINE
SUBSCRIPTION SERVICES, INCLUDING MDS
3.0 FOR SUBMITTING CHARGES TO
MEDICARE AND MEDICAID FOR
RESIDENTS' CARE**

AWARDED TO: WESCOM SOLUTIONS, INC.

Phone: (800) 277-5889

Fax: (905) 858-2248



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PROFESSIONAL SERVICE CONTRACT

This is a contract between the County of Lehigh, a Home Rule County of the third class, with offices at 17 South Seventh Street, Allentown, PA, 18101-2400 hereinafter referred to as the COUNTY, and Wescom Solutions, Inc., with offices at 6975 Creditview Road, Unit 4, Mississauga, Ontario, L5N 8E9, hereinafter referred to as the PROVIDER.

WITNESSETH,

WHEREAS, PROVIDER has developed PointClickCare.com ("PointClickCare"), a website designed, inter alia, to maintain patient/client records ("Records") for government entities and the private healthcare provider system; and

WHEREAS, PointClickCare consists of various applications, each of which offers various options to the COUNTY ("Applications"); and

WHEREAS, PROVIDER is the registered owner of PointClickCare and the Applications; and

WHEREAS, PROVIDER is prepared to grant a limited license for the use of the Applications to the COUNTY; and

WHEREAS, the COUNTY wishes to purchase, and the PROVIDER wishes to furnish the services cited below according to all applicable Federal, State, and Local Laws; and,

WHEREAS, the services referred to are professional in nature;

NOW THEREFORE, the COUNTY and the PROVIDER in consideration of the obligations herein undertaken and intending to be legally bound, hereby agree as follows:

I. SCOPE OF SERVICES

A. The PROVIDER shall provide the following services: Provide access to online services, including MDS 3.0 for submitting proper charges for residents to Medicare and Medicaid.

B. These services and the requirements for their provision are set forth more fully in Appendix "A" attached hereto and incorporated as if set forth in full.

II. TERM OF CONTRACT

A. The contract shall become effective when executed by the Lehigh County Executive according to the date parameters as stated below:

Beginning Date: January 1, 2011
Termination Date: See Section B below

B. This contract shall be in effect on a month to month basis. Either party may terminate this contract with or without cause, by providing thirty (30) days written notice to the other party. The County Executive is authorized to terminate any contract with the PROVIDER pursuant to the provisions of this sub-paragraph.

C. COUNTY shall be liable only for payments due the PROVIDER as set forth in this Contract up to and including the date of termination.

D. The PROVIDER and the COUNTY hereby agree the COUNTY may with the PROVIDER'S consent assign any or all of its rights and delegate any or all of its obligations or responsibilities under this Contract upon twenty (20) days written notice to PROVIDER in the manner set forth in Article XVII of this Contract, provided that the PROVIDER shall not unreasonably withhold its consent.

III. COMPENSATION

A. The COUNTY shall pay for the services rendered by the PROVIDER, according to the provisions which are identified in Appendix "B" attached hereto and incorporated by this reference as if set forth in full.

B. The PROVIDER hereto agrees that any and all payments due from the COUNTY as required under the terms of this contract, are contingent upon the availability of the appropriated funds. If any or all of the funds which are due to the PROVIDER emanate from State or Federal sources, payment is also contingent upon the COUNTY receiving such moneys from the State or Federal Government. PROVIDER explicitly agrees that it will not submit to COUNTY any false claim, as defined in the False Claims Act, 31 U.S.C. § 3729 et seq.

C. With respect to any billing, COUNTY reserves the right to withhold payment for any portion of any statement in which it reasonably asserts that a discrepancy exists, which discrepancy should be corrected by a new statement. In such instances, COUNTY may withhold payment only for that portion of the statement with which it reasonably disagrees. Further, it shall be the duty of COUNTY to notify PROVIDER of any such disagreement or discrepancy as soon as possible.

IV. SCHEDULE OF ATTACHMENTS

The PROVIDER shall be bound by the following appendices attached hereto, incorporated herein as if set forth in full:

Appendix A - Scope of Services
Appendix B – Compensation
Appendix C – Amendments and Special Provisions

V. COVENANTS, REPRESENTATIONS AND WARRANTIES

A. The COUNTY covenants, represents, and warrants:

1. The person or persons signing on behalf of the COUNTY are duly authorized to do so.
2. That this contract is entered into by the Lehigh County Executive pursuant to his authority under Section 402(j) of the Lehigh County Home Rule Charter.
3. That the COUNTY is in compliance with all applicable federal, state and local laws especially, but without limitation to all statutes, ordinances, rules, and regulations governing any and all federal and state funding of the contract.
4. That if the representations in subparagraphs 2 or 3 above should at any time hereafter become incorrect, the COUNTY will promptly take all steps to correct the noncompliance.

B. The PROVIDER covenants, represents and warrants:

1. The person or persons signing on behalf of the PROVIDER is duly authorized to do so.
2. That the PROVIDER is entering into this contract either in the ordinary course of its business activities or pursuant to a resolution of its Board of Directors (or other governing body) validly called and held. If requested, the resolution, including in it the names and positions of the persons authorized to sign this contract, shall be forwarded to the COUNTY upon the signing of this contract.
3. That the PROVIDER now complies with and will continue to comply with for the duration of this contract, all applicable law in its business and activities which pertain to the performance or funding of this contract, including, without limitation, the following:
 - a. The Fair Labor Standards Act, the Labor Management Relations Act (Taft-Hartley); and the Labor Management and Reporting and Disclosure Act (Landrum-Griffin).

- b. Occupational Safety and Health Act, and OSHA regulations thereunder.
- c. Worker's Compensation Laws.
- d. The Environmental Protection Act, EPA regulation and the laws and regulations administered by the Pennsylvania Department of Environmental Resources.
- e. Title VII of the Civil Rights Act of 1964, all EEOC regulations and all laws relating to equal employment opportunity.
- f. The Equal Pay for Equal Work Law and all other laws relating to sex discrimination.
- g. The Federal Age Discrimination in Employment Act and any amendments thereto, 29 Section 620 et seq., especially the 1978 amendments thereto, Public 95-256, Section 1 et seq., Act of April 6, 1978, Statute 189 and hereby states that it will not mandate the retirement of any employee on the basis of age, or for any other reason prohibited by the aforesaid act.
- h. The Older Americans Act of 1965 as amended (P.L. 89-73, Section 1, Stat. 219) and the Administrative Code of 1929 as amended by Act 1978-7 (P.L. 177, No. 175) and all regulations promulgated thereunder.
- i. Those laws relating to the fiscal management and accounting of public funds. The COUNTY, in its sole discretion, shall have the privilege of examining and or auditing the records of the PROVIDER which pertain to this contract to ascertain or verify compliance with this subparagraph.
- j. The Americans with Disabilities Act.
- k. The Immigration, Reform, and Control Act of 1986.
- l. The Pro-Children Act of 1994.
- m. The False Claims Act, 31 U.S.C. § 3729 et seq.
- n. Stark II Regulations, 66 Fed. Reg. 8771.
- o. Health Insurance Portability and Accountability Act, (HIPAA), 29 U.S.C. §1181, et seq.

4. The PROVIDER acknowledges that in the event there is any violation of applicable laws or regulations by the PROVIDER, the COUNTY may deem the violation to be a breach of this contract by the PROVIDER.

5. The PROVIDER agrees that no employee, board member, or representative of the PROVIDER, either personally, or through an agent, shall solicit the referral of clients to any facility in a manner, which offers or implies an offer of rebate to persons referring clients or other fee-splitting inducements. This applies to consents of fee schedules, billing methods, or personal solicitation. No person or entity involved in the referral of clients may receive payment or other inducement by a facility or its representatives. The PROVIDER shall substantially include the language of this Paragraph in each subcontract under this Contract.

6. The PROVIDER agrees that all experimentation with human subjects involving physical or mental risk to those subjects shall be prohibited without the prior written approval of the Secretary of the Department of Health, subject to all applicable laws, statutes and regulations, and voluntary, informed consent of the subject in writing. If the subject is a minor, or incompetent, a voluntary, informed consent of his/her parents or legal guardian shall be required.

7. The PROVIDER is duly organized, validly existing, and in good standing under the laws of Pennsylvania and the state in which the PROVIDER is organized as previously noted in the Opening Paragraphs of this Contract.

8. That PROVIDER, as a condition precedent to payment, shall upon request of COUNTY promptly furnish evidence of compliance of any sub-paragraph herein.

VI. TAXES

A. The PROVIDER hereby certifies, as a condition precedent to the execution of this contract and as an inducement for the COUNTY to execute same, that it is not "delinquent" on any taxes owed to the County of Lehigh (hereinafter "COUNTY"). "Delinquent" is hereby defined as the point in time at which the collection of the tax becomes the responsibility of the Lehigh County Tax Claim Bureau.

B. The PROVIDER further agrees, as a specific condition of this contract, that it shall remain current on all of the taxes it owes to the COUNTY. Should the PROVIDER become delinquent on any taxes it owes to the COUNTY during the term of this contract, the PROVIDER may be deemed to be in breach of this contract by the COUNTY and, in addition to any other remedies at law for such breach, the PROVIDER hereby specifically agrees and authorizes the COUNTY to apply all funds when due to the PROVIDER directly to the taxes

owed to the COUNTY until said taxes are paid in full.

C. In the event the PROVIDER becomes delinquent, it hereby authorizes the COUNTY to make payments to the taxing authority for the COUNTY to bring the PROVIDER'S county taxes current.

VII. UNDUE INFLUENCE

The PROVIDER agrees not to hire any COUNTY Personnel who may exercise or has exercised discretion in the awarding, administration, or continuance of this contract for up to and including one year following the termination of the employee from COUNTY service. Failure to abide by this provision shall constitute a breach of this contract.

VIII. CONFLICT OF INTEREST

The PROVIDER agrees to notify in writing the COUNTY as soon as the PROVIDER knows or has reason to know that:

A. A current employee of the COUNTY has commenced, or is intending to commence, employment with PROVIDER while continuing to maintain COUNTY employment, or

B. A current employee of the COUNTY has performed, or is intending to perform, services to the PROVIDER as an independent contractor while continuing to maintain COUNTY employment. Any written notice required to be given under this section shall specify the COUNTY employee's name, the nature of the COUNTY employee's employment, or the subject of the COUNTY employee's contract with the PROVIDER and the date on which the COUNTY employee's employment or contract with PROVIDER commenced.

IX. BREACH OF CONTRACT

A. The PROVIDER agrees that any breach of performance, of any covenant, representation, or warranty, indemnity, or condition, or attached appendices, shall constitute default of this contract.

B. When a breach of this contract has occurred, the COUNTY, in the exercise of its discretion, may allow PROVIDER a specified period of time to correct its breach of the contract.

C. If PROVIDER does not correct its violations of the contract as specified, COUNTY may terminate the contract in whole or in part if such partial termination is in the best interest of the COUNTY.

X. CONFIDENTIALITY

A. The PROVIDER and the COUNTY, their agents and employees shall perform their respective obligations under this contract in such manner as to insure that records, names, and identities of persons to whom services are or have been provided, shall remain confidential except as disclosure is permitted or required by law. Photographs, videos, and/or recordings, which in any way identify clients, shall not be released without the written consent of the legally responsible party, and the COUNTY representative.

B. Termination of this contract for any reason shall not relieve the PROVIDER of any of PROVIDER'S obligations as stated in this paragraph.

XI. DISCRIMINATION CLAUSE

In carrying out the terms of this contract, both parties agree not to discriminate against any employee or client or other person on account of age, race, color, sex, religious creed, national origin, marital status, or physical or mental disabilities as set forth in the Americans With Disabilities Act of 1990. PROVIDER and COUNTY shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, any pertinent Executive Order of the Governor and with all laws prohibiting discrimination in hiring or employment opportunities.

XII. INDEMNIFICATION AND HOLD HARMLESS

A. The PROVIDER shall indemnify and hold harmless the COUNTY and each of its officials, employees, and agents from any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses for whatsoever kind or nature, to the extent resulting from any:

1. Breach of the contract by PROVIDER; or
2. Professional error or omission, fault, or negligence by PROVIDER or any one acting under its direction, control of or on its behalf in connection with or incident to its performance of this contract; and
3. General public liability claim arising in connection with the business or activities of PROVIDER which pertains to this contract.

B. If any claim is made against COUNTY which would give to a right of indemnification by COUNTY from PROVIDER, COUNTY will give notice thereof to PROVIDER. The COUNTY may permit the PROVIDER to assume the defense of any such claim, or any litigation resulting therefrom. Counsel for PROVIDER, which will conduct the defense of such claim or litigation, must be approved by COUNTY, whose approval will not

unreasonably be withheld. If COUNTY consents to permit PROVIDER'S counsel to assume defense, COUNTY may participate in such defense. Neither party will consent to entry of any judgment or enter into any settlement without the written consent on the other party, which consent will not unreasonably be withheld. The parties shall cooperate fully with each other and make available to COUNTY all pertinent information under its control.

C. It is expressly understood by PROVIDER that the Pennsylvania state statute, specifically 42 Pa. C.S. §8549, which limits recovery against a local government unit and/or its officials and employees to a maximum of \$500,000.00, is not applicable to recovery of damages in an action against PROVIDER.

XIII. INSURANCE

A. The PROVIDER shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services rendered under this contract, insurance in the types and limits specified below. In addition to the insurance coverage and limits specified herein, the PROVIDER shall obtain any other insurance coverage as may be required by law.

1. Professional Liability Insurance

- a. Limit of Liability: \$1,000,000 by claim and \$2,000,000 in the aggregate.
- b. If PROVIDER is a Medical Professional, PROVIDER shall ensure that all conditions are met for eligibility for MCARE Fund coverage.
- c. Coverage for occurrences happening during the performance of services required under this contract shall be maintained in full force and effect under the policy. The policy shall include a "tail coverage" if a one or two year period of exposure exists.

2. General Liability Insurance

- a. Limits of Liability: \$1,000,000 in the aggregate and per occurrence.
- b. Coverage: Premise operations, blanket contractual liability, personal injury liability (employee exclusion deleted), products and completed operations, independent contractors, employees and volunteers as additional insureds, joint liability, and broad form property damage (including completed operations).

3. Worker's Compensation and Employer's Liability Insurance
 - a. Limits of Liability: Statutory Limits.
 - b. Other States' coverage and Pennsylvania endorsement.
4. Automobile Liability Insurance
 - a. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
 - b. Coverage: Owner, non-owned and hired vehicles.
 - c. PROVIDER shall ensure that all staff operating said vehicles are licensed drivers and properly insured.
5. Umbrella Excess Liability
 - a. \$5,000,000 in the aggregate and per occurrence.
 - b. Coverage provided shall be over auto liability, general liability, and professional liability.
6. Abuse/Sexual Molestation and Corporal Punishment Liability Insurance.
 - a. \$1,000,000 per occurrence; \$3,000,000 in the aggregate.

B. All insurance provided for in this section shall be obtained under valid and enforceable policies issued by insurers of recognized responsibility, which are licensed to do business in the Commonwealth of Pennsylvania. Certificates of Insurance evidencing the existence of such insurance shall be submitted to the COUNTY upon execution of the contract by PROVIDER. If the term of this contract coincides with the term of the PROVIDER'S insurance coverage, a Certificate from the expiring policy will be accepted, but a Certificate evidencing renewed coverage of a new policy must be presented to the COUNTY no later than thirty (30) days after the effective date of the policy.

C. Each policy and Certificate of Insurance shall contain: an endorsement naming the COUNTY as Additional Insured party thereunder; and a provision that at least thirty (30) calendar days prior written notice be given to the COUNTY in the event coverage is canceled or non-renewed or coverage reduced.

D. If the PROVIDER desires to self insure any or all of the coverages listed in this section, it shall provide to the COUNTY documentation that such self insurance has received all the

approvals required by law or regulations, as well as the most recent audited financial statement of the PROVIDER'S insurance. Any coverage which is self insured shall provide the same coverage, limits and benefits as the coverages listed in this section.

E. If the PROVIDER fails to obtain or maintain the required insurance, the COUNTY shall have the right to treat such failure as a material breach of the contract and to exercise all appropriate rights and remedies.

F. PROVIDER shall include all subcontractors as insurers under its policies or shall furnish separate Certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this contract.

G. Any modification or waiver of the insurance requirements contained in this section shall be set forth in Appendix 'C'.

XIV. INDEPENDENT CONTRACTOR

A. The PROVIDER is deemed an Independent Contractor and shall not during the term of this contract assign, subcontract, transfer, or otherwise delegate all or part of its obligations or responsibilities without prior written approval of the COUNTY. No relationship of employer-employee is intended nor created by this contract, it being understood that PROVIDER shall render services to the COUNTY on an independent contractor basis. PROVIDER is not entitled to any benefits from the COUNTY including but not limited to compensation other than that set forth in the 'Compensation' section, Worker's Compensation, unemployment insurance or benefits, retirement benefits, pension benefits, Social Security or disability benefits, and professional liability insurance and/or deductibles. PROVIDER expressly agrees and acknowledges that the COUNTY will deduct no employment taxes from any compensation paid to PROVIDER and that PROVIDER will be responsible for the payment of all taxes whatsoever in connection with any compensation received from the COUNTY.

B. The PROVIDER further agrees and acknowledges that PROVIDER is not authorized under the terms of this contract to bind the COUNTY in any contractual undertakings with any third parties as a result of the within contract and PROVIDER will not make any representation that it is capable of binding the COUNTY.

XV. MODIFICATION

This document and all attachments which have been incorporated by reference contain all the terms, provisions, and conditions of this contract. No term or provision may be unilaterally modified or amended. Any alteration, variation, modification, or waiver of a provision of this contract shall be valid only when reduced to writing, duly signed by the parties of this contract, and attached to the original of the contract.

XVI. REPORT

A. COUNTY may require PROVIDER to supply to COUNTY reports in the manner, at the times and in the form as prescribed by COUNTY.

B. If a final report or study is delivered to COUNTY pursuant to this contract, a copy of the final report or study shall be provided directly by the PROVIDER to the Board of Commissioners. PROVIDER agrees to present publicly the final report or study should a committee of the Board of Commissioners so desire.

XVII. NOTICES

A. Any notices required to be given pursuant to the terms and provisions hereof shall either be served in person, evidenced by a signed and dated receipt, by facsimile transmission, or by depositing such notice in the United States mail, certified, with certification and postage charges prepaid. In the event of service of notice upon either party pursuant to the terms of this paragraph, their respective facsimile transmission numbers and addresses are as follows:

PROVIDER:

Wescom Solutions, Inc.
6975 Creditview Road
Mississauga, Ontario L5N 8E9
Phone: (800) 277-5889
Fax: (905) 858-2248

COUNTY:

Terry Lopus
Director/Administrator
Cedarbrook Nursing Homes
350 W. Cedarbrook Road
Allentown, PA 18104
Phone: (610) 336-5627
Fax: (610) 395-0412

B. The PROVIDER shall notify the COUNTY in writing prior to changes in the PROVIDER'S location, mailing address, phone number, facsimile number, or name.

XVIII. PENNSYLVANIA CERTIFICATION

The PROVIDER shall provide annually, upon renewal, copies of required certifications or licenses. The PROVIDER shall notify the COUNTY in writing within five (5) working days of any loss of its Pennsylvania certification or licensure for any of the services being provided to the COUNTY. Upon notification of any loss of certification/licensure for any of the services being provided to the COUNTY, the COUNTY may terminate this contract immediately.

XIX. PROFESSIONALISM

It is contemplated, expected and understood by the parties that PROVIDER will execute and perform the services to be provided to COUNTY in a professional and ethical manner. All work performed or managed by PROVIDER must be of the highest quality and should conform

to all standards, safety guidelines, and design conditions as may be imposed by legitimate regulatory organizations, including governmental agencies and municipalities. All services to be performed under this contract shall be performed in the most cost-effective manner while still achieving the objectives of COUNTY.

XX. AUDIT

A. The PROVIDER shall maintain and retain all books, documents, papers, and records of the PROVIDER which are related to the performance of this contract or payment under this contract for a period of seven (7) years following final performance under this contract. The record shall properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. If PROVIDER is not a public body, PROVIDER agrees to maintain records which comply with the nationally accepted uniform Standards of Accounting and Financial reporting for Voluntary Health and Welfare Organization.

B. The Lehigh County Controller, or any of his/her duly authorized representatives shall, at reasonable times, during the term of this contract and until seven (7) years after the final performance under this contract, have access to and the right to examine any books, documents, papers, and records of the PROVIDER which are related to the performance of this contract or payment under this contract for compliance, performance or evaluation.

C. PROVIDER shall provide to the COUNTY an audit of the financial transactions and/or units of service of the PROVIDER, by an independent auditor, in accordance with the accepted and required auditing standards of COUNTY. Cost of such audit shall be borne by the PROVIDER.

XXI. PROVIDER RESPONSIBILITY PROVISIONS

A. PROVIDER certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the PROVIDER cannot so certify, then it agrees to submit along with the bid/proposal a written explanation of why such certification cannot be made.

B. If PROVIDER enters into subcontracts or employs under this contract any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this contract or any extension or renewals thereof, the COUNTY shall have the right to require the PROVIDER to terminate such subcontracts or employment.

C. The PROVIDER agrees to reimburse the COUNTY for the reasonable costs of investigation incurred by the Office of Inspector General for investigation of the PROVIDER'S

compliance with the terms of this or any other agreement between the PROVIDER and the Commonwealth which result in the suspension or debarment of the contractor. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, and expert witness and documentary fees. The PROVIDER shall not be responsible for investigative costs for investigations which do not result in the contractor's suspensions or debarment.

D. The PROVIDER may obtain the current list of suspended and debarred contractors by contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Phone: (717) 783-6472
Fax: (717) 787-9138

XXII. CONFIDENTIAL INFORMATION

The PROVIDER has not included confidential or proprietary information or trade secrets as part of any submission to COUNTY. If the PROVIDER has determined that it must divulge such information as part of any submission to COUNTY, the PROVIDER submitted to COUNTY a signed written statement to that effect in accordance with 65 P.S. §67.707(b) and additionally provided a redacted version of its submission, which removed only the confidential or proprietary information and trade secrets for public disclosure purposes.

XXIII. RIGHT TO KNOW

A. The Pennsylvania Right to Know Law, 65 P.S. §67.101-3104, applies to this Agreement and all documents provided to COUNTY in connection with this Professional Services Agreement.

B. In the event COUNTY receives a Right-To-Know Law request regarding documents or information in the PROVIDER's possession and relating to the contract or performance thereunder ("Requested Information"), the PROVIDER agrees to provide COUNTY with access to, and copies of, the Requested Information within Fourteen (14) calendar days after notification from COUNTY, and to provide such other assistance as COUNTY may request in order to comply with the Right-to-Know Law.

C. The PROVIDER agrees that COUNTY's determination as to whether Requested Information is a public record under the Right-to-Know Law is dispositive of the question as between the parties and the PROVIDER agrees not to challenge COUNTY's determination. The PROVIDER will have the opportunity to submit a written statement to COUNTY explaining why

the Requested Information is exempt from public disclosure under the Right-to-Know Law for up to seven (7) calendar days after receiving the request.

D. The PROVIDER agrees to abide by any decision of the Pennsylvania Office of Open Records, or by the Pennsylvania Courts, to release a record to the public and agrees to release all rights and remedies that may be available to it as result of COUNTY's disclosure of Requested Information pursuant to the Right-to-Know Law.

E. The PROVIDER's duties relating to the Right-to-Know Law shall survive the expiration of the contract and shall continue as long as the PROVIDER has Requested Information in its possession.

XXIV. INTERPRETATION

The PROVIDER agrees to waive the general rule of interpretation that "in the event of any ambiguity or issue of construction, the same will be resolved against the drafter of the document." It is declared to be the intention of the PROVIDER and the COUNTY that the public health, safety and welfare be protected and furthered by the contract. Therefore, this contract is to be interpreted in such manner as to favor such public interest as opposed to any private interest.

XXV. GOVERNING LAW AND VENUE

The contract shall be governed by the laws of the Commonwealth of Pennsylvania including matters of construction, validity, and performance and any action filed in connection with this contract shall be filed in the Court of Common Pleas of Lehigh County.

XXVI. SEVERABILITY

In the event any provision hereof is declared null and void by a court of law, the remaining provisions of this contract shall remain in full force and effect.

XXVII. ENTIRE CONTRACT

This contract constitutes the entire understanding of the parties hereto. It supersedes any and all prior written or oral understanding between the parties, and no changes, amendments, or alterations shall be effective unless in writing and signed by both parties and only to the extent therein set forth. No waiver of the breach of any term or condition of the contract shall be deemed to constitute the waiver of any breach of the same or any other term or condition.

XXVIII. CHANGE OF LAW

Notwithstanding anything to the contrary in this agreement, in the event that any Medicare/or Medicaid law, rule, regulation or payment policy or other applicable law or regulation, or any interpretation thereof, at any time, is modified, implemented, threatened to be implemented, or determined to prohibit, restrict or in any way materially change the terms of the Agreement, or by virtue of the existence of the Agreement has or will have material adverse affect on either PROVIDER or COUNTY, the PROVIDER and COUNTY agree to negotiate in good faith to amend this Agreement in a manner consistent with such change and the intent of all parties.

XXIX. ACCESS TO RECORDS

A. PROVIDER, for a period of five (5) years from the date of the subject services, shall make available upon written request of the Secretary of Health and Human Services or the U.S. Comptroller General or any of their fully authorized representatives, this contract, books, documents and records of PROVIDER that are necessary to verify the nature and extent of costs incurred by residents of Cedarbrook under this Agreement.

B. If PROVIDER furnishes the subject services with a value equal to or in excess of \$10,000.00 over a twelve-month period through a subcontract with a third party, said subcontract must expressly provide that said third party, for a period of five (5) years from the date of the subject services, shall make available, upon written request of the Secretary of Health and Human Services, the U.S. Comptroller General or any of their authorized representatives, the subcontract, books, documents and records of said third party that are necessary to verify the nature and extent of costs incurred by residents of Cedarbrook.

IN WITNESS WHEREOF, the parties hereto have executed the within contract by their officials hereunto duly authorized;

PROVIDER:

Attest:

Date: _____

WESCOM SOLUTIONS, INC.

By: _____

COUNTY OF LEHIGH

(affix seal)

Witness:

Date: _____

Donald T. Cunningham, Jr.
County Executive

APPENDIX A SCOPE OF SERVICES

The PROVIDER shall provide the following services:

Online Subscription Service. PROVIDER grants to the COUNTY, during the term of this Agreement, a limited license to use those Applications of PointClickCare listed in Schedule 1 attached hereto, for a specified number of active Records ("Licensed Capacity"). The Licensed Capacity of the COUNTY is set out in Schedule 1 hereto. The active Records shall be provided to the COUNTY via an online service ("Online Service") through a data center established and maintained by PROVIDER ("Data Center"). Non-active (discharged or waiting list) Records are maintained by PointClickCare but are not included in the Licensed Capacity of the COUNTY for the purposes of calculating the Subscription Charge (as hereinafter defined).

Modifications. The COUNTY may, at any time, increase its Licensed Capacity and/or the number of Applications licensed. For each increase in the Licensed Capacity or number of Applications licensed, there shall be an additional Schedule 1 signed by both parties, which shall be subject to the terms of this Agreement.

COUNTY Responsibilities. In order to use the Online Service, the COUNTY must obtain access to the World Wide Web, either directly or through devices that access web-based content. The COUNTY shall be responsible for any service fees associated with such access, including any carrier fees. In addition, the COUNTY shall provide all equipment necessary to make such connection to the World Wide Web, including a computer and modem and/or a wireless access device.

Transfer of limited license to use the Online Service. The COUNTY's usage rights to PointClickCare or any Application may not be transferred to another entity without the prior written consent of PROVIDER.

Eligibility

PointClickCare.com is available only to healthcare provider or government entities that have the capacity to enter into legally binding contracts under applicable law for legitimate business purposes. Any entity failing to fit the preceding description will not be able to enter into this Agreement.

Online Service Accessibility

Database And Applications Accessibility. The Data Center shall operate 24 hours a day, 365 days per year, subject to scheduled maintenance as described below. The COUNTY shall, subject to obtaining access to the World Wide Web, acquire access to the COUNTY Database and acquire the ability to perform data processing with each Application, in accordance with the design of such Application, during not less than 99.6% of hours between 7 a.m. and 11 p.m., EST.

Downtime Maintenance Periods. PROVIDER periodically adds, repairs, and upgrades the Data Center network, hardware and the Applications and shall use its best efforts to accomplish this without affecting the COUNTY's access to PointClickCare or the Applications, however, repairs of an emergency or critical nature may result in the Online Service not being available for the COUNTY's usage during the course of such repairs. In addition, PROVIDER has established periodic system maintenance windows on Tuesday and Friday mornings between the hours of 2am and 5am (EST). During this time, PROVIDER reserves the right to take down the server(s) at the Data Center hosting the COUNTY Data in order to conduct routine maintenance to both software and hardware. PROVIDER shall advise the COUNTY prior to any scheduled downtime. PROVIDER reserves the right to change its maintenance window upon prior notice to COUNTY provided the maintenance occurs between the hours of 11 p.m. and 7 a.m. (EST).

Database Back-up. Tapes or other storage media shall be used at the Data Center for daily back-up of data for the disaster protection purposes.

Data Conversion Services. Except as expressly provided by this Agreement or an exhibit hereto, the COUNTY shall be responsible for entering all COUNTY Data, including data previously entered in a different software system. The COUNTY may elect the data conversion service from PROVIDER for designated data sets, as offered by PROVIDER. If the data conversion service is elected, an exhibit titled "Purchase of Data Conversion" will be attached hereto in accordance with the attached schedule I and 3 titled "Database Conversion"

Technical Support. TECHNICAL SUPPORT IS INCLUDED IN THE SUBSCRIPTION CHARGE. Technical support is defined as the provision of corrections for any reproducible material error in the Application. Technical support included in the Subscription Charge refers explicitly to maintaining or restoring the Application to operation in accordance with the system documentation. Support issues that arise through user error and Application training issues shall be referred to the Help Desk.

Help Desk. PROVIDER shall provide help desk ("Help Desk") support on an as-needed basis at no charge to the COUNTY upon commencement of the Subscription Services and completion of COUNTY training. Help Desk services are available to the COUNTY between 8am and 8 pm EST Monday to Friday.

Use Practices

Security. The, COUNTY shall receive one or more unique user identity and password combinations. In the event of turnover in the COUNTY's staff or any other occurrence resulting in the COUNTY's password(s) becoming known to any person not authorized to act for the COUNTY, the COUNTY shall immediately notify PROVIDER. The COUNTY shall be responsible for all security precautions at its site(s) and within its staff.

Session Connection Limitations. A connection session is the continuous block of time from the time the COUNTY logs in to the Data Center until the moment the COUNTY disconnects. In the event that the COUNTY, after using an Application, omits to disconnect and leaves the connection idle for 15 minutes, PROVIDER shall automatically disconnect such connection. If disconnected, the COUNTY is free to re-connect immediately to establish a new session.

Data Access on Insolvency. In the event that PROVIDER threatens to or ceases operations, executes an assignment for the benefit of creditors, takes the benefit of any legislation for insolvent persons, or is subject to receivership or bankruptcy proceedings, the COUNTY shall on written request by the COUNTY to PROVIDER be immediately provided with a disk copy of the COUNTY's data.

Additional Terms

Warranty. PROVIDER warrants that the COUNTY shall have the right to utilize the Applications free and clear of all liens and encumbrances, subject to the terms hereof, PROVIDER warrants that the Applications shall function, as originally deployed and as modified by future releases, in accordance with its documentation, and that the COUNTY shall have access to the Applications at the Data Center as described in this Agreement. NO OTHER WARRANTIES APPLY, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

COUNTY Data. PROVIDER does not own any data, information or material submitted by the COUNTY to the Online Service ("Data"), unless PROVIDER specifically advises the COUNTY otherwise. PROVIDER agrees not to disclose to any third party any information concerning the Client's operations, clients or patients except as expressly authorized herein. The COUNTY shall allow PROVIDER to access and copy the COUNTY Data provided that the portions of the COUNTY Data to be copied by PROVIDER (the "Database") shall not include patient identification information and further provided that PROVIDER shall not provide the Database to any Third party in any format either by facility name or location – which enables such third party to identify COUNTY Facility (ies) (individually or collectively) as the basis for the data reported. Subject to such restriction, PROVIDER may use or provide to third parties anonymous database information.

Limitation of Liability

IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE INCURRED BY THE COUNTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, ARISING FROM THE COUNTY'S ACCESS TO, OR USE OF, THE SITE OR THE ONLINE SERVICE UNLESS RESULTING FROM NEGLIGENT ACTS OR ADMISSION BY PROVIDER. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATION MAY NOT APPLY TO THE COUNTY.

PointClickCare.com Subscription Service
Schedule 1

Applications

Essentials (Included)

- Admission Discharge Transfer
 - MDS
 - Medical Diagnosis (ICD 9/10)
 - Care Plans
 - Census
 - Billing &
 - Accounts Receivable
-

PointClickCare**Quote****Quote Title: Monthly Subscriptions**

Wescom Solutions Inc.
6975 Creditview Road
Unit 4
Mississauga ON L5N 8E9

Date 11/24/2010
Quote # 3609
Expires 12/24/2010
Sales Rep Matt D'Angelo

Prepared for:

Cedarbrook - Lehigh County Home
350 S. Cedarbrook Rd
Allentown PA 18104
United States

Item	Description	Bed/Qty	Base Price	List Price [R]	Vol. Disc. [P]	Net CPRD	Monthly Rate
PCC Essentials - for SNF	Allentown Fees ADT, MDS, Care Plans, Diagnosis, Billing, Accounts Receivable, Census Management, Resident Management.	483	0.38	11.59	35.0%	.25	3,638.68
PCC Essentials - for SNF	Fountain Hill Monthly Fees ADT, MDS, Care Plans, Diagnosis, Billing, Accounts Receivable, Census Management, Resident Management.	197	0.38	11.59	35.0%	.25	1,484.10
	Tax Code Summary	Tax Rate	Total Tax				
	Tax Code: PST	0.0%	\$0.00				
	Tax Code: GST	0.0%	\$0.00				

Terms:

1. Application License: License to use the selected PointClickCare application modules for the term of the subscription.
2. Maintenance: Application enhancements and corrections
3. Hosting: Providing a secure and reliable server platform for the application and management of the application.
4. Unless otherwise stated, all project coordination, implementation and data services are provided by consultants online and over the telephone. Online services are available and quoted separately
5. Cancellation Policy: All training sessions scheduled with a PointClickCare consultant require at least 24 hours notice when cancelling. Any sessions cancelled with less than 24 hours notice will be charged at their full rate. This policy also applies to fixed rate customers
6. Subscription services are subject to the PointClickCare Subscription Service Terms
7. Prices are subject to applicable taxes
8. Implementation fees are due within 30 days of signing

Please fax signed quotes to 1-800-716-0995 or scan and email to sales@pointclickcare.com

Approved By: _____

Signature: _____

Date: _____

APPENDIX B COMPENSATION

The fee for services performed pursuant to this Agreement shall be as follows:

Subscription/License Fee

Subscription Charge. The COUNTY shall be responsible for a subscription fee as set forth in Schedule 1 (the "Subscription Charge"), and shall be payable in full within 30-days from official start date.

Price Protection. PROVIDER may, at any time during the term of this Agreement, modify the Subscription Charge, upon ninety (90) days prior notice, subject to the following limitations:

- a) no modification may occur within the twelve-month period beginning with the first term for which the Subscription Charge is payable;
- b) Subscription Charge may not increase by more than 5% on any given year.

Suspension. If the COUNTY fails to make payment of any amount owing, including the Subscription Charge, under this Agreement within 45 days of such amount becoming due, the COUNTY's right to utilize the Applications shall, at the discretion of PROVIDER, be subject to suspension. During the period of suspension, any attempt to access the Data Center by the COUNTY will be blocked. An account that has been suspended for nonpayment will not be reactivated until the balance due on the account has been paid in full, or sufficient arrangements for payment acceptable to PROVIDER have been made. Reactivation of a suspended account requires, in addition to charges otherwise payable, a one-hundred-dollar (\$100.00) reactivation fee. Service fees shall continue to accrue during any period of suspension. Suspension of a COUNTY account does not relieve the COUNTY of his obligation to pay the outstanding account balance.

The suspension shall not be effective until ten (10) days after PROVIDER has given written notice by certified mail, return receipt requested to COUNTY of the default in payment.

Non-Subscription Services

Training & Professional Services. If COUNTY requests training & professional services for COUNTY's staff in the use of the Applications, the COUNTY shall pay the published rate of \$125/h.

APPENDIX C
AMENDMENTS AND SPECIAL PROVISIONS

1. Section XIII (Insurance) Paragraph A6 is not applicable.
2. There shall be added a new paragraph D. to Section XX (Audit) as follows:

“D. In any review of or use of information in clients records, both PROVIDER and COUNTY shall observe the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its regulations regarding private health and mental health information as understood in HIPAA. This commitment includes but is not limited to the standard of minimum necessary disclosure for legitimate purposes and the standard of privacy governing “psychotherapy of process notes.”

3. There shall be added a new Section XXX entitled “Business Associates Addendum”:

“XXX BUSINESS ASSOCIATES ADDENDUM

I. Definitions.

- 1.1 Business Associate. “Business Associate” shall mean the PROVIDER
- 1.2. Covered Entity. “Covered Entity” shall mean, a department of the County of Lehigh.
- 1.3. Individual. “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.4. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A. and E.
- 1.5. Protected Health Information. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.6. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.501.

1.7. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or their designee.

II. Permitted Uses and Disclosures by Business Associate.

2.1. Except as otherwise limited herein, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

2.2. Except as otherwise limited herein, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

2.3. Except as otherwise limited herein, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

III. Obligations and Activities of Business Associate.

3.1. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Contract or as Required By Law.

3.2. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Contract.

3.3. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Contract.

3.4. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for herein of which it becomes aware.

3.5. Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply throughout this Contract to Business Associate with respect to such information.

3.6. Business Associate agrees to provide reasonable and timely access, at the request of Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. Business Associate shall not be entitled to any compensation from Covered Entity for granting access to PHI pursuant to this Section 3.6. If any Individual requests a copy of PHI or agrees to a summary or explanation of such information, the Business Associate may impose a reasonable, cost-based fee as permitted under 45 C.F.R. § 164.524 (c)(4). The Individual requesting the PHI shall bear sole financial responsibility for any such cost-based fee imposed by Business Associate. Business Associate will bill the requesting Individual directly for any cost-based fee imposed pursuant to this Section. 3.6.

3.7. Business Associate agrees to make any amendments to PHI in a Designated Record set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual. Business Associate shall not be entitled to any compensation from Covered Entity for amending PHI pursuant to this Section 3.7.

3.8. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity compliance with the Privacy Rule.

3.9. Business Associate agrees to 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 in accordance with 45 C.F.R. § 164.528.

3.10. Business Associate agrees to provide to Covered Entity or an Individual, information collected in accordance with Section 3.9 hereof, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Business Associate shall not be entitled to any compensation from Covered Entity for performing obligations under Sections 3.9 and 3.10 hereof. Business Associate must provide the first accounting to an Individual in any twelve month period without charge. Business Associate may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same Individual within the twelve month period as permitted under 45 C.F.R. § 164.528(c)(2). The Individual requesting the accounting of disclosures shall bear sole financial responsibility for any cost-based fee imposed pursuant to this Section 3.10.

IV. Obligations of Covered Entity.

4.1. Covered Entity shall notify Business Associate of any limitation in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

4.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4.3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

V. Permissible Request By Covered Entity.

5.1. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

VI. Term and Termination.

6.1. The Term of this Contract shall be effective as of the beginning date set forth in Section II of this Contract. The Business Associate's obligations set forth in this Section XXVI (Business Associate Addendum) shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section 6.

6.2. Upon Covered Entity's knowledge of a material breach by Business Associate of these terms and conditions, Covered Entity shall either:

(a) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Contract if Business Associate does not cure the breach or end the violation within fifteen (15) days of notification by Covered Entity;

(b) Immediately terminate this Contract if Business Associate has breached a material term of Section XXVI and cure is not possible; or

(c) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

6.3. Except as provided in Section 6.4 hereof, upon termination of this Contract, of any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agent's of Business Associate. Business Associate shall retain no copies of the PHI.

6.4. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon confirmation by Covered Entity that return or destruction of PHI is infeasible, Business associate shall extend the protections of this Section XXVI to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If Covered Entity and Business Associate disagree on whether return or destruction of PHI is infeasible, both parties agree to negotiate in good faith in order to resolve this disagreement.

VII. Regulatory References.

7.1. A reference herein to a section in the Privacy Rule means the section as in effect or as amended.

VIII. Amendment.

8.1. Covered Entity and Business Associate agree to take such action as is necessary to amend this Contract from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 and any final regulations promulgated thereunder.

IX. Indemnification.

9.1. In addition to any other provision of this Contract, Business Associate agrees to indemnify and hold harmless Covered Entity from any and all liability or claims for damages or injury caused or resulting from negligent acts or omissions in connection with Business Associate's use or disclosure of PHI, or from Business Associate's breach of this Contract. Business Associate shall further indemnify and hold Covered Entity harmless against all costs, reasonable attorney's fees, expenses and liabilities incurred in connection with any action or proceeding brought against Covered Entity by reason of any such claims. Business Associate, upon notice from Covered Entity, shall resist and defend at Business Associate's expense, such action or proceeding.

X. Severability.

10.1. In the event any term or provision of this Contract is rendered invalid or unenforceable by any valid act of Congress or the state legislature, or by any regulation duly promulgated by officers of the United States or the Commonwealth of Pennsylvania acting in accordance with law, or is held by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Contract shall remain in full force and effect.

XI. Waiver;

11.1. The waiver by either party of a breach or violation of any provision of the Addendum shall not operate as or be construed to be a waiver of any subsequent breach thereof.

XII. Conflicts.

12.1. The terms and conditions of this Appendix will override and control any conflicting term or condition of the Contract. All non-conflicting terms and conditions of this Contract remain in full force and effect.

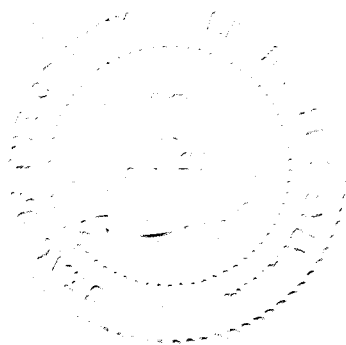
XIII. Headings.

13.1. The headings of the various sections of this Contract are inserted for the purpose of convenience only and do not, expressly or by implication, limit, define or extend the specific terms of the section so designated.

COUNTY OF LEHIGH ORDINANCE 2011 – NO. 103

CERTIFICATION

I, DAVID BARILLA, Clerk to the Board of Commissioners of Lehigh County, do hereby certify that the attached is a true and correct copy of the ordinance adopted at a regular meeting of the Commissioners of Lehigh County held on the 12th day of January, 2011, and approved on the 14th day of January, 2011 by the Lehigh County Executive, and effective on the 24th day of January, 2011.



A handwritten signature in dark ink, which appears to read "David Barilla", is written over a horizontal line.

DAVID BARILLA, Clerk
Board of Commissioners