# QliqSOFT Secure Texting Service
# SUBSCRIPTION AGREEMENT

This Secure Texting Service Agreement **("Agreement")** is entered into and effective as of April 1, 2019 ("Effective Date") by and between QliqSOFT, Inc., a Delaware corporation, whose principal place of business is at 13155 Noel Road, Suite 900, Dallas, TX 75240 **("QliqSOFT")** and County of Monterey, a political subdivision of the State of California.  **("Customer")**.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## 1. Definitions.

**"Users"** means Customer designated users who are part of Customer's group(s), who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by QliqSOFT at Customer's request).

**"User Data"** means all electronic data or information submitted by Users to the Service. Data includes user name, contact information, profession and other account information.

**"User Message Data"** means all electronic data or information sent by Users of the Service to other Users of the Service through the Service. User Message Data includes the actual text, file and image data securely transmitted via the Service.

**"Service"** means the Qliq Secure Texting service provided by QliqSOFT.

## 2. Service.

**2.1** **Provision of Service.** QliqSOFT shall make the Service available to Customer pursuant to the terms and conditions set forth in this Agreement and as specified in Exhibit A hereto. During the term of this Agreement, the Service shall perform materially in accordance with Exhibit A hereto.

## 3. Use of the Service.

**3.1** **QliqSOFT Responsibilities.** QliqSOFT shall: (i) in addition to its confidentiality obligations under Section 6, not use, edit or disclose to any party other than Customer the User Data; (ii) maintain the security and integrity of the Service and the User Data; and (iii) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for scheduled downtime (of which QliqSOFT shall give notice and which QliqSOFT shall schedule to the extent reasonably practicable during the weekend hours from 6:00 p.m. PT Friday to 3:00 a.m. PT Monday); or (b) downtime caused by circumstances beyond QliqSOFT's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems not involving QliqSOFT employees, computer or telecommunications failures or delays involving hardware or software not within QliqSOFT's possession or reasonable control, and network intrusions or denial of service attacks, but only to the extent unavailability results notwithstanding the exercise by QliqSOFT of reasonable care and due diligence to avoid or mitigate the same in anticipation of or in response to such causes.

**3.2** **Customer Responsibilities.** Customer is responsible for all activities that occur under Customer's User accounts. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all User Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify QliqSOFT promptly of any such unauthorized use; and (iii) comply with all applicable local, state, federal, and foreign laws in using the Service.

**3.3** **Use Guidelines.** Customer shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than as contemplated by this Agreement; (ii) interfere with or disrupt the integrity or performance of the Service

or the data contained therein; or (iii) attempt to gain unauthorized access to the Service or its related systems or networks.

## 4. Fees & Payment.

**4.1     User Fees.** Customer shall pay all fees specified in Exhibit A hereto. Subscription fees are based on the number of users in the Customer's group, not the extent of actual usage. Except as otherwise provided, fees are non-refundable, and the number of subscriptions purchased cannot be decreased after the beginning of each subscription term stated in Exhibit A, except in accordance with terms of cancellation provided in this Agreement.

**4.2     Invoicing & Payment.** Fees for the Service will be invoiced in advance and otherwise in accordance with the terms set forth in Exhibit A.

**4.3     Suspension of Service.** If Customer's account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, QliqSOFT reserves the right to suspend the Service provided to Customer, without liability to Customer, until such amounts are paid in full.

**4.4     Taxes.** Unless otherwise stated, QliqSOFT's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on QliqSOFT's income. If QliqSOFT has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides QliqSOFT with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 5. Proprietary Rights.

**5.1     Reservation of Rights.** Customer acknowledges that in providing the Service, QliqSOFT utilizes (i) the QliqSOFT names, logos and domain names, the product and service names associated with the Service, and other trademarks and service marks; (ii) certain information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively, "**QliqSOFT Technology**") and that the QliqSOFT Technology is covered by intellectual property rights owned or licensed by QliqSOFT (collectively, "**QliqSOFT IP Rights**"). Other than as expressly set forth in this Agreement, no license or other rights in or to the QliqSOFT Technology or QliqSOFT IP Rights are granted to Customer, and all such licenses and rights are hereby expressly reserved.

**5.2     License Grant.** QliqSOFT grants Customer and its Users a non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicenseable right to access and use the Service in accordance with the terms of this Agreement.

**5.3     End-Users Terms of Service.** Upon logging-on the Service, Customer's Users agree to the terms of a QliqSOFT Terms of Service.

**5.4     Restrictions.** Customer shall not (i) modify, copy or create derivative works based on the Service or QliqSOFT Technology; (ii) disassemble, reverse engineer, or decompile the Service or QliqSOFT Technology, or access it in order to (A) build a competitive product or service, (B) build a product or service using similar ideas, features, functions or graphics of the Service, or (C) copy any ideas, features, functions or graphics of the Service.

**5.5     Customer Data.** As between QliqSOFT and Customer, all User Data and User Message Data is owned exclusively by Customer, except User Data provided upon registration or otherwise provided to create a User profile, which are co-owned by Customer and QliqSOFT. User Data and User Message Data shall be considered Confidential Information subject to the terms of this Agreement. QliqSOFT may access Customer's User accounts, including User Data, to address service or technical problems or at Customer's request. QliqSOFT may also access User Data in order to provide, collect or use aggregated information or statistics. QliqSOFT will not access User Message Data in any way.

**5.6** **Suggestions.** QliqSOFT shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the Services.

**5.7** **Publicity.** QliqSOFT may publish the Customer's name on QliqSOFT website, case studies, and press releases documenting the use of the QliqSOFT service by the Customer.

## 6. Confidentiality.

**6.1** **Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, the User Data, the User Message Data, the Service, the QliqSOFT Technology, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for User Data and User Message Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

**6.2** **Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.

**6.3** **Compelled Disclosure**. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**6.4** **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## 7. Warranties & Disclaimers.

**7.1** **Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement. QliqSOFT represents and warrants that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) it owns or otherwise has sufficient rights to the Service and the QliqSOFT Technology to grant the rights and licenses granted herein; and (iii) the Service and QliqSOFT Technology do not infringe any intellectual property rights of any third party.

**7.2** **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, QLIQSOFT MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. QLIQSOFT HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

QliqSOFT is not responsible for and does not endorse the information, User Message Data and opinions entered into the Service, nor any provision of medical care described or discussed on the Service. Users and Customer are responsible for all information and for making all medical decisions with respect to medical treatments. The information provided by Participants is not endorsed by QliqSOFT, and QliqSOFT shall have no legal duty to insure the accuracy of any information created by Users.

Customer is responsible for compliance with all governmental, regulatory and other legal requirements with respect to User Message Data disclosed on the Service or actions taken by Customer or its Users in the course of the evaluating or using the Service.

## 8. Mutual Indemnification.

**8.1** **Indemnification by QliqSOFT.** Subject to this Agreement, QliqSOFT shall defend, indemnify and hold Customer harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against Customer by a third party alleging that the use of the Service as contemplated hereunder infringes any United States copyright, trademark or trade secret of a third party; provided, that Customer (a) promptly gives written notice of the Claim to QliqSOFT; (b) gives QliqSOFT sole control of the defense and settlement of the Claim (provided that QliqSOFT may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to QliqSOFT, at QliqSOFT's cost, all reasonable assistance.

**8.2** **Indemnification by Customer.** Subject to this Agreement, Customer shall defend, indemnify and hold QliqSOFT harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with Claims made or brought against QliqSOFT (1) by a User or another third party alleging that use of the Service has harmed a User or another third party, or that the User Data infringes the intellectual property rights of, or has otherwise harmed, a User or another third party, or (2) by a government or regulatory agency related to Customer's products; provided, that QliqSOFT (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases QliqSOFT of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

## 9. Limitation of Liability.

**9.1** **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF $250,000 OR THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER.

**9.2** **Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, LOSS OF DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**9.3** **Limitation of Action.** Except for actions for non-payment or breach of either party's intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than two (2) years after the cause of action has accrued.

## 10. Term & Termination.

**10.1** **Term of Agreement.** This Agreement commences on the Effective Date and will continue yearly for up to three (3) years until all subscriptions granted in accordance with this Agreement have expired or been terminated, whichever is sooner.

**10.2** **Service Subscriptions.** Service Subscriptions will commence as set forth in Exhibit A hereto, and continue for the subscription term specified therein.

**10.3     Termination.** Either party may terminate this Agreement for cause: (i) upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, and/or termination of funding.

**10.4     Outstanding Fees.** Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to QliqSOFT prior to the effective date of termination, including any non-refundable set-up fee.

**10.5     Surviving Provisions.** The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 4, 5 (excluding Section 5.2), 6, 7, 8, 9, 10 and 11.

**11.     General Provisions.**

**11.1     Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**No Benefit to Others.** The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.

**Notices.** All notices under this Agreement shall be in writing and shall be delivered to the addresses notified by the parties to each other by a means evidenced by a delivery receipt, by facsimile or by email. Notice shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) 48 hours after sending by confirmed facsimile; or (iv) 48 hours after sending by email.

**Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing either party may assign this Agreement together with all rights and obligations hereunder, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
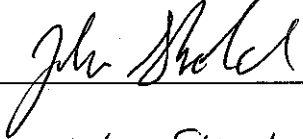
**Governing Law.** This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of Texas, without regard to its conflicts of laws provisions.

**Entire Agreement.** This Agreement, including all exhibits and addenda hereto, constitute the entire agreement between the parties as to its subject matter, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. In the event of any conflict between the provisions in this Master Subscription Agreement and any exhibit or addendum hereto, the terms of the exhibit or addendum shall prevail to the extent of any inconsistency.
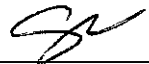
**Counterparts.** This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this Agreement as of the Effective Date:
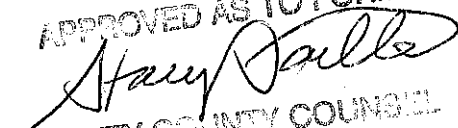
**QLIQSOFT, INC.**

By: _____

Print Name: _John Skowlund_
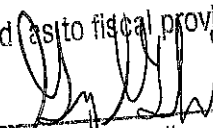
Title: _Vice President_

Date: _3/11/2019_

**CUSTOMER**

By: _____

Print Name: _Ezequiel Vega_

Title: _Assistant Director of Health_

Date: _05/02/2019_

## EXHIBITS

Exhibit A: Qliq Secure Texting Subscription

Exhibit B: Business Associate Agreement

Reviewed as to fiscal provisions

_____
Auditor-Controller
County of Monterey   4/11/19

APPROVED AS TO FORM
_____
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

# EXHIBIT A

## Qliq Secure Texting Subscription:

Customer agrees to the subscription and QliqSOFT agrees to provide one (1) private group of the Qliq Secure Texting Service. The initial number of users will be **25** users.

The subscription period will begin on "Launch Date" of **April 1, 2019** and will continue on a **1 year subscription renewal basis for a period of three (3) years.** Customer may discontinue the Subscription during the term of this Agreement, Customer must simply notify QliqSOFT in writing 30 days in advance of the last day of the billing cycle the Customer desires to end the Services.

**Subscription Fees:** Customer agrees to pay subscription fees in accordance to the fee schedule and payment terms below. Subscription fee is based upon number of users in group on billing date.

## Qliq Secure Texting Subscription Fees

| USERS | PRICE |
|---|---|
| 50-500 | $6/user/month |
| 501-1000 | $5/user/month |
| 1000+ | $4/user/month |

Includes Active Directory integration, QliqSTOR Archive Application, and Admin Training and Support

## Payment Terms

Payment due on first date of each service term. Service will be invoiced **annually**. Additional users added during term will be invoiced on a prorated basis.

**Set Up Fee:** There is **no fee** for the set up of the standard Qliq service. Additional fees are charged for optional integration or customization services as approved by Customer.

**Training Fee:** Up to 2 hours of Administrator training is provided at **no fee** within the first 30 days of service. Additional Administrator or User training is available at a rate of $125 per hour.

Training for Customer's designated group administrator(s) is accomplished by web conference without difficulty. Optionally, QliqSOFT's professional services consultant is available for on-site training. The cost of on-site training is $1,500 per day plus related travel expenses.

**Upgrades:** Customer will be entitled to all available Service upgrades from QliqSOFT.

## Primary Contact

Name _____

Title _____

Email_____

Phone _____

## Billing Contact

Name _____

Title _____

Email_____

Phone _____

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement"), effective <u>April 1</u>, 20<u>19</u> ("Effective Date"), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department ("Covered Entity") and <u>QliqSOFT, Inc.</u> ("Business Associate") (each a "Party" and collectively the "Parties").

Business Associate provides certain services for Covered Entity ("Services") that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity ("PHI"). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the "Privacy Rule"), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the "Security Rule"), under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations ("HITECH"). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* ("CMIA"), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 ("Red Flag Rules"). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information ("EPHI"), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

1.  **DEFINITIONS**

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

2.  **PERMITTED USES AND DISCLOSURES OF PHI**

2.1     Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, <u>provided</u> that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law , or Business Associate obtains reasonable assurances from the persons 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;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

## 3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

3.1     Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents

agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

(l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2     Additional Responsibilities of Business Associate with Respect to EPHI.  In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3     Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

(e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

## 4. TERMS AND TERMINATION

4.1     Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2     Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3     Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4     Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

## 5. MISCELLANEOUS

5.1     Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2     Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3     No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4    Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

QliqSOFT, Inc
Attn:    John Skowlund, Vice President, Business Development
Tel:     970-403-5152
Fax:

If to Covered Entity, to:

Attn:
Tel:
Fax:

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5    Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6    Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7    Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

*COUNTY OF MONTEREY, ON BEHALF OF*
*THE HEALTH DEPARTMENT*

*[BUSINESS ASSOCIATE]*

QliqSOFT, Inc

By: _____

By: _____

Print Name: *Ezequiel Vega*

Print Name: *John Skowland*

Print Title: *Assistant Director of Health*

Print Title: *Vice President*

Date: *05/02/2019*

Date: *3/11/2019*

# Monterey County
# Board of Supervisors

168 W. Alisal Street, 1ˢᵗ Floor
Salinas, CA 93901
831.755.5066
www.co.monterey.ca.us

### Board Order

**Agreement No. A-14293**

A motion was made by Supervisor Mary L. Adams, seconded by Supervisor Chris Lopez, to:

a. Approve and authorize the Director of Health or the Assistant Director of Health to sign a Secure Texting Service Subscription Agreement with QliqSOFT, Inc. for the provision of secure Health Insurance Portability and Accountability Act (HIPAA) compliant messaging as needed in the amount not to exceed $7,200 for Fiscal Year (FY) 2018-19, $7,200 for Fiscal Year (FY) 2019-20, and $7,200 for Fiscal Year (FY) 2020-21 for a total Agreement amount not to exceed $21,600; and

b. Approve the non-standard to county Agreement language to include risk terms regarding limitation of liability and indemnification as recommended by the Director of Health; and

c. Approve and authorize the Director of Health or Assistant Director of Health to approve one (1) future amendment that will not exceed ten percent (10%) or $2,160 of the original Agreement and will not significantly alter the scope of the secure texting service subscription.

PASSED AND ADOPTED on this 30ᵗʰ day of April 2019, by the following vote, to wit:

AYES:      Supervisors Alejo, Lopez, Adams and Phillips
NOES:      None
ABSENT: Supervisor Parker

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting April 30, 2019.

Dated:   April 30, 2019
Legistar File ID: A 19-098
Agenda Item No. 15

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

_____
Valerie Ralph, Clerk of the Board