

**COUNTY OF MONTEREY STANDARD AGREEMENT**  
**(NOT TO EXCEED \$100,000)**

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Wolters Kluwer Health, UpToDate, Inc.

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

**1.0 GENERAL DESCRIPTION.**

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

**Provide** Subscriber Manager Subscription for Monterey Health Department,  
Behavioral Health Bureau

**2.0 PAYMENT PROVISIONS.**

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of \$ 9,900.00.

**3.0 TERM OF AGREEMENT.**

3.01 The term of this Agreement is from August 1, 2017 to July 31, 2018, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

**4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.**

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

**Exhibit A** Scope of Services/Payment Provisions

**Exhibit B** Standard Agreement - Modifications

## 5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

## 6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

## 7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of

CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

## 8.0 INDEMNIFICATION.

- 8.01 Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

## 9.0 INSURANCE REQUIREMENTS.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

**Commercial General Liability Insurance**, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

*(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

**Business Automobile Liability Insurance**, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

*(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

**Workers' Compensation Insurance**, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

*(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

**Professional Liability Insurance**, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

*(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

#### 9.04 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of

three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall **provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds** with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that **such insurance is primary** insurance to any insurance or self-insurance maintained by the County and that the insurance of **the Additional Insureds shall not be called upon to contribute** to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

## **10.0 RECORDS AND CONFIDENTIALITY.**

- 10.01 **Confidentiality.** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by

CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

## 11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

## 12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall

be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

### 13.0 INDEPENDENT CONTRACTOR.

13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

### 14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

<b>FOR COUNTY:</b>	<b>FOR CONTRACTOR:</b>
Elsa Jimenez, Director of Health	James Prendergast, Director of Pricing and Compliance
Name and Title	Name and Title
1270 Natividad Road Salinas, CA 93906	230 Third Avenue Waltham, MA 02451
Address	Address
831-755-4526	781-392-2000
Phone	Phone

### 15.0 MISCELLANEOUS PROVISIONS.

15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.



- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

**COUNTY OF MONTEREY**

**CONTRACTOR**

By: \_\_\_\_\_  
Contracts/Purchasing Officer

Wolters Kluwer Health, UpToDate, Inc.  
Contractor's Business Name\*

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Department Head (if applicable)

By: \_\_\_\_\_  
(Signature of Chair, President, or Vice-President)\*

Date: \_\_\_\_\_

Approved as to Form<sup>1</sup>

\_\_\_\_\_ CFO  
Name and Title

By: \_\_\_\_\_  
County Counsel

Date: \_\_\_\_\_

Date: \_\_\_\_\_  
6-21-17

By: \_\_\_\_\_  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*

Approved as to Fiscal Provisions<sup>2</sup>

By: \_\_\_\_\_  
Auditor/Controller

JAMES PREDELGAST  
Dir GLOBAL BUSINESS & ORDER MGMT  
Name and Title

Date: \_\_\_\_\_  
6/23/2017

Date: \_\_\_\_\_  
JUNE 5, 2017

Approved as to Liability Provisions<sup>3</sup>

By: \_\_\_\_\_  
Risk Management

Date: \_\_\_\_\_

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

<sup>1</sup>Approval by County Counsel is required

<sup>2</sup>Approval by Auditor/Controller is required

<sup>3</sup>Approval by Risk Management is required only if changes are made in sections 7 or 8

## **EXHIBIT-A**

**To Agreement by and between the  
County of Monterey Health Department/Behavioral Health Bureau  
AND  
Wolters Kluwer Health, UpToDate, Inc.**

### **Scope of Services / Payment Provisions**

#### **A. SCOPE OF SERVICES**

- A.1** Wolters Kluwer Health, UpToDate, Inc. (UpToDate/Contractor) will provide a Subscriber Manager subscription license to use UpToDate Licensed Materials. UpToDate Anywhere with Subscriber Manager is an electronic clinical resource that will allow authorized users to obtain answers to clinical questions, including the latest evidence, and will provide for specific, practical recommendations for diagnosis and treatment.

Authorized users shall be those authorized by the Monterey County Health Department/Behavioral Health Bureau (BHB) to access UpToDate and consists of psychiatrists, mid-levels, faculty, nurses and other staff and medical professionals who are employed by Monterey County (County) or who provide medical services to patients at the County facilities, including any student affiliated with the County.

UpToDate shall provide a web-based subscription environment, as set forth below:

1. Ability to manage the licensed web-based seats via assigned web portal.
2. Ability to deploy twenty-two (22) staff name(s) to register for a licensed seat, in which staff will receive an invitation to register.
3. Ability to establish a username and password with UpToDate, Inc. Once established, a username and password will allow authorized users access to UpToDate from any internet-enabled device including desktop computers, laptops, and mobile devices such as the iPhone and Android devices, regardless of authorized user's location, subject or Registration and Re-verification.
4. Ability to accrue a .5 Category Continuing Medical Education (CME) credit for every search that the authorized user conducts in UpToDate.
5. Provide information on UpToDate's complimentary learning webinars.
6. Provide usage reports as requested by County.
7. Provide technical assistance as needed.

**B. PAYMENT PROVISIONS**

**B.1 COMPENSATION/ PAYMENT**

County shall pay the subscription price in advance as an annual amount not to exceed **\$9,900.00** for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

<b>Institution</b>	<b>Licensed Web-Based Seats</b>	<b>Rate Per Seat</b>	<b>August 1, 2017 – July 31, 2018 Total Annual Subscription Amount</b>
Behavioral Health Bureau	22	\$450.00	\$9,900.00

**B.2 PAYMENT CONDITIONS**

- A. CONTRACTOR shall submit via email a claim or claims, as applicable, using an Invoice Form as agreed by COUNTY and CONTRACTOR, with electronic signature along with supporting documentation, as may be required by the COUNTY for services rendered to: **MCHDBHFinance@co.monterey.ca.us**
- B. COUNTY shall review and certify CONTRACTOR'S claim either in the requested amount or in such other amount as COUNTY approves in conformity with this Agreement, and shall then submit such certified claim to the COUNTY Auditor. The County Auditor-Controller shall pay the amount certified within thirty (30) calendar days of receiving the certified invoice.
- C. To the extent that the COUNTY determines CONTRACTOR has improperly claimed services, COUNTY may disallow payment of said services and require CONTRACTOR to resubmit said claim of services for payment, or COUNTY may make corrective accounting transactions.
- D. If COUNTY certifies payment at a lesser amount than the amount requested COUNTY shall immediately notify the CONTRACTOR in writing of such certification and shall specify the reason for it. If the CONTRACTOR desires to contest the certification, the CONTRACTOR must submit a written notice of protest to the COUNTY within twenty (20) calendar days after the CONTRACTOR'S receipt of the COUNTY notice. The parties shall thereafter promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such a dispute until the parties have met and attempted to resolve the dispute in person.
- E. There shall be no travel reimbursement allowed during this Agreement.

**B.3 CONTRACTORS BILLING PROCEDURES**

- A. NOTE: Payment may be based upon satisfactory acceptance of the web-based subscription environment setup.
- B. The County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

**B.4 MAXIMUM OBLIGATION OF COUNTY**

- A. Subject to the limitations set forth herein, COUNTY shall pay to the CONTRACTOR during the term of this Agreement an amount not to exceed **\$9,900** for services rendered under this Agreement.
- B. Maximum Annual Liability:

FISCAL YEAR	AMOUNT
August 1, 2017 – July 31, 2018	\$9,900.00
<b>MAXIMUM TOTAL LIABILITY</b>	<b>\$9,900.00</b>

**C. CONTRACT MONITOR/ADMINISTRATOR**

Sarah House, Department Information Systems Manager  
Monterey County Health Department  
1270 Natividad Road  
Salinas, CA 93906  
831-755-4531  
[HouseSD@co.monterey.ca.us](mailto:HouseSD@co.monterey.ca.us)

**D. CLINICAL ADVOCATE/LIAISON**

David Soskin, MD  
Medical Director, Behavioral Health  
Monterey County Health Department  
1441 Constitution Blvd., Bldg. 400  
Salinas, CA 93906  
831-796-1701  
[SoskinDP@co.monterey.ca.us](mailto:SoskinDP@co.monterey.ca.us)

OR

Oriana Vesga-Lopez, MD  
Psychiatrist, Behavioral Health  
Monterey County Health Department  
1441 Constitution Blvd., Bldg. 400  
Salinas, CA 93906  
831-796-1713  
[VesgaLopezOP@co.monterey.ca.us](mailto:VesgaLopezOP@co.monterey.ca.us)

Contract No.: 001-00-43920874

January 13, 2017

Gloria Rodríguez  
Monterey County Health Department Behavioral Health Bureau  
1270 Natividad Rd  
Salinas, CA 93906-3122  
United States

Dear Gloria Rodriguez,

This letter and the attached Subscription and License Terms (the "Terms") set out the terms and conditions on which UpToDate, Inc. will supply Monterey County Health Department Behavioral Health Bureau ("You" or "Your") with an UpToDate Anywhere Subscription to *UpToDate*® online, for an initial one-year term (the "Term"). Capitalized terms may be defined in this letter or in the attached Terms; together, the letter and the Terms are defined as the "Agreement".

#### **Subscription and Price**

**Subscription:** The annual subscription price for *UpToDate* is \$9,900.00 USD (plus tax where applicable). The subscription price must be paid within 30 days from the time the County Auditor-Controller receives the certified invoice. This quote is valid for 60 days from the date of this letter.

**License to Use *UpToDate*:** For the above subscription price, UpToDate, Inc. will grant Your Authorized Users a license to use the Licensed Materials on the terms set forth in this Agreement. This UpToDate Anywhere Subscription allows You to manage the issuance of usernames via UpToDate's Subscriber Manager Console (the "Console"). Your subscriber administrator may invite individuals to establish usernames and password in order to Access the Licensed Materials. Once an individual establishes a username and password they become an Authorized User. The number of individuals invited is limited to the Maximum Total Number of Unique Authorized Users listed below. Authorized Users may Access the Licensed Material via any Internet-enabled device, including laptops, desktop computers, and mobile devices such as the iPhone and Android devices.

**Term:** The Term of Your subscription will start on the start date You nominate below. You may renew Your subscription at the expiry of the initial term at the then-current subscription price.

#### **Confirmation of Your Information**

##### *Operating Statistics*

**Total Maximum Number of Unique Authorized Users:      22**

You represent and warrant that no users will gain Access to the Licensed Materials through this subscription, except for Your employees or other professionals affiliated with You, as assigned Authorized Users by You via the Console.

Please fill out Schedule 1 to designate Your Subscriber Manager Administrator and Your Clinical Advocate/Liaison.

**Subscription Confirmation**

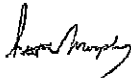
To confirm Your acceptance of this subscription, please sign both copies of this letter in the space below and return them to us, along with the completed Schedule 1. Your subscription will be processed immediately and an executed copy will be returned to You.

We look forward to providing Monterey County Health Department Behavioral Health Bureau with a subscription to *UpToDate*. We are confident that Your clinicians will find *UpToDate* to be a practical and efficient tool with which to effectively manage clinical issues in practice.

Your account manager, Ray DeVincent, will call you shortly to answer any questions that you might have and to discuss the next steps.

Again, thank you for your interest in *UpToDate*.

Sincerely,



1/13/2017 3:00 PM  
Finance - Contract Administration  
UpToDate, Inc.

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Please indicate your preferred start date for Your Subscription:

Start Date: \_\_\_\_/01/\_\_\_\_ (must be the first day of the month)

Accepted and Agreed to this \_\_\_\_ day of \_\_\_\_\_, 2017 on behalf of Monterey County Health Department Behavioral Health Bureau.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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Accepted and Agreed to this \_\_\_\_ day of \_\_\_\_\_, 2017 on behalf of UpToDate, Inc.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**UpToDate, Inc.**

#### Definitions

"Access": Viewing, searching or displaying any page of the Licensed Materials, whether such pages are viewed by means of connection to a network or from storage in any storage medium.

"Agreement": These Subscription and License Terms and the attached quotation letter.

"Subscriber Manager Administrator": the person assigned by You, who is granted the ability to invite individuals via the Console to become Authorized Users by creating a username and password. The Administrator will also be able to deactivate as well as reactivate Authorized Users. (see <http://www.upToDate.com/home/administrator-resources>)

"Authorized Users": Your employees or other professionals affiliated with You, who have been invited by Your Subscriber Administrator via the Console and established a username and password.

"Licensed Materials": UpToDate<sup>®</sup> online database, software and user documentation.

#### Grant of License

UpToDate, Inc., in consideration of payment of the subscription fee and subject to the terms and conditions below, will grant You a non-exclusive, non-transferable license for Your Authorized Users to Access the Licensed Materials solely for the purpose of (i) research or other scholarly activities or (ii) providing diagnostic treatment or other medical services to patients, subject to the terms and conditions of this Agreement. You shall ensure that the Licensed Materials are Accessed only by Authorized Users affiliated with You for a purpose related to Your business.

In order to access the Licensed Materials, Authorized Users must agree to the End User License Agreement (EULA). In the event of a conflict or discrepancy between the EULA and this Subscription and License Agreement, it is agreed that this Subscription and License Agreement shall take precedence.

#### Term and Termination

Access to the Licensed Materials will be provided to You for the Term, unless earlier terminated in accordance with this Agreement. Information in the Licensed Materials is updated periodically.

You have the option to renew the Term and to continue the subscription by paying the then-current subscription fee, as notified to You by UpToDate, Inc., within 90 days of the expiration date.

You have the right to cancel Your subscription for cause by giving a 60 days written notice and allowing for an additional 30 days Cure Period for UpToDate, Inc. to remedy. If at the end of the Cure Period, You are not satisfied with UpToDate's remedy, You may cancel Your subscription. The end date of the Cure Period will become the effective date of cancellation and a pro-rated refund of fees actually paid by You for any remaining months of the subscription, from the effective day of cancellation to the normal end-date of the subscription period will be provided to You. UpToDate, Inc. reserves the right to withhold any damages arising from any failure or default by You.

UpToDate, Inc. may terminate Your subscription if UpToDate, Inc. gives a 30-day written notice to You specifying any failure or default. In the performance of any provisions of this Agreement, a breach hereunder includes, without limitation, providing Access to - Authorized Users for whom you have not paid UpToDate. A pro-rata refund of fees actually paid by You for any remaining period of the subscription, from the effective day of cancellation to the normal end-date of the subscription period, will be provided to You, provided that UpToDate, Inc. reserves the right to withhold any damages arising from any failure or default by You.

Upon termination or expiration of Your subscription, Your license and associated rights expire automatically, unless You have renewed Your subscription on UpToDate, Inc.'s then-current terms. At the request of UpToDate, Inc. following termination or expiration of the subscription, You shall promptly return or destroy any Licensed Materials and copies thereof in Your possession.

Your payments to UpToDate, Inc. under this Agreement are funded by local, state, and federal governments. If funds from local, state and federal sources are not obtained and

continued at a level sufficient to allow for Your purchase of the indicated quantity of services, then You may give written notice of this fact to UpToDate, Inc., and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

#### Authorized Access

You acknowledge that the Licensed Materials are for the use of the Authorized Users only. Access by Authorized Users from any location is permitted so long as Access occurs exclusively via the username and password.

#### Audit

You agree that UpToDate, Inc. may audit Your use of the Licensed Materials for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Licensed Materials by You other than in full compliance with the terms of the Agreement, You shall reimburse UpToDate, Inc. for all reasonable expenses related to such audit in addition to any other liabilities You may incur as a result of such non-compliance.

#### Fees and Payments

You will pay the agreed upon Subscription Fees within 30 days from the time the County Auditor-Controller receives the certified invoice. UpToDate reserves the right to suspend Access due to late payment, without limiting UpToDate's other rights and remedies including the right to terminate this Agreement. Access will remain suspended until invoice is paid in full. No refund or credit will be issued for loss of Access during the period of suspension due to late payment.

UpToDate, Inc. shall not receive reimbursement for travel expenses unless set forth in this Agreement, and then only in accordance with any applicable County policies.

#### Marketing Support

UpToDate, Inc. will assist You in maximizing usage of the Licensed Materials during the subscription period by providing informational materials for Your distribution to Authorized Users, subject to the terms and conditions of this Agreement. You grant the right to UpToDate, Inc. to include Your name in UpToDate, Inc.'s list of subscribers.

#### Systems Performance

During the term of the subscription, UpToDate online content will be updated by UpToDate, Inc. During this time, UpToDate online may be down for up to 2 hours, and users Accessing the Licensed Materials at this time will see a notice that UpToDate online is being updated. UpToDate, Inc. may, in its sole discretion, provide more frequent updates and enhancements, if applicable, as and when they are released. Nothing in this Agreement obligates UpToDate, Inc. to furnish more frequent updates or to create enhancements.

For online access from a desktop (or laptop) computer, UpToDate online is validated for use with the current versions of most major browsers. For a current list of those browsers and information regarding supported mobile operating systems, please see: <http://www.upToDate.com/help/manual/vsrreq>

UpToDate online is hosted by a Tier 1 service provider which guarantees that the site will be operational at least 99.5% of the time. However, technical failures, routine maintenance and transient Internet conditions may render the site temporarily unavailable.

Neither party shall be liable, or considered in default, under this Agreement for delays or failures of performance caused by circumstances beyond the party's reasonable control, provided each party immediately provides notice to the other and does everything reasonably possible to resume its performance.

#### User Access Restrictions

You may not allow or facilitate any Access to the Licensed Materials by any persons who are not Authorized Users. Access to persons who are not Authorized Users is prohibited no matter how such Access is obtained. You shall notify UpToDate promptly if you become aware of any Access to the Licensed Materials by users within your organization who are not Authorized Users.



#### Ownership

The Licensed Materials are the sole and exclusive property of UpToDate, Inc. (or its parents, subsidiaries, affiliates, or designees) or its suppliers. You do not become the owner of the Licensed Materials, but are entitled to use them according to the terms and conditions of this Agreement.

You have purchased the right to Access the Licensed Materials for a specific limited period of time, i.e., the subscription period. At the end of this period, Your license and associated rights, such as technical support, if any, expire automatically, unless You have renewed Your subscription on UpToDate, Inc.'s then-current terms. The Agreement and Your license to use the Licensed Materials will also terminate if You fail to comply with any term or condition in this Agreement.

You acknowledge that the Licensed Materials include software which is proprietary and confidential to UpToDate, Inc. or its licensors; and all rights, title and interest therein or thereto, including without limitation, all patents, copyrights, trademarks and trade secrets remain in UpToDate, Inc. or its licensors. You shall not, during the subscription period or thereafter, disclose, directly or indirectly, or take any other action, which would result in the unauthorized disclosure of any confidential or proprietary data whatsoever, including but not limited to, reproduction of data furnished by UpToDate, Inc.

#### Permitted Uses and Prohibitions

Copying, printing, distributing to third parties, or preparing derivative works of the Licensed Materials or any part thereof is strictly prohibited unless specifically authorized herein or in writing from UpToDate. Similarly, the Licensed Materials may not be included in other software or databases, reverse engineered, or modified. No part of the Licensed Materials may be hypertexted, indexed, or otherwise utilized by automated software means, including: search engines, robots, spiders, crawlers, data mining tools, or any other software that aggregates access to, or the content of, the Licensed Materials. No part of the Licensed Materials may be copied for resale, nor may it be posted or otherwise made available on intranets, so-called federated sites, knowledge bases, searchable databases, public bulletin boards, web sites, Internet domains, or online chat rooms. The Licensed Materials may not be combined with other content in knowledge banks or through similar technologies. However, Your Authorized Users may occasionally print out individual articles for personal clinical, educational or research use and/or email individual articles to a colleague, provided that the articles printed and emailed by an individual Authorized User contain in aggregate only insubstantial portions of the Licensed Materials and include a source reference to UpToDate, Inc. and its copyright notice. Under no circumstances may Authorized Users print or email large numbers of articles from the Licensed Materials. All rights to use the Licensed Materials are expressly stated herein, and UpToDate, Inc. reserves all other rights. There is no implied right to use the Licensed Materials.

Authorized Users cannot share Usernames and Passwords. Any sharing of Usernames and Passwords will be considered a violation of this Agreement. Access to the Licensed Materials by non-Authorized Users is expressly forbidden.

In addition to its rights set forth in "Term and Termination" above, UpToDate, Inc. reserves the right in its sole discretion to limit or suspend Your Authorized Users' Access to the Licensed Materials, by electronic self-help or other means and without notice, if UpToDate, Inc. believes in good faith that any Authorized User has committed a breach of security or violated the terms of this Agreement.

#### Restriction Against Transfer

You may not sublicense, assign, share, sell, rent, lease, or otherwise transfer this Agreement or the right to use the Licensed Materials.

#### Privacy / HIPAA

UpToDate, Inc. does not collect any individually identifiable health information from You. UpToDate, Inc. is not a covered entity under the U.S. federal HIPAA.

UpToDate, Inc. reserves the right to track and collect personal information about Authorized Users of UpToDate, including without limitation: the URL that the user has come from (whether this URL is on its Website or not), the URL the user goes to next (whether this URL is on its Website or not), the Internet browser that is being used, the type of operating system used, the Authorized User's location, and the Authorized User's IP address. An Authorized User's IP address may be used for system administration purposes and to track a user's session, in order to give UpToDate, Inc. an understanding as to which parts of its database Authorized Users are visiting. UpToDate, Inc. may use such non-personal information for purposes including but not limited to improving the content

of its database, marketing, advertising, reports to You, or research. UpToDate may send information and notices of new services about UpToDate directly to Authorized Users.

UpToDate, Inc. reserves the right to release current or past user information, whether or not the information identifies a particular person, internally within UpToDate, Inc. or to third parties for limited purposes in the event UpToDate, Inc. believes that the Licensed Materials are being used in violation of this Agreement or to commit unlawful acts, and/or if UpToDate, Inc. is required to disclose information to comply with applicable laws or regulations, or with a court or administrative order.

Except as stated in the above paragraph, UpToDate, Inc. will not share with unaffiliated third parties information specific to Authorized Users or share information regarding specific IP addresses. UpToDate, Inc. is, however, free to disclose aggregate non-personal user information to third parties.

#### Access to Books and Records

To address the requirements of Section 952 of Public Law 96-499 (42 US Code 1395 (j) V (j)), UpToDate, Inc. agrees that it will, until the expiration of four years after the furnishing of the services provided pursuant to this agreement, upon the written request of an appropriate federal official as defined by the statute, make available to the Secretary of Health and Human Services or the Comptroller General or to any of their duly authorized representatives, this Agreement, and those books, documents and records of UpToDate, Inc. pertaining only to this Agreement as are necessary to verify the nature and extent of the services provided under this agreement and the charges levied, and payments made, for the services set forth in this Agreement. UpToDate, Inc. will not carry out any services through a subcontract with another organization and the duties under this Agreement may not be assigned or delegated.

When this Agreement expires or terminates, UpToDate, Inc. shall return to You any of Your records which UpToDate, Inc. used or received from You to perform services under this Agreement.

You shall have the right to examine, monitor and audit all records, documents, conditions, and activities of UpToDate, Inc. and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of You or as part of any audit of You, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

#### Use of Professional Judgment

The editors and authors of the Licensed Materials have conscientiously and carefully tried to create the identified diagnosis measures, treatment alternatives and drug dosages in the Licensed Materials that conform to the standards of professional practice that prevailed at the time of publication. However, standards and practices in medicine change as new data become available and the individual medical professional should consult a variety of sources. For this reason, only the most current release of the Licensed Materials should be consulted when information is sought. New updates are issued periodically; do not rely on older versions. In addition, when prescribing medications, the user is advised to check the product information sheet accompanying each drug to verify conditions of use and identify any changes in dosage schedule or contraindications, particularly if the agent to be administered is new, infrequently used or has a narrow therapeutic range.

The Licensed Materials describe basic principles of diagnosis and therapy. The information provided in the Licensed Materials is no substitute for individual patient assessment based upon the healthcare provider's examination of each patient and consideration of laboratory data and other factors unique to the patient. The Licensed Materials should be used as a tool to help the user reach diagnostic and treatment decisions, bearing in mind that individual and unique circumstances may lead the user to reach decisions not presented in the Licensed Materials. The opinions expressed in the Licensed Materials are those of its authors and editors and may or may not represent the official position of any medical societies cooperating with, endorsing or recommending the Licensed Materials.

#### U.S. Government Limited Rights Notice

Any access to the Licensed Materials provided under contract to the U.S. Government is provided with limited rights. The Licensed Materials consist of data, as defined in 48 CFR 27.401 or 48 CFR 27.404-2(a), as applicable, and restricted computer software as defined in 48 CFR 27.401. The Licensed Materials may be reproduced and used by the U.S. Government, provided that they will not be used for or in connection with manufacturing

and will not be disclosed outside of the U.S. Government or to any U.S. Government contractor, without the prior express written permission of UpToDate.

#### Limited Warranty

UpToDate, Inc. warrants that the Licensed Materials made available to You through the IP addresses listed in the attached letter shall be substantially identical to the version of the Licensed Materials provided to other similarly situated customers. If the Licensed Materials are defective, such deficiency shall be rectified without charge promptly after notice to UpToDate, Inc. from You. This is Your sole and exclusive remedy, and UpToDate, Inc.'s sole liability, for breach of this warranty.

UpToDate, Inc. agrees to indemnify You against any third party claim that the Licensed Materials infringe a U.S. copyright, patent or trademark, and any damages awarded on such a claim, provided that You provide UpToDate, Inc. with prompt notice of the claim and sole control of the defense and settlement of the claim. In the event such a claim is made against You or anticipated by UpToDate, Inc., UpToDate, Inc. shall have the option of refunding the fee paid by You for the then-current twelve month period and terminating Your right to use the Licensed Materials. The foregoing indemnity and optional termination shall be Your sole remedy and UpToDate, Inc.'s sole obligation and liability in the event of any claim that the Licensed Materials infringe a third party's copyrights.

NEITHER UPTODATE, INC. NOR ANY OTHER PARTY OR MEDICAL SOCIETY MAKES ANY OTHER WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS, WHICH ARE LICENSED "AS IS", OR WITH RESPECT TO THIS AGREEMENT. THE WARRANTY AND REMEDY PROVIDED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED, ANY STATEMENTS OR REPRESENTATIONS MADE BY ANY OTHER PERSON OR ENTITY ARE VOID. YOU ASSUME ALL RISK AS TO THE QUALITY, FUNCTION, AND PERFORMANCE OF THE LICENSED MATERIALS.

#### Limitation of Liability

IN NO EVENT WILL UPTODATE, INC. OR ANY OTHER PARTY WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, PROMOTION OR MARKETING OF THE LICENSED MATERIALS OR PERFORMANCE OF THIS AGREEMENT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF DATA OR PROFITS OR FOR INABILITY TO USE THE LICENSED MATERIALS, TO ANY PARTY EVEN IF UPTODATE, INC. OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT IN RELATION TO THE INDEMNITY PROVIDED AGAINST THIRD PARTY CLAIMS AS EXPRESSLY PROVIDED ABOVE, IN NO EVENT SHALL UPTODATE, INC. OR SUCH OTHER PARTY'S LIABILITY FOR ANY DAMAGES OR LOSS TO YOU OR ANY OTHER PARTY IN CONNECTION WITH THIS AGREEMENT EXCEED THE LICENSE FEE YOU PAID FOR THE LICENSED MATERIALS.

Some states do not allow limitations on how long an implied warranty lasts and some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation and exclusion may not apply to You. This warranty gives You specific legal rights, and You may also have other rights that vary from state to state.

#### Confidentiality

"Confidential Information" shall mean any information regarding UpToDate's product designs and plans, product development plans, release dates, strategies, pricing, and other marketing and technical information and other unpublished information provided to you by UpToDate; and all other information which UpToDate characterizes as confidential at the time of its disclosure either in writing or orally, except for information which you can demonstrate: (a) is previously rightfully known to you without restriction on disclosure; (b) is or becomes, from no act or failure to act on your part, generally known in the relevant industry or public domain; (c) is disclosed to you by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by you without access to the Confidential Information. You shall at all times, both during the term hereof and for a period of at least three years after termination of your right to use UpToDate, keep in confidence all such Confidential Information. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of UpToDate. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall only disclose Confidential Information to another employee or contractor under binding obligations of confidentiality substantially similar to those set forth herein on a "need to know" basis. You shall notify UpToDate in writing immediately

upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with UpToDate in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If you are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, you will (i) immediately notify UpToDate prior to such disclosure to allow UpToDate an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with UpToDate in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, you shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements.

#### General

This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without regard to its principles of conflicts of law or the United Nations Convention on Contracts for the International Sale of Goods. Each party submits to the exclusive jurisdiction of the federal and state courts located in Monterey County, California.

If any provision of this Agreement is determined to be invalid or unenforceable under any applicable law, it shall be deemed omitted and the remaining provisions shall continue in full force and effect. This Agreement may be modified only in writing executed by authorized representatives of You and UpToDate, Inc. Either party's waiver of any right shall not constitute waiver of that right in the future.

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, and all prior agreements, representations, statements, and undertakings, oral or written, are hereby expressly superseded and canceled.

If You use purchase orders in conjunction with this Agreement, then You agree that the following statement is hereby automatically made part of such purchase orders: "The terms and conditions set forth in the UpToDate Contract No.: 001-00-43920874 are made part of this purchase order and are in lieu of, and shall replace, all terms and conditions, express or implied, in this purchase order, including any renewals hereof."

#### Performance Standards

UpToDate, Inc. warrants that UpToDate, Inc. and UpToDate, Inc.'s agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of You, or immediate family of an employee of You.

UpToDate, Inc. its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

UpToDate, Inc. shall furnish at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. UpToDate, Inc. shall not use Your premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

#### Insurance

Prior to commencement of this Agreement, UpToDate, Inc. shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, UpToDate, Inc. upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to Your Contracts/Purchasing Department, unless otherwise directed. UpToDate, Inc. shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and You have approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of UpToDate, Inc.

All coverage's except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Your Contracts/Purchasing Director.

Without Limiting UpToDate, Inc.'s duty to indemnify, UpToDate, Inc.'s shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Workers' Compensation Insurance, If UpToDate, Inc. employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each accident and \$1,000,000 each disease.

Professional Liability Insurance, If required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, UpToDate, Inc. shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

#### Non-Discrimination

During the performance of this Agreement, UpToDate, Inc. and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in UpToDate, Inc.'s employment practices or in the furnishing of services to recipients. UpToDate, Inc. shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. UpToDate, Inc. and any subcontractor shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in the Agreement shall not be deemed to be prohibited discrimination.

#### Compliance with Terms of State or Federal Grant

If this Agreement has been or will be funded with monies received by You pursuant to a contract with the state or federal government in which You are the grantee, UpToDate, Inc. will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, You will deliver a copy of said contract to UpToDate, Inc., at no cost to UpToDate, Inc.

#### Independent Contractor

In the performance of work, duties, and obligations under this Agreement, UpToDate, Inc. is at all times acting and performing as an Independent Contractor and not as an employee of You. No offer or obligation of permanent employment with You or particular County department or agency is intended in any manner, and UpToDate, Inc. shall not become entitled by virtue of this Agreement to receive from You any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. UpToDate, Inc. shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, UpToDate, Inc. shall defend, indemnify, and hold You and the County of Monterey harmless from any and all liability, which You may incur because of Contractor's failure to pay such taxes.

#### Notices

Notices required under this Agreement shall be delivered personally or by first-class postage pre-paid mail to You and UpToDate, Inc.'s contract administrators at the addresses listed below.

#### County of Monterey

Attn: Elsa Jimenez, Director of Health  
1270 Natividad Road  
Salinas, CA 93906

#### UpToDate Inc.

UpToDate, Inc.  
Attn: Legal  
230 Third Ave  
Waltham, MA 02451  
Fax: 781-642-8840

#### Conflict of Interest

UpToDate, Inc. represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

Schedule 1

Subscriber Manager Administrator

Please provide the name, contact information and email address of the individual assigned to the role of Subscriber Manager Administrator ("Administrator"). The Administrator will be responsible for using the Console to manage access rights for Your Authorized Users, including the ability to issue the initial invitation to individuals to create a username and password and become Authorized Users. The Administrator username and password grant Access exclusively to the Console; said username and password do not grant Access to the UpToDate® online content.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email address: \_\_\_\_\_

Clinical Advocate/Liaison

The Clinical Advocate/Liaison will serve as the central clinical resource (administrative issues will be handled by Your Subscriber Manager Administrator) for conveying the UpToDate value proposition to other clinicians (at Monterey County Health Department Behavioral Health Bureau), promoting clinician end user registration and usage, and providing best practices insights and advice.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email address: \_\_\_\_\_

## EXHIBIT B: STANDARD AGREEMENT - MODIFICATIONS

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**Monterey County Standard Agreement  
Between  
County of Monterey  
And  
Wolters Kluwer Health, UpToDate, Inc.**

1. Section 9.0 INSURANCE REQUIREMENTS:

Section 9.04 Other Requirements:

COUNTY agrees to modify the Other 'Insurance' Requirements for the CONTRACTOR by deleting Section 9.04 Other Requirements of the COUNTY Standard Agreement for this Agreement. Under this Agreement, CONTRACTOR is providing to COUNTY, 'Subscriber Manager', a remote web-based clinical resource subscription service. CONTRACTOR is located in the State of Massachusetts and has no employees or offices in the State of California. This Agreement does not require on-site training or assistance.

CONTRACTOR has provided the Certificate of Insurance for Commercial General Liability, Automobile Liability, Workers Compensation, and Professional Liability that meet Monterey County's insurance limits.

2. Section 10.0 RECORDS AND CONFIDENTIALITY:

Section 10.05 Royalties and Inventions:

COUNTY agrees to delete Section 10.05 Royalties and Inventions of the Standard Agreement and adhere to CONTRACTOR'S 'Permitted Uses and Prohibitions' as stated in Wolters Kluwer Health, UpToDate's Letter that is made part of Exhibit A of this Agreement. COUNTY accepts that CONTRACTOR has full ownership of the Subscriber Manager 'Licensed Materials'.

3. Except as provided herein, all other terms and conditions of the Standard Agreement with Wolters Kluwer Health, UpToDate, Inc. shall remain in full force and effect.