

**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:

CareMessage

(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 text and voice messaging patient communication system.

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 \$ 98,800.

3.0 TERM OF AGREEMENT.

3.01 The term of this Agreement is from November 1, 2015 to October 31, 2017, 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** Agreement Modifications/Additional Provisions
- Exhibit C** Business Associate Agreement
- Exhibit D** Automobile Insurance Exemption/Modification Justification

5.0 PERFORMANCE STANDARDS.

CareMessage
BF
County

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are ~~specialy~~ 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

Care Message
BF
County

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.

Care Message
BF
County

~~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

CareMessage
BF
County

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.~~

Care Message
BF

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.~~

~~County~~

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.

Care Message
BF

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.~~

~~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:

FOR COUNTY:	FOR CONTRACTOR:
Ray Bullick, Director of Health	Ben Ferry, Manager of Finance and Administration
Name and Title	Name and Title
1270 Natividad Road Salinas, CA 93906	360 Pine Street, Suite 600 San Francisco, CA 94104
Address	Address
(831) 755-4526	(978) 604-5979
Phone	Phone

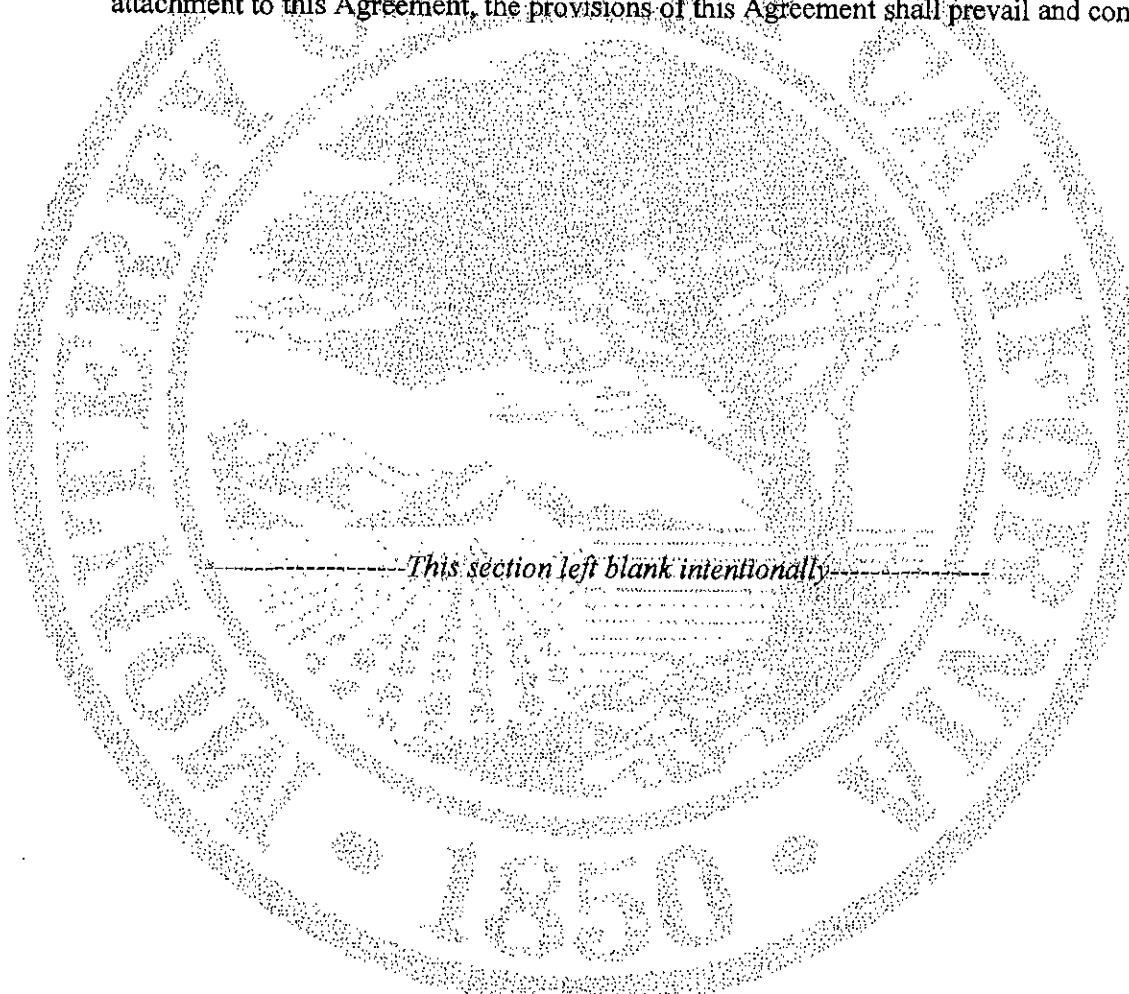
15.0 MISCELLANEOUS PROVISIONS.

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.



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

CareMessage
Contractor's Business Name*

Date: _____

By: _____
Department Head (if applicable)

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

Date: 1-6-16

Approved as to Form _____

Vineet Singal, CEO
Name and Title

By: _____
Deputy County Counsel

Date: 9/18/15

Date: 12/8/15

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

Approved as to Fiscal Provisions² _____

Ben Ferry, Manager of Fin & Admin
Name and Title

By: _____
Auditor/Controller

Date: 9/18/15

Date: _____

RISK MANAGEMENT
COUNTY OF MONTEREY
APPROVED AS TO LIABILITY/INDEMNITY/
INSURANCE LANGUAGE

By: _____
Risk Management

Date: _____
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.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

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

Addendum

To the Standard Agreement by and between the
County of Monterey, hereinafter referred to as "County"

AND

CareMessage, hereinafter referred to as "CONTRACTOR"

The County of Monterey Standard Agreement shall be modified as follows:

Clause 1.01 under GENERAL DESCRIPTION is deleted in its entirety and replaced as follows:

~~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 a text and voice messaging patient communication system.~~

1.01 The County hereby engages CONTRACTOR to provide or otherwise make available, and CONTRACTOR hereby agrees to provide or otherwise make available, 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 a text and voice messaging patient communication system.

Clause 5.01 under PERFORMANCE STANDARDS is deleted in its entirety and replaced as follows:

~~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.~~

5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are 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.

Clause 7.02 under TERMINATION is deleted in its entirety and replaced as follows:

~~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.~~

7.02 Either party may cancel and terminate this Agreement for good cause effective fifteen (15) days after written notice to the other party if the breach is not cured within such fifteen (15) day period. "Good cause" includes the failure of CONTRACTOR to substantially perform the required services at the time and in the manner provided under this Agreement and the failure by County to timely pay amounts due under this Agreement.

Clause 8.0 INDEMNIFICATION is deleted in its entirety and replaced as follows:

~~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.~~

8.0 INDEMNIFICATION

8.01 Indemnification by CONTRACTOR. CONTRACTOR agrees to indemnify and hold County, its Affiliates and their respective directors, officers, employees and agents harmless from and against any and all losses, damages, liabilities, judgments, penalties, fines, costs, and expenses (including reasonable attorneys' fees) (collectively "Damages"), arising out of or in connection with any third party claim that the Service, when used by County or an Authorized User in accordance with, and without breach of, this Agreement, infringes a United States patent, copyright or trademark. If the Service is held, or believed by CONTRACTOR, to so infringe, CONTRACTOR may, at its option and expense, (i) replace the Service, without additional charge, with a functionally equivalent and non-infringing product; (ii) modify the Service to avoid the infringement in a functionally equivalent and non-infringing manner; or (iii) obtain a license for County to continue use of the Service at no additional charge to County. If CONTRACTOR determines in its reasonable discretion to not pursue the remedies set forth in subclauses (i), (ii) or (iii) of this Section 8.01, CONTRACTOR may terminate this Agreement and refund to County any prepaid (but unapplied) fees. This Section 8.01 states CONTRACTOR's sole liability and County's exclusive remedy for any claim of intellectual property infringement by CONTRACTOR.

8.02 Indemnification by County. Except to the extent CONTRACTOR has an indemnification obligation under Section 8.01, County agrees to indemnify and hold CONTRACTOR and its directors, officers, employees and agents harmless from and against any and all Damages arising out of or in connection with any third party claim (i) that any material, information, process or data provided by County to CONTRACTOR pursuant to this Agreement infringes a United States patent, trademark or copyright, (ii) arising out of or related to County Information, or (iii) arising out of or related to County's or an Authorized User's (or a third party using an Authorized User's credentials) use of the Service, including, but not limited to, messages sent to or from Patients through the Service. County's indemnification obligation under subclause (ii) of this Section 8.02 will not apply if the claim is a direct result of CONTRACTOR's use of County Information other than as permitted by this Agreement.

8.03 Indemnification Procedure. For each of the indemnification obligations set forth in Section 8.01 and 8.02, (i) the indemnified party(ies) will give the indemnifying party (A) prompt written notice of such claims, provided that the failure or delay to notify the indemnifying party will not relieve the indemnifying party from any liability that it may have to an indemnified party under this Agreement so long as the failure or delay will not have materially prejudiced the defense of such claim; (B) reasonable assistance in defending the claim; and (C) sole authority to defend or settle such claim, and (ii) the indemnified party(ies) will not be required to consent to a judgment against it or enter into a settlement that is prejudicial to it. If an indemnifying party in Section 8.01 or 8.02 elects not to defend any such claim, the indemnified party(ies) will have the option, but not the duty, to reasonably settle or defend the claim at its cost and the indemnifying party will indemnify the indemnified party(ies) for such settlement or defense and any Damages finally awarded against the indemnified party(ies) attributable to such claim.

Clause 10.01 Confidentiality under RECORDS AND CONFIDENTIALITY is deleted in its entirety and replaced as follows:

~~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.~~

10.01 Confidentiality. A. Definition of Confidential Information. "Confidential Information" means all information disclosed or otherwise made available by a Party (when disclosing information, the "Disclosing Party") to the other Party (when receiving information, the "Receiving Party"), whether verbally, visually, 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. Confidential Information of CONTRACTOR includes, but is not limited to, the terms of this Agreement (including, without limitation, fee and payment terms), its proprietary technology, computer programs, software, source and object codes, marketing plans, technology and technical information, product plans and designs, and business processes. Confidential Information of County includes, but is not limited to, County Information, protected health information, Patient records (including medical records and other health information) and any other data or information related to the business or other affairs of County, an Authorized User, or Patient. However, Confidential Information does not include any information that the Receiving Party can show by competent evidence (i) is or becomes generally known to the public without breach of this Agreement, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party and not subject to a confidentiality obligation, (iii) was received from a third party authorized to make such disclosure without an obligation of confidentiality, or (iv) was independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information.

10.01 B. Protection of Confidential Information. The Parties recognize that in connection with this Agreement, they each may obtain Confidential Information of the other Party. The Receiving Party will (i) treat all Confidential Information of the Disclosing Party with at least the same degree of care that it uses to protect the confidentiality of its own similar information (but not less than reasonable care), (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (iii) except as otherwise authorized by the Disclosing Party in writing, not disclose Confidential Information of the Disclosing Party except to those of its and its affiliates' employees, contractors and agents who need to know such information for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those in this Agreement. Neither Party will disclose the terms of this Agreement to any third party other than its affiliates, legal counsel and accountants except with the other Party's prior written consent. Notwithstanding anything to the contrary in this Agreement, CONTRACTOR will comply with the confidentiality and other terms of the Business Associate Agreement attached hereto as Exhibit C.

10.01 C. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law, if the Receiving Party gives the Disclosing Party commercially reasonable prior written notice of the compelled disclosure (if legally permitted) and reasonable assistance, at the Disclosing Party's request and cost, if the Disclosing Party wishes to contest the disclosure or seek confidential treatment thereof.

Clause 10.02 County Records under RECORDS AND CONFIDENTIALITY is deleted in its entirety and replaced as follows:

~~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.~~

10.02 County Records. Upon termination or expiration of this Agreement for any reason, (i) except for Confidential Information of County held by CONTRACTOR in accordance with its document retention practices, each Party will return to the other Party or, if consented to in writing by the other Party, certify the destruction of, all Confidential Information of the other Party in its possession or control, and (ii) the rights granted pursuant to Section 2 of Exhibit B will immediately terminate and CONTRACTOR will cease to provide County and Authorized Users access to and use of the Service.

Clause 10.03 Maintenance of Records under RECORDS AND CONFIDENTIALITY is deleted in its entirety and replaced as follows:

~~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.~~

10.03 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 as conveyed by County to CONTRACTOR in writing. 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.

Clause 10.04 Access to and Audit of Records under RECORDS AND CONFIDENTIALITY is deleted in its entirety and replaced as follows:

~~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.~~

10.04 Access to and Audit of Records. The County, at its own cost, 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.

Clause 10.05 Royalties and Inventions under RECORDS AND CONFIDENTIALITY is deleted in its entirety:

~~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.~~

EXHIBIT-A

**To the Standard Agreement by and between the
County of Monterey, hereinafter referred to as "County"
AND
CareMessage, hereinafter referred to as "CONTRACTOR"**

Scope of Services / Payment Provisions

I. SCOPE OF SERVICES

Contractor will provide a text and voice messaging patient communication system approved by the County with the objective to reduce no-shows, increase patient engagement and satisfaction and improve overall patient outcomes.

CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

A. Appointment Reminders

1. Establish an automated appointment reminder system to County patients, which will be provided through text and voice messaging.
2. Provide messages in either English or Spanish. Message shall be in the patient's language of preference.
3. Provide pre-appointment information to the patient as needed.
4. Include a feature that allows a patient to confirm or cancel the appointment.
5. Collect patient RSVP data and place it into a simple color coded report to show County who has confirmed, did not respond, or is unable to make the appointment. This information shall be provided in real time to staff via the CareMessage dashboard (app.caremessage.org).

B. Follow-up and Data Collection

1. Conduct general outreach to include clinic closure messages, prescription refill reminders etc.
2. Provide for clinical follow-up, which shall consist of breast cancer screening reminders, cervical cancer screening reminders, medication reminders etc.
3. Allow the County to send surveys and collect data from any patient population. The County can then review results in real time and use our analytics engine to quantify both engagement and self-reported data.

C. Health Management

1. Provide health management programs based on specific patient and provider needs, including co-morbidities. Programs shall include, but not limited to, type 2 diabetes, maternal health, nutrition, exercise, smoking cessation and depression.
2. Existing CareMessage health management, medication adherence and health literacy programs will be provided to Monterey County and minor customization efforts can be undertaken to meet

the needs of the local patient population (up to the limits described in the 'Fees' and 'Overages' sections). Clinical staff will be able to reach out to patients quickly and easily through evidence-based health management programs described above.

3. Provide information in either English or Spanish. Information shall be in the patient's language of preference.

D. Data, Analytics and Reporting

1. Provide a system that allows for the County to generate reports, which shall include visualization of the data on an individual and population level.
2. Provide technical assistance as needed.

E. Cloud-based Access

1. Provide a platform that is entirely cloud-based.
2. Utilize FireHost Secure Cloud or equivalent.
3. Not require installation of software on County IT system.
4. Ensure system accessibility from any device with an internet connection.

F. Security and Safeguarding of Patient Information

1. Store data and back up on a HIPAA-Compliant server with 128-bit SSL encryption.
2. Ensure the data in transit from server to computer screen is HTTPS encrypted.
3. As part of the electronic HIPAA authorization feature, transmit an initial welcome message to patient informing them that they will start receiving text messages regarding their health.

G. Implementation

1. Provide the following services during the implementation phase:
 - a. Conduct initial needs assessment to document detailed use cases and resources required for implementation
 - b. Provide County with access to testing environment
 - c. Host project-planning discussion to identify inputs and develop timelines to address the following criteria (involve additional CareMessage team members as necessary):
 - o Research goals and evaluation metrics
 - o Program content requirements for new or existing content
 - o Interoperability needs between CareMessage platform and customer database
 - d. Execute upon activities defined in project plan, providing regular progress updates to appropriate stakeholders
 - e. Prior to interface completion, execute batch upload of patient demographic, scheduling, and any other relevant data via excel file or comma delimited file/character separated file (csv) upload.
 - f. Provide evaluation and reporting tools to track relevant data
 - g. Provide training materials and webinar(s) to familiarize County with platform functionality
 - h. Host pre-launch discussion to review final inputs and impact to staff workflow
 - i. Determine ongoing communication cadence to ensure County needs are addressed in a timely manner

H. Additional Items

1. Contractor shall not "go-live" until County has approved material and implementation plan. County, in collaboration with the Contractor, shall test programs and applications prior to launch.
2. Contractor shall provide the County with technical support as needed and will make modifications as required to ensure functionality of the program.

I. Project Schedule

CONTRACTOR shall produce the following deliverables by the dates indicated below:

DELIVERABLE	TIMEFRAME FOR COMPLETION
Implementation	2-4 months commencing 5-7 business days from receiving written permission to proceed from County.
Go-Live	24 hours from County approval.

COUNTY acknowledges that the overall project completion timeline is dependent on COUNTY providing quick and timely responses and approvals to allow the CONTRACTOR to continue with deliverables outlined.

II. PAYMENT PROVISIONS

1. COMPENSATION/ PAYMENT

County shall pay an amount not to exceed \$98,800 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:

Contractor shall provide technical support as needed as part of the cost.

Implementation	\$5,000 upon contract execution and \$5,000 upon successful implementation one month following the "go-live" date (Total \$10,000).
Flat Monthly Fee, which shall include: 1) Unlimited utilization of the CareMessage platform and the services outlined in I. Scope of Services	\$3,700 per month for up to 60,000 patients, immediately following the "go-live" date

Overages

Patient Limit (exceeding 60,000 patients)	2 options: 1) \$1/patient/month for up to 4,500 additional patients (in addition to the standard \$3,700/month fee); or 2) Flat monthly fee of \$7,000 for up to 100,000 total patients enrolled
Additional Messages (exceeding 20 messages customized for Monterey County)	\$20/message

There shall be no travel reimbursement allowed during this Agreement.

CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.

B.2 CONTRACTORS BILLING PROCEDURES

NOTE: Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.

County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

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.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

EXHIBIT-B

ADDITIONAL PROVISIONS

This Exhibit B supplements the County of Monterey Standard Agreement (the "**Standard Agreement**") by and between the County of Monterey, a political subdivision of the State of California, and CareMessage ("**CONTRACTOR**" or "**CareMessage**") (each a "**Party**" and collectively, the "**Parties**") and is incorporated therein by reference. Capitalized terms not defined herein shall have the meanings given to them in the Standard Agreement.

1. DEFINITIONS

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with County. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the County.

"**Agreement**" means the Standard Agreement and all Work Orders, exhibits, schedules, or addenda attached to this Agreement or that reference this Agreement.

"**Authorized User**" means an employee, consultant, contractor, or agent of County who is authorized by County to use the Service and to whom County (or CareMessage at County's request) has supplied a user identification and password.

"**County**" means the County of Monterey and its Affiliates.

"**County Information**" means any data or information transmitted, posted, or entered by County or Authorized Users through, onto, or into the Service.

"**Work Order**" means a document specifying the Service to be provided by CareMessage under this Agreement. The initial Work Order is attached hereto as Exhibit A. Work Orders are incorporated into this Agreement by reference. "Work Order" may also be referred to in the Agreement as "Scope of Services."

"**Patient**" means any patient of County with whom or to whom County communicates or intends to communicate health appointment and/or health-related alerts via the Service.

"**Site**" means the CareMessage Internet site through which the Service is made available (available at <http://app.caremessage.org>).

"**Service**" means CareMessage's mobile health platform, including the ability to send and receive health-related text, email and/or voice messages, made available for County's use by CareMessage, and such other services identified in a Work Order.

2. SERVICES

2.1 **Provision of Service.** Subject to the terms and conditions of this Agreement, CareMessage grants County and its Authorized Users a non-exclusive, non-sublicensable, non-transferable, worldwide right and license during the term of this Agreement (the "**Term**") to access via the Internet and use the Service solely for County's internal business purposes. County's subscription to the Service is neither contingent on the delivery of any future Service functionality or features nor dependent on any oral or written public comments made by CareMessage regarding any future Service functionality or features.

2.2 **County Responsibilities.** Only Authorized Users may access and use the Service. Each Authorized User will be assigned a unique user identification name and password (a "**User ID**") for access to and use of the Service. Rights of any Authorized User to use the Service cannot be shared or used by more than one individual. CareMessage will not disclose User IDs to any third party without the prior written consent of County, unless otherwise required by law. County is responsible for ensuring the security and confidentiality of all User IDs. County is responsible for Authorized Users' compliance with, and any Authorized User's breach of, this Agreement. Any transactions and all information submitted under a User ID will be deemed to have been performed or submitted by the Authorized User associated with that User ID. County agrees to maintain a current list of User IDs authorized to access and use the Service and to provide CareMessage with such list in writing upon request.

County is responsible for obtaining and maintaining any hardware, software and other equipment as may be necessary to connect to, access or otherwise use the Service via the Internet.

2.3 **Use Restrictions.** County will not, and will not allow Authorized Users or other third parties to: (i) sublicense, assign, distribute, share, sell, rent, transfer or otherwise make the Service, or any portion thereof, available to any third party, (ii) modify or make derivative works of the Service or any portion thereof, (iii) provide, or make available, any links, hypertext or otherwise (other than a "bookmark" from an Internet browser) to the Site or Service or "frame" or "mirror" any portions of Site on any server or wireless or Internet-based device, (iv) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or underlying structure, ideas or algorithms of the Service or any portion thereof, (v) access or use any part of the Service to build a competitive product or service (vi) seek to hack, break or otherwise circumvent any security mechanism on the Site or the Service or any host, network, or account related thereto or otherwise attempt to gain unauthorized access to the Site or the Service, (vii) use the Service in a manner that poses a security or service risk to CareMessage or to any County of CareMessage or that disrupts or threatens the Service or the software or systems used to host the Site or the Service (including, but not limited to, interfering with, intentionally overloading, or disrupting the integrity or performance of the Site or the Service, whether or not by using "bots," "spiders" or other automated system), (viii) use the Service, or transmit any information or material through the Service, for any unlawful purpose or in a way that violates, infringes, or misappropriates the rights of any third party (including, but not limited to, property rights or privacy rights), (ix) access the Service for purposes of monitoring its availability, performance or functionality or for any other benchmarking or competitive purposes, unless otherwise agreed in writing by CareMessage, or (x) otherwise use the Service in any manner that exceeds the scope of use permitted under this Agreement. County will not, and will require that all Authorized Users not, remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of the Site or Service.

County agrees that it and Authorized Users will not use the Service in a manner, or transmit any information or material through the Service, that violates (i) CareMessage's standard published Policies then in effect or (ii) applicable local, state or federal laws or regulations, including, but not limited to, the Telephone Consumer Protection Act (47 U.S.C. § 227) ("TCPA"), the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"), and the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA").

County agrees to use the Service solely to send and receive health appointment and/or other health-related information to and from Patients. Without limiting the other provisions of this Section 2.3, County agrees that it and Authorized Users will not use or seek to use the Service to transmit any message, information, symbol or other communication that is infringing, threatening, defamatory, fraudulent, false, misleading, deceptive, likely to mislead or deceive, tortious, offensive or abusive, or of an indecent, obscene or menacing character, or that promotes, incites, or instructs in matters of crime, or for the purpose of causing annoyance, inconvenience or unnecessary alarm, distress or panic to any person. Further, County and its Authorized Users will not use or seek to use the Service for the purpose of providing any warning or notification about a serious and imminent risk to the safety of persons or property (e.g., emergency services).

County will immediately notify CareMessage of any unauthorized use of the Service upon becoming aware of such unauthorized use. CareMessage may monitor County's and Authorized Users' use of the Service, but shall have no obligation to do so. CareMessage may audit the messages sent through the Service.

CareMessage reserves the right to not send any message or immediately suspend access to the Service, or both, if it reasonably believes that County's or an Authorized User's use of the Service is in violation of this Section 2.3. Suspension of the Service will not relieve County from its obligation to pay all amounts due under this Agreement or otherwise limit CareMessage's rights or remedies.

3. PROPRIETARY RIGHTS

3.1 **Reservation of Rights.** CareMessage (and its licensors, where applicable) own all right, title and interest in and to the Service and all patent rights, copyrights, trademark rights and other intellectual property rights that are part of or otherwise associated with the Service (other than with respect to County Information), as well as any revisions, modifications, enhancements and derivative works of the Service together with the intellectual

property rights therein. Except for the limited rights expressly granted to County and Authorized Users by this Agreement, this Agreement does not transfer any proprietary right or interest in the Service from CareMessage (or any of its licensors) to County, Authorized Users or anyone else. CareMessage retains all rights not expressly granted in this Agreement. Unless otherwise provided in a Work Order, if applicable, CareMessage owns all work product, including, but not limited to, all inventions, improvements, and original works of authorship, and all intellectual property rights associated therewith, created by CareMessage under or with respect to a Work Order.

3.2 **Feedback.** County grants to CareMessage a royalty-free, worldwide, irrevocable, perpetual, transferable, sublicensable, non-exclusive license to incorporate into the Service, use, commercialize, and otherwise fully exploit, in any way and for any purpose, any suggestion, enhancement request, recommendation, correction or other feedback provided by County or Authorized Users relating to the Service.

4. COUNTY INFORMATION

4.1 **Access to County Information.** For CareMessage to provide the Service as contemplated by this Agreement, it will be necessary for County to disclose to CareMessage, and enable CareMessage to have access to and use, County Information. By transmitting, posting or entering County Information through, onto, or into the Service, County grants CareMessage a worldwide, royalty-free, irrevocable, and non-exclusive license to access and use such County Information to provide the Service and as otherwise contemplated by this Agreement. County represents and warrants that it has the authority to grant CareMessage the rights set forth in the preceding sentence.

4.2 **Ownership of County Information.** As between CareMessage and County, County retains ownership of all County Information and, except for the limited rights granted to CareMessage by Section 4.1, this Agreement does not transfer any proprietary right or interest in County Information from County to CareMessage. County represents and warrants that it possesses all rights, consents and permissions necessary to use, input, and disclose County Information in connection with the Service. County is solely responsible for County Information and represents and warrants that no County Information will: (i) infringe or violate any third party intellectual property rights, publicity rights, or privacy rights; or (iii) contains any viruses or programming routines that could damage or surreptitiously intercept or expropriate any system, data, or personal information.

4.3 **Use of County Information.** CareMessage will only use County Information to provide the Service and as otherwise contemplated by this Agreement. In providing the Service, CareMessage may share County Information with third party service providers who will have access to such County Information as needed to perform their functions, but may not use or disclose County Information for other purposes. In addition, CareMessage may, during and after the Term, (i) collect (but only during the Term) and analyze County Information relating to the use and performance of various aspects of the Service and related systems and technologies, (ii) use County Information to improve and enhance the Service and for other development, diagnostic and corrective purposes in connection with the services provided by CareMessage and (iii) disclose or utilize such data in aggregate or other de-identified form in connection with its business.

4.4 **No Control over Information.** County acknowledges that CareMessage exercises no control over, and will not have any liability for, the accuracy, content, or destination (other than that designated by County) of any County Information. It is County's sole responsibility to ensure that County Information, and the use thereof by County and Authorized Users, complies with all applicable laws and regulations and Patient instructions. If County becomes aware that a Patient does not wish to continue to receive messages from County, County must take all necessary steps to ensure that the Patient does not receive any further messages from County through the Service.

5. **[Intentionally omitted]**

6. WARRANTIES AND DISCLAIMERS

6.1 Each Party represents and warrants that: (i) it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder and (ii) this Agreement constitutes the legal, valid and binding obligation of such Party, enforceable in accordance with its terms, except as such enforceability may be limited by (A) applicable laws; (B) bankruptcy, insolvency, reorganization, moratorium or similar laws now or

hereafter in effect, affecting or limiting the enforcement of creditors' rights generally; and (C) the discretion of the appropriate court with respect to specific performance, injunctive relief or other equitable remedies.

6.2 Effective as of all times during the term hereof that County communicates with Patients, County represents and warrants that it has obtained all Patient consents and permissions necessary to send and receive all messages to and from each Patient, using the Service.

6.3 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, NEITHER CAREMESSAGE NOR ITS LICENSORS MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICE OR THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NEITHER CAREMESSAGE NOR ITS LICENSORS MAKES ANY REPRESENTATIONS OR WARRANTIES REGARDING THE COMPREHENSIVENESS, CORRECTNESS, OR ACCURACY OF ANY INFORMATION PROVIDED THROUGH THE SERVICE OR THAT THE SERVICE WILL BE UNINTERRUPTED, COMPLETELY SECURE, ERROR FREE, FREE FROM VIRUSES OR HARMFUL FULL COMPONENTS, FREE FROM DATA LOSS OR DAMAGE, OR THAT ANY ERRORS OR DEFECTS WILL BE CORRECTED. NEITHER CAREMESSAGE NOR ITS LICENSORS MAKE ANY REPRESENTATIONS OR WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM COUNTY'S USE OF THE SERVICE OR THAT TRANSMISSIONS WILL BE INSTANTANEOUS. ALL TECHNOLOGY, SOFTWARE, FUNCTIONS, CONTENT, IMAGES, MATERIALS, AND OTHER DATA OR INFORMATION PROVIDED BY CAREMESSAGE OR ITS LICENSORS ARE PROVIDED "AS-IS."

7. [Intentionally omitted]

8. **LIMITATION OF LIABILITY**

8.1 **Limitation of Liability.** EXCEPT AS PROVIDED IN THIS SECTION 8.1, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY COUNTY UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FORMAL WRITTEN NOTICE OF THE CLAIM FOR LIABILITY. THE LIMITATION ON LIABILITY SET FORTH IN THE PRECEDING SENTENCE WILL NOT APPLY (I) IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (II) IN REGARD TO SECTION 10.01 OF THE ADDENDUM ("CONFIDENTIALITY") OR SECTION 8.0 OF THE ADDENDUM ("INDEMNIFICATION"), OR (III) CLAIMS FOR PAYMENT OF FEES OWED UNDER THIS AGREEMENT.

8.2 **Exclusion of Consequential and Related Damages.** EXCEPT IN REGARD TO SECTION 10.01 OF THE ADDENDUM ("CONFIDENTIALITY") AND SECTION 8.0 OF THE ADDENDUM ("INDEMNIFICATION"), IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, UNDER ANY THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THE DISCLAIMER IN THIS SECTION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

8.3 **Web Disruption.** An Authorized User's access to the Service may be subject to limitations, delays or other disruptions inherent to the use of the Internet. In no event will CareMessage be liable for any damages (whether in contract or in tort) attributable to the public web infrastructure or an Authorized User's inability to connect to the Internet.

8.4 **Telecommunication Provider Disruption.** County understand that CareMessage is in part reliant on telecommunication carriers and other third party suppliers (collectively referred to as "Telecommunication Providers") to deliver messages to Patients, and any failure by a Telecommunication Provider to deliver a message subsequent to CareMessage's successful delivery of a message to the

Telecommunication Provider is beyond the control of CareMessage. County will not hold CareMessage liable, and CareMessage shall not be liable, in respect of any such failure.

9. TERMINATION

9.1.1 Termination of this Agreement will not relieve County of its obligation to pay any fees payable to CareMessage for the period prior to the effective date of termination.

9.1.2 [Intentionally omitted]

9.1.3 Sections 3.2, 4.3, 6.3, 8, and 11 of this Exhibit B and Sections 10.01, 8.0 and 10.02 of the Addendum will survive the termination or expiration of this Agreement.

10. **HIPAA COMPLIANCE.** In providing the Service, CareMessage is a "Business Associate" to County, which is a "Covered Entity," for purposes of HIPAA, to the extent applicable, and the parties agree that they are bound by the terms of the Business Associate Agreement attached hereto as Exhibit C.

11. GENERAL PROVISIONS

11.1 **Change in Service.** CareMessage has the right to change, modify, and otherwise convert the software, hardware and/or technology used to provide the Service without notice, *provided, however*, that the basic functionality and quality of the Service will not be materially affected.

11.2 **Amendment.** The Parties may agree to expand, reduce or otherwise modify a Work Order through an Amendment, signed by both Parties.

11.3 **Anti-Corruption.** County has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from a CareMessage employee or agent in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the restriction in this section. If County learns of any violation of the restriction in this section, CareMessage requests that County promptly notify CareMessage.

11.4 **Export Control.** County agrees that it will not, directly or indirectly, export or re-export, or knowingly permit the export or re-export of, any information, software or technology underlying or related to the Service (including any documentation related thereto) or any technical information about the Service without fully complying with the export control laws of the United States.

11.5 **Relationship of the Parties.** The Parties are independent contractors. This Agreement does not and shall not be deemed to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Neither Party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other. This Agreement is non-exclusive and either Party may contract with other parties for the procurement or sale of comparable services.

11.6 **No Third-Party Beneficiaries.** Except as expressly provided herein, there are no third party beneficiaries to this Agreement.

11.7 [Intentionally omitted]

11.8 **Waiver; Remedies.** No failure or delay by either Party in exercising any right under this Agreement will 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.

11.9 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions of this Agreement will continue in full force without being impaired or invalidated.

in any way. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

11.10 **Assignment.** County may not assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of CareMessage (which consent will not be unreasonably withheld). Subject to the terms of this section, this Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

11.11 **Governing Law; Attorneys' Fees.** This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules. The prevailing Party in any action will be entitled to recover, as part of its damages, its reasonable legal costs and expenses, including attorneys' fees, for bringing and maintaining such action. In addition, County is liable for all reasonable expenses (including debt collection expenses and legal fees and costs) incurred by CareMessage for recovery of monies due from the County under this Agreement.

11.12 **Venue.** The state and federal courts located in San Francisco, California will have exclusive jurisdiction over any dispute relating to this Agreement, and each Party consents to the exclusive jurisdiction and venue of those courts.

11.13 **Publicity.** County grants CareMessage the right to use County's name and logo as a CareMessage customer on CareMessage's website, in marketing material (including, but not limited to, in email communications with prospective CareMessage customers), and during discussions with current or prospective clients and donors and industry analysts. The Parties agree to issue a mutually acceptable press release to announce County's use of CareMessage's services within thirty (30) days after execution of this Agreement.

11.14 **Conflict.** If there is a conflict or inconsistency among this Exhibit B, a Work Order, or the County of Monterey Standard Agreement, the conflict or inconsistency will be resolved according to the following order of precedence: the County of Monterey Standard Agreement, this Exhibit B, the Work Order.

11.15 **Force Majeure.** Neither Party shall be deemed to be in violation of this Agreement (other than with respect to payment) if prevented from performing its obligations for any reason beyond its control and that such Party is unable to overcome through the exercise of commercially reasonable diligence (a "Force Majeure"), including, but not limited to, disruption of the Internet, acts of God, the elements, floods, strikes, labor difficulties, or laws, rules or regulations of the federal, state or local government, or any agency thereof; *provided, however,* that if any Force Majeure event occurs, the affected Party will give prompt written notice to the other Party and will make commercially reasonable efforts to minimize the impact of the event.

11.16 [Intentionally omitted]

11.17 **Approved Subcontractors.** None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County.

EXHIBIT-C
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement"), effective 9/18, 2015 ("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 CareMessage ("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, provided 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:

CareMessage
360 Pine Street, Suite 600
San Francisco, CA 94104
Attn: Ben Ferry, Manager of Finance and Administration
Tel: (978) 604-5979
Fax: _____

If to Covered Entity, to:

Monterey County Health Department
1270 Natividad Road, Salinas CA 93906
Attn: Ray Bullick, Director of Health
Tel: (831) 755-4526
Fax: (831) 755-4797

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.

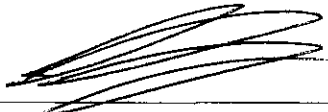
5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule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

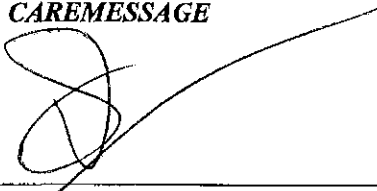
5.7 Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and 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**

CAREMESSAGE

By: 

By: 

Print Name: Ray Bullick

Print Name: Vineet Singal

Print Title: Director of Health

Print Title: CEO

Date: 1-6-16

Date: 9/18/15

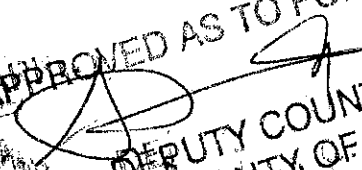

APPROVED AS TO FORM AND LEGALITY
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

EXHIBIT-D

**To the Standard Agreement by and between the
County of Monterey, hereinafter referred to as "County"
AND
CareMessage, hereinafter referred to as "CONTRACTOR"**

AUTOMOBILE INSURANCE EXEMPTION/MODIFICATION JUSTIFICATION

In respect to Section 9.0, Insurance Coverage Requirements:

County agrees to exempt CONTRACTOR from the Business Automobile Liability Insurance requirement. The Scope of Services outlined in EXHIBIT-A will be done electronically and by telephone. No automobiles are required in the performance of said services.