

OCHIN CareMessage Participation Agreement & Terms of Service

The County (defined below) is a member of OCHIN Inc., an Oregon nonprofit corporation (“OCHIN”). Pursuant to CareMessage’s agreement with OCHIN (the “CareMessage-OCHIN Agreement”), the County may access and use CareMessage’s Service (defined below) through OCHIN’s electronic interface (the “OCHIN Interface”), pursuant to the terms of this Terms of Service (this “Agreement”) and, if applicable, the County’s agreement with OCHIN (the “County-OCHIN Agreement”). This CAREMESSAGE TERMS OF SERVICE (this “Agreement”) governs the use of the Service by the County and its Authorized Users (defined below), and constitutes a binding agreement between the County and CareMessage.

BY ACCESSING OR USING THE SERVICE, THE COUNTY AGREES TO BE BOUND BY THIS AGREEMENT. IF THE COUNTY DOES NOT AGREE TO BE BOUND BY THIS AGREEMENT, DO NOT ACCESS OR USE THE SERVICE.

1. DEFINITIONS

“**Acknowledgement Agreement**” means an agreement pursuant to which the County indicates its wish to use the Service and agrees to the terms of this Agreement.

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

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

“**County**” means the entity that executes an Acknowledgment Agreement, and such entity’s Affiliates.

“**County Information**” means any data or information transmitted, posted, or entered by the County or Authorized Users through, onto, or into the Service or transmitted, transferred or otherwise delivered to CareMessage for incorporation into or use with the Service.

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

“**Policy**” means any CareMessage policy regarding the Service made available by CareMessage.

“**Site**” means the Internet site through which the Service is made available.

“**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 the County’s use through the OCHIN Interface, and as more specifically set forth in Exhibit C attached hereto and incorporated herein by this reference.

2. SERVICES

2.1 **Provision of Service.** Subject to the terms and conditions of this Agreement, CareMessage grants the County and its Authorized Users a non-exclusive, non-transferable, worldwide right during the Term (defined in Section 10) to access via the Internet and use the Service solely for the County’s internal business purposes. The County will access and use the Service through the OCHIN Interface.

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 may not 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 the County, unless otherwise required by law. The County is responsible for ensuring the security and confidentiality of all User IDs. The 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. The 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.

The 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. The County will not, and will not allow Authorized Users or other third parties to: (i) 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 client 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. The 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.

The 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").

The County agrees to use the Service solely to send and receive health and/or social-service appointment and/or other health and/or social service-related information to and from Patients and/or clients. Without limiting the other provisions of this Section 2.3, the 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, the 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).

The County will immediately notify CareMessage of any unauthorized use of or suspected unauthorized use of the Service upon becoming aware of such unauthorized use or suspected unauthorized use. CareMessage may monitor the 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 the 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 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 the 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 the County, Authorized Users or anyone else. CareMessage retains all rights not expressly granted in this Agreement.

3.2 **Feedback.** CareMessage has not agreed, and does not agree, to treat as confidential any suggestion or idea for improving or otherwise modifying any of CareMessage's products or services that the County or Authorized Users provide to CareMessage ("**Feedback**"). Nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict CareMessage's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, and CareMessage may do each of the foregoing without compensation to or credit to the County or Authorized Users.

4. **CLIENT INFORMATION**

4.1 **Access to County Information.** For CareMessage to provide the Service as contemplated by this Agreement, it will be necessary for the 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 or transmitting, transferring or otherwise delivering County Information to CareMessage, the 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. The 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 the County, the 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 the County to CareMessage. The County represents and warrants that it possesses all rights, consents and permissions necessary to use, input, disclose, transfer, and deliver County Information in connection with the Service. The 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 (ii) contain 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 or utilize such data in aggregate or other de-identified form in connection with its internal business purposes.

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

5. **CONFIDENTIALITY**

5.1 **Definition of Confidential Information.** "**Confidential Information**" means all information disclosed or otherwise made available by CareMessage or the County (when disclosing information, the "**Disclosing Party**") to the other (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 CareMessage includes, but is not limited to, 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 the County includes, but is not limited to, County Information, Patient records (including medical records and other health information) and any other data or information related to the business or other affairs of the 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. [Notwithstanding the foregoing, information that is Protected Health Information ("PHI") shall not be deemed "Confidential Information" for purposes of this Agreement and instead shall be governed by the Business Associate Agreement attached hereto as Exhibit B.]

5.2 **Protection of Confidential Information.** CareMessage and the County recognize that in connection with the County's use of the Services, they each may obtain Confidential Information of the other. If CareMessage or the County obtains Confidential Information of the other, such Confidential Information will remain the property of the Disclosing Party, and the Receiving Party will (i) treat the Disclosing Party's Confidential Information 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) only use the Disclosing Party's Confidential Information in furtherance of the Receiving Party's obligations under this Agreement, *provided, that* the Receiving Party may not translate or make derivative works of such Confidential Information without the Disclosing Party's prior written consent, and (iii) except as otherwise authorized by the Disclosing Party in writing, not disclose the Disclosing Party's Confidential Information 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 CareMessage nor the County 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.

5.3 **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.

6. **Subcontract of Work.** CareMessage may subcontract certain portions of the work to be performed by CareMessage under this Agreement to affiliates or other third parties (each, a "Subcontractor"). No arrangement with a Subcontractor will relieve CareMessage of any of its obligations under this Agreement, including, but not limited to, obligations regarding the protection of County's Confidential Information.

7. **WARRANTIES AND DISCLAIMERS**

7.1 Effective as of all times during the term hereof that the County communicates with Patients, the 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.

7.2 **Disclaimer.** 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 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 THE 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."

8. **INDEMNIFICATION**

8.1 **Indemnification by CareMessage.** CareMessage agrees to indemnify and hold the County and its 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 the 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 CareMessage, to so infringe, CareMessage 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 the County to continue use of the Service at no additional charge to the County. If CareMessage determines in its reasonable discretion to not pursue the remedies set forth in subclauses (i), (ii) or (iii) of this Section 8.1, CareMessage may terminate this Agreement.

8.2 Indemnification by County. Except to the extent CareMessage has an indemnification obligation under Section 8.1, the County agrees to indemnify and hold CareMessage 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 the County to CareMessage 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 the 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. The County's indemnification obligation under subclause (ii) of this Section 8.2 will not apply if the claim is a direct result of CareMessage's use of County Information other than as permitted by this Agreement.

8.3 Indemnification Procedure. For each of the indemnification obligations set forth in Section 8.1 and 8.2, (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 8.1 or 8.2 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.

9. LIMITATION OF LIABILITY

9.1 Limitation of Liability. EXCEPT AS PROVIDED IN THIS SECTION 9.1, IN NO EVENT WILL CAREMESSAGE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED ONE YEARS WORTH OF FEES RECEIVED BY CAREMESSAGE RELATING TO THE COUNTY'S SUBSCRIPTION TO THE SERVICER. 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 5 ("CONFIDENTIALITY") OR SECTION 8 ("INDEMNIFICATION"), OR (III) IN REGARD TO THE BUSINESS ASSOCIATE AGREEMENT.

9.2 Exclusion of Consequential and Related Damages. EXCEPT IN REGARD TO SECTION 5 ("CONFIDENTIALITY") AND SECTION 8 ("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.

9.3 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.

9.4 Telecommunication Provider Disruption. The County understands 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. Telecommunication Providers are not Subcontractors of CareMessage and the County will not hold CareMessage liable, and CareMessage shall not be liable, in respect of any such failure.

10. TERM AND TERMINATION

(a) **Term of Agreement.** The term of this Agreement will begin on the Effective Date and last for a period of 12 months. Either party may terminate this Agreement (i) upon fifteen (15) days' written notice of material breach to the other party if such breach remains uncured at the expiration of such period or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Neither the expiration nor earlier termination of this Agreement shall release either party from any obligation, which has accrued as of the date of termination.

10.1 Termination.

10.1.1 CareMessage may terminate this Agreement upon written notice to the County if the County has materially breached this Agreement and the breach has not been substantially cured within thirty (30) days after the date of CareMessage's written notice (such thirty (30) day period shall not apply if the breach is not curable). Such written notice will describe in reasonable detail the breach and, if applicable, the steps CareMessage reasonably believes to be necessary to cure such breach.

10.1.2 CareMessage may terminate this Agreement immediately (with no opportunity to cure) upon written notice if the County commences, or has commenced against it, bankruptcy proceedings in any jurisdiction and such proceedings are not dismissed within thirty (30) days, makes a general assignment for the benefit of its creditors, becomes insolvent, has a receiver appointed for it or its business, ceases operations or is liquidated or dissolved.

10.1.3 Upon termination or expiration of this Agreement for any reason, (i) except for Confidential Information of the County held by CareMessage 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 will immediately terminate and CareMessage will cease to provide the County and Authorized Users access to and use of the Service.

10.1.4 Sections 3.2, 4.3, 5, 7.3, 8, 9, 10.2.4, and 12 of this Agreement will survive the termination or expiration of this Agreement.

10.1.5 The County's payments to CareMessage 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 CareMessage, 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.

11. **HIPAA COMPLIANCE.** In providing the Service, CareMessage is a "Business Associate" to the 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 B and which is incorporated herein by reference.

12. GENERAL PROVISIONS

12.1 **Change in Service.** CareMessage has the right to change, modify, and otherwise convert the software, hardware and/or technology used to provide the Service, *provided, however*, that the basic functionality and quality of the Service will not be materially affected. CareMessage will provide OCHIN at least 48 hours' written notice of any changes, modifications, or conversions of the software, hardware and/or technology used to provide the Service.

12.2 **Export Control.** The 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.

12.3 **Relationship of the Parties.** CareMessage is an independent contractor of the County. 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.

12.4 **Notices.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and may be given by personal delivery (including delivery by messenger or by overnight courier service), by certified mail, postage prepaid, return receipt requested, or by email to the recipient's address as follows:

If to OCHIN	OCHIN 1881 SW Naito Parkway Portland, OR 97201 c/o Abby Sears, CEO searsa@ochin.org
If to CareMessage:	CareMessage 332 Pine St, Unit 300 San Francisco, CA 94104 c/o Vineet Singal, CEO vsingal@caremessage.org

If to the County: To the County's address set forth in the Acknowledgement Agreement.

Either party may, by notice to the other, specify a different address or email for notice purposes. Notice will be deemed to have been received upon receipt or refusal of delivery by the intended recipient, as evidenced by the records of the messenger, delivery service or the U.S. Postal Service. For notices sent by email, notices will be deemed to have been received on the same business day as the mailing (if sent before 5 p.m. (San Francisco time) on a business day) or the business day following mailing (if sent after 5 p.m. (San Francisco time) on a business day).

12.5 **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.

12.6 **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.

12.7 **Assignment.** The 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. Should OCHIN terminate its agreement with CareMessage, and CareMessage agrees to assignment of the OCHIN agreement to County, County agrees to pay for any costs incurred by OCHIN for keeping the interface between County and CareMessage functional.

12.8 **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.

12.9 **Publicity.** If the County consents in writing, CareMessage may use the 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.

12.10 **Entire Agreement.** This Agreement is the entire agreement between CareMessage and the County regarding the subject matter hereof and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter, whether with CareMessage, OCHIN or otherwise. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. However, if there is a conflict or inconsistency between this Agreement and the County-OCHIN Agreement, this Agreement will prevail.

12.11 **Force Majeure.** Neither CareMessage nor the County shall be deemed to be in violation of this Agreement 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.

Exhibits Contained in this Agreement:

- Exhibit A – Participation Agreement & Terms of Service Acknowledgement
- Exhibit B – OCHIN CareMessage Pricing
- Exhibit C – Service Features
- Exhibit D - Statement of Work for Phase I Pilot
- Exhibit E – Existing County BAA with CareMessage

EXHIBIT A

OCHIN CareMessage Participation Agreement & Terms of Service Acknowledgment

The undersigned (the “County”) hereby acknowledges and agrees as follows:

1. This Terms of Service Acknowledgment is made in favor of CareMessage, a California nonprofit corporation (“CareMessage”).
2. The County is a member of OCHIN Inc., an Oregon nonprofit corporation (“OCHIN”).
3. The County wishes to access and use CareMessage’s mobile health services (the “Services”) through OCHIN’s electronic interface.
4. The County has been provided a copy of CareMessage’s Terms of Service (the “Terms of Service”) regarding the Services.
5. The County understands and agrees that its access to and use of the Services is governed by, among other things, the Terms of Service and agrees to the Terms of Service. County and CareMessage acknowledge that by agreeing to the Terms of Service they are mutually terminating any other agreement between County and CareMessage.

Effective Date: 5/15/2018

<p>County of Monterey Health Department</p> <p>Signed by _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Address for Notices:</p> <p>1270 Natividad Rd. Salinas, CA 93906</p>	<p>OCHIN</p> <p>Signed by <small>DocuSigned by:</small> <i>Abby Sears</i> <small>707D54D4A65144A...</small> _____</p> <p>Print Name: Abby Sears</p> <p>Title: CEO</p> <p>Address for Notices:</p> <p>1881 SW Naito Parkway Portland, OR 97201 c/o Abby Sears, CEO searsa@ochin.org</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

APPROVED AS TO FORM
APPROVED AS TO FORM
[Signature]
COUNTY OF MONTEREY

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey
5-11-18

EXHIBIT A

OCHIN CareMessage Participation Agreement & Terms of Service Acknowledgment

The undersigned (the “County”) hereby acknowledges and agrees as follows:

1. This Terms of Service Acknowledgment is made in favor of CareMessage, a California nonprofit corporation (“CareMessage”).
2. The County is a member of OCHIN Inc., an Oregon nonprofit corporation (“OCHIN”).
3. The County wishes to access and use CareMessage’s mobile health services (the “Services”) through OCHIN’s electronic interface.
4. The County has been provided a copy of CareMessage’s Terms of Service (the “Terms of Service”) regarding the Services.
5. The County understands and agrees that its access to and use of the Services is governed by, among other things, the Terms of Service and agrees to the Terms of Service. County and CareMessage acknowledge that by agreeing to the Terms of Service they are mutually terminating any other agreement between County and CareMessage.

Effective Date: 5/15/2018

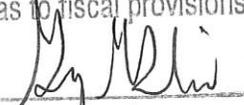
<p>County of Monterey Health Department</p> <p>Signed by _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Address for Notices:</p> <p>1270 Natividad Rd. Salinas, CA 93906</p>	<p>OCHIN</p> <p>Signed by <small>DocuSigned by:</small> <i>Abby Sears</i> <small>707B54B4A65144A...</small> _____</p> <p>Print Name: Abby Sears</p> <p>Title: CEO</p> <p>Address for Notices:</p> <p>1881 SW Naito Parkway Portland, OR 97201 c/o Abby Sears, CEO searsa@ochin.org</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

APPROVED AS TO FORM



DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

Reviewed as to fiscal provisions



Auditor-Controller
County of Monterey 5-14-18

EXHIBIT B**OCHIN CAREMESSAGE PRICING**

Description	Unit Cost	# Units	Cost
Setup and Configuration	\$7,500	1	\$7,500
Credit	(\$7,500)	1	(\$7,500)
Total Cost			\$0
Description	Unit Cost	# Units	Cost
CareMessage Application Fee (Pass Through Cost)	\$65,000	1	\$65,000
<ul style="list-style-type: none"> • 0-10k patients = \$8,250 • 10-25k patients = \$20,300 • 25-50k patients = \$36,550 • 50-100k patients = \$65,000 • 100-200k patients = \$97,500 			
CareMessage Interface Maintenance	\$3,000	1	\$3,000
Total Annual Maintenance			\$68,000

****Subscription based pricing will be billed on a monthly basis as a pass through on your monthly OCHIN bill**

EXHIBIT C

SERVICE FEATURES

The Service includes, but is not limited to, the following features:

1. Appointment reminders
2. Group outreach
3. Health education programs
4. Direct messaging
5. Secure cloud-based access

EXHIBIT D

STATEMENT OF WORK

Date: 3/22/2008

JIRA#: OPT-6457

CareMessage Phase 1 Pilot Integration: Patient Update and Appointment Reminder Interfaces with County of Monterey Health Department

Engagement Overview

The purpose of this project is to implement appointment reminders and patient updates by way of HL7 feeds between OCHIN EPIC Service Area Members and CareMessage. This is a pilot project to establish the initial integration between OCHIN and CareMessage. This pilot will set the standard for OCHIN's integration with CareMessage, making User Acceptance Testing and member feedback critical to the success of this project and future rollouts.

Approach and Assumptions

Phase 1: Appointment Reminders, Appointment Confirmations, Appointment Cancellations and Patient Updates

- A Service Area would enroll in an appointment reminder program with CareMessage.
- A bi-directional HL7 SIU interface as well as an outgoing HL7 ADT will be used.
- The SIU interface will trigger messages from OCHIN EPIC to CareMessage with information about the appointment for each patient.
- CareMessage will then use that information to contact the patient by way of phone call or text and send SIU messages with either confirmation or cancelled information to OCHIN EPIC that will file in real time.
- The outgoing ADT interface will be used to update patient demographic information in CareMessage.
- In alignment with OCHIN's stance on confidential health information exchange, filtering for vulnerable patient populations will be implemented for this connection as follows:
 - OCHIN will not send any ADT updates for confidential patient types (999C, Confidential, Confidential-MH, Unk Confidential)
 - For the SIU, OCHIN will not send messages out if the patient meets the following criteria:
 - Confidential patient type (as detailed above)
 - Block Mail flag is set to Yes
 - Visit type is: Confidential Counsel&Test, Off Site Visit, Abstraction, BH Care Coordination
 - Active Guarantor Type is Confidential or Family Planning
 - Block calls for appointment box is checked

- This means that patients that meet the above criteria will not receive appointment reminder calls or confirmations via this integration. In addition, patient demographic updates will not be transmitted to Care Message for confidential patient types.

Phase II:

Phase II will include a bidirectional orders and results interface (ORM/ORU). Outreach campaigns and education programs must be defined as a prerequisite for this interface. Project is currently being scoped and is dependent on vendor capability; timeline TBD. Member will be expected to participate in User Acceptance Testing.

Connectivity

OCHIN Epic will send real time encounter based HL7 messages via TCP/IP (OCHIN standard connectivity protocol for interfaces) that are triggered when users create patients, update patient information and schedule appointments for that patient.

Success Criteria/Deliverables

- OCHIN will have a bi-directional HL7 integration with CareMessage for appointment reminders. This includes an outgoing ADT interface from OCHIN to CareMessage, an outgoing SIU interface from OCHIN to CareMessage, and an incoming SIU interface from CareMessage to OCHIN.
- Training documents and user guides specific to OCHIN will be created by CareMessage
- Workflows will be provided to members by OCHIN
- CareMessage will participate in build and testing activities
- Pilot Site members will participate in use acceptance testing
- Maintenance for product use and troubleshooting will be provided

Pilot Site Roles and Responsibilities

Pilot sites are expected to contribute to the implementation process, provide feedback on product use, discuss barriers, participate in regularly scheduled calls as well as any additional ad-hoc calls, and participate in user acceptance testing (UAT).

Workflows for this product will be developed. Member feedback may be needed and members will be expected to provide feedback on workflows, when asked.

User acceptance testing is expected to take two to three weeks and will involve communication with the pilot site, OCHIN project manager, and team members from CareMessage (as needed). Expected timeline for UAT will be as follows:

Timeline: We ask that participating providers be able to participate in the following Pilot Activities and Timelines:

- **Kickoff: Must attend a kick off meeting (Outlook invite to be sent to identified site contact for each member)**

Dependencies

- Signed MSA between OCHIN and CareMessage and in place prior to project kick off

- VPN setup between CareMessage and OCHIN prior to interface development work starting
- Pilot site agreements signed
- Pilot site contacts and CareMessage project contacts provided to OCHIN Project Manager
- A new incoming SIU Bridges interfaces must be purchased from Epic.
- Outbound ADT Bridges interface and Mirth Gateway will need to be configured to filter messages for any new service areas that wish to use CareMessage.
- Member participation in project, especially UAT
- CareMessage participation in entirety of project
- Pilot member participation in both phase I and phase II

Limitations and Out of Scope

- Any incoming SIU messages outside of confirmation and cancellation messages for Phase 1 are out of scope.
- As Care Message provides reporting capabilities within their platform, and Reporting WorkBench will not be utilized, OCHIN will not provide reporting support for this integration project.
- Training will be limited to user guide documentation will not include live training
- Pilot will create a standard implementation for use across the collaborative by OCHIN members; therefore customizations will be limited, and will require review for approval

Risks

- Increased traffic to the Mirth appliance may cause performance issues if a large number of service areas utilize these interfaces. This may result in the need for OCHIN to expand the current Mirth infrastructure in order to meet the demands for capacity.
- OCHIN has never done an incoming SIU interface, there will be considerations and problems that are unknown at this time.
- As this is a pilot project, there may be unknowns that we discover during implementation.
- Phase 1 allows a cell phone to be used for this program which could be a workflow/training issue during patient registration. Cell phone numbers must be entered into the cell phone section. If a cell phone number is used as the home number for that patient, it will need to be entered twice.
- Because this is a pilot for a new product integration, OCHIN will make every effort to provide workflows and user documentation that is complete, but edits and additions may be necessary post UAT and go-live.

Project Contacts

Name	Organization	Title/ Role	Email
Jessie Brown	OCHIN	Project Manager	brownj@ochin.org
Kristen Wolden	OCHIN	Interface Team Supervisor , Project Oversight	lloydk@ochin.org
Bekki Wilson	CareMessage	Implementation Project Manager	bwilson@caremessage.org

Milestones

Milestone	Due Date	Responsible Party	Deliverable/dependency
Move to production	5/21/18	OCHIN	Completion of UAT, training documentation complete, workflows complete
Stabilization begins	5/21/18	OCHIN	Go Live
Stabilization ends, project closed	6/8/18	OCHIN	Hand off to maintenance

Pricing and Terms

Fees

All services related to this project as outlined in this Statement of Work, shall be performed as defined below.

Description	Unit Cost	# Units	Cost
Setup and Configuration	\$7,500	1	\$7,500
OCHIN Credit	(\$7,500)	1	(\$7,500)
Total Cost			\$0
Description	Unit Cost	# Units	Cost
CareMessage Application Fee (Pass Through Cost)	\$65,000	1	\$65,000
<ul style="list-style-type: none"> • 0-10k patients = \$8,250 • 10-25k patients = \$20,300 • 25-50k patients = \$36,550 • 50-100k patients = \$65,000 • 100-200k patients = \$97,500 			

CareMessage Interface Maintenance	\$3,000	1	\$3,000
Total Annual Maintenance			\$68,000

Pricing valid for 30 days unless otherwise noted.

Travel Fees

- No travel is anticipated and not included in this SOW

Payment Terms

1. Member shall be responsible for all Fees as identified in this Statement of Work, and any Change Orders, as applicable.
2. Invoicing will occur as follows, 30 days after receipt of the certified invoice in the Auditor-Controller's Office.

Payment Trigger	Description	Payment
1 st Month Live	1/12 th of Annual Maintenance	\$5,667

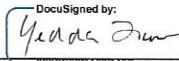
Signatures

Signature is required to accept this SOW. By signing below, each party agrees to the proposed purchase and authorizes work to begin. **(Signatures to follow on next page)**

County of Monterey Health Department
 1270 Natividad Rd.
 Salinas, CA 93906

OCHIN, Inc.
 1881 SW Naito Parkway
 Portland, OR 97201

By: _____
 Authorized Signature

By:  _____
 Authorized Signature

Name: _____

Name: Yedda Trawick

Title: _____

Title: COO

Date: _____

Date: 4/20/2018

OCHIN, Inc.
1881 SW Naito Parkway
Portland, OR 97201

By: _____
Authorized Signature

Name: _____

Title: _____

Date: _____

OCHIN Internal Approval:

Ramona Morseman	DocuSigned by: <i>Ramona Morseman</i> 5BCC21E1A91E4D7...
-----------------	----------------------------------------------------------------

OCHIN, Inc.
1881 SW Naito Parkway
Portland, OR 97201

By: _____
Authorized Signature

Name: _____

Title: _____

Date: _____

OCHIN Internal Approval:

Ramona Morseman	DocuSigned by: <i>Ramona Morseman</i> 5BCC21E1A91E4D7...
-----------------	----------------------------------------------------------------

EXHIBIT E

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(f)(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(f) 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 Bullock, Director of Health
Tel: (831) 755-4526
Fax: (831) 735-4797

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