



Health  
UpToDate, Inc.

230 3<sup>rd</sup> Avenue  
Waltham, MA 02451  
United States

Phone +1 781 392 2000  
www.wolterskluwer.com

Contract No.: 00070716

October 22, 2024

County of Monterey  
Monterey County Health Department  
Clinic Services Bureau  
1615 Bunker Hill Way Ste 140  
Salinas, California 93906-6010  
United States

Dear Ladies and Gentlemen,

This letter (the "Letter") and the attached Subscription and License Terms set forth in Exhibit A set out the terms and conditions on which UpToDate, Inc. ("UpToDate") will supply County of Monterey, for services to Monterey County Health Department, Clinic Services Bureau ("You" or "Your") with a subscription to UpToDate®, which consists of the UpToDate® online database, software and user documentation (the "Licensed Materials"). This Agreement (as defined below) and Your subscription will be valid for an initial period of 3 years (the "Term") commencing on November 1, 2024. Capitalized terms may be defined in this Letter or in the attached Exhibit A. This Letter, along with the Exhibit A, are collectively referred to herein as the "Agreement".

Subscription Fees: The 3 year Subscription Fee for Your UpToDate® license are as follows:

	<b>Total†</b>
Year 1 – November 01, 2024 through October 31, 2025	\$21,938.82 USD
Year 2 – November 01, 2025 through October 31, 2026	\$23,255.15 USD
Year 3 – November 01, 2026 through October 31, 2027	\$24,650.46 USD

†Plus tax where applicable

Any facilities added to or subtracted from the Designated Sites will be incorporated at the then-current pricing.

This Agreement total not to exceed \$69,844.43 USD. The Subscription Fees for each Year in the pricing schedule above can be amended upon written mutual agreement by both parties and must be paid within 30 days time the County Auditor-Controller receives the certified invoice of each respective year. After the final Year of the pricing schedule, the Subscription Fees will be re-evaluated. This quote is valid for 60 days from the date of this letter.

License to Use the Licensed Materials: For the above Subscription Fees, UpToDate will grant Your Authorized Users access to use the Licensed Materials on the terms set forth in this Agreement. This subscription allows Your Authorized Users to Access the Licensed Materials as follows:

- While physically located at the Designated Site(s) via the IP Address(es) or Security agent(s) listed below;
- Via Your password authenticated system(s) as identified to UpToDate, which will in turn pass UpToDate a unique identifier; and

- Authorized Users have the option to establish a username and password with UpToDate. Once established, a username and password allows the Authorized User to Access Licensed Materials from any Internet-enabled device including desktop computers, laptops, and mobile devices such as the iPhone and Android devices, regardless of Authorized User’s location, subject to Registration and Re-verification.

**Confirmation of Your Information**

The operating statistics on which UpToDate based the Subscription Fees are:

<b>Institution</b>	<b>Clinicians</b>
Clinic Services	42
Total	42

**Designated Sites**

Health Clinic At Marina  
 3155 De Forest Rd  
 Marina, California 93933  
 United States

Seaside Family Health Center  
 1156 Fremont Blvd  
 Seaside, California 93955  
 United States

Clinic Services  
 559 E Alisal St  
 Salinas, California 93905  
 United States

Laurel Health Clinics  
 1441 Constitution Blvd  
 Salinas, California 93906  
 United States

**IP Addresses**

192.92.176.114 - 192.92.176.114  
 192.92.176.113 - 192.92.176.113

192.92.176.115 - 192.92.176.115  
 192.92.176.112 - 192.92.176.112

You represent and warrant that: (i) the operating statistics set forth above are accurate and complete figures; (ii) You have the technical capability to ensure that only Authorized Users may Access the Licensed Materials via the IP address(es) and/or UpToDate provided Security Agent(s) listed above; (iii) the IP Addresses above or UpToDate provided Security Agent(s) only provide Access to Authorized Users while Authorized Users are physically located at the Designated Site(s) and no other users will gain Access to the Licensed Materials through this subscription; and (iv) for the purposes of Registration and Re-verification the IP Addresses above or UpToDate provided Security Agent(s) are only accessible by Authorized Users.

**Subscription Confirmation**

To confirm Your acceptance of the terms in the Agreement, please sign this Letter in the space below and return it to us. Your subscription will be processed promptly and an executed copy will be returned to You.

We look forward to providing You with a subscription to the Licensed Materials. We are confident that Your clinicians will find the *UpToDate* services to be practical and efficient tools with which to effectively manage clinical issues in practice.

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

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

Sincerely,

*Denise Luggenberger*

10/22/2024 4:12 PM

Finance – Contract Administration

UpToDate, Inc.

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Accepted and Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2024 on behalf of **UpToDate, Inc.**

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

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

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

**UpToDate, Inc.**

Accepted and Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2024 on behalf of **UpToDate, Inc.**

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

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

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

**UpToDate, Inc.**

Accepted and Agreed to this day of \_\_\_\_\_, 2024 on behalf of County of Monterey for Services to **Monterey County Health Department, Clinic Services Bureau.**

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

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

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

County of Monterey for Services to **Monterey County Health Department, Clinic Services Bureau.**

**County of Monterey for Services to County of Monterey Health Department**

Approved as to Legal Form:

DocuSigned by: \_\_\_\_\_ Date: **10/24/2024 | 2:24 PM PDT**  
By: Stacy Saitta \_\_\_\_\_  
Chief Deputy County Counsel – County of Monterey

Approved as to Fiscal Provisions:

DocuSigned by: \_\_\_\_\_ Date: **10/24/2024 | 4:20 PM PDT**  
By: Jennifer Forsyth \_\_\_\_\_  
Auditor-Controller – County of Monterey

**EXHIBIT A****UpToDate® Subscription - UpToDate, Inc. Subscription and License Terms****1. Definitions**

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

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

"Authorized Users": Physician staff, faculty, residents, nurses, librarians and other staff and medical professionals who are employed by Your organization or who provide medical services to patients at Your organization's facilities, any student affiliated with Your organization, and, to the extent that Your organization includes a publicly accessible physical library, individuals otherwise entitled to use Your library facilities, subject to "Authorized Access" below.

"Registration": The process by which an Authorized User creates a username and password via the IP address(es) or UpToDate provided Security Agent(s).

"Re-verification": The process by which Authorized Users verify their registration credentials. Authorized Users are required to log-in, using their username and password, at least once every 90 days via the IP address(es) or UpToDate provided Security Agent(s). If in any 90-day period such log-in does not occur, the Authorized User's ability to Access Licensed Materials from outside the Designated Site(s) will be suspended. In the event of suspension, Authorized Users may automatically Re-verify by logging-in, using their username and password, via the IP address(es) or UpToDate provided Security Agent(s) any time thereafter during the Term to resume Access via username and password.

**2. Grant of License**

UpToDate, in consideration of payment of the applicable Subscription Fees (as set forth in the Letter) and subject to the terms and conditions below, grants You a limited, revocable, non-exclusive, non-transferable license for Your Authorized Users to Access the Licensed Materials solely for the purpose of: (i) research and other scholarly activities; or (ii) providing diagnostic treatment or other medical services to patients, subject to the terms and conditions of this Agreement. You shall ensure that the Licensed Materials are Accessed only by Authorized Users affiliated with You for a purpose related to Your business.

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

**3. Term and Termination**

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

You have the right to terminate this Agreement if UpToDate materially breaches this Agreement and such breach is not cured within 30 days of UpToDate receiving written notice of such breach from You (the "Cure Period"). The end date of the Cure Period will become the effective date of termination and a pro-rated refund of the Subscription Fees actually paid by You for any remaining months of the subscription, from the effective day of termination to the normal end-date of the subscription period, will be provided to You.

UpToDate may terminate this Agreement if You or Your Authorized Users materially breach this Agreement and such breach is not cured within the Cure Period (15 days in the case of non-payment).

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

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

**4. Authorized Access**

You acknowledge that the Licensed Materials are for the use of the Authorized Users. Access by Authorized Users is permitted so long as Access occurs: (i) in the confines of a Designated Site (as designated in the Letter); or (ii) via Your password authenticated system(s) as identified to UpToDate, which will in turn pass

UpToDate a unique identifier; or (iii) from any location, provided such access occurs by means of the Authorized User entering his/her username and password. Use of the Licensed Materials by non-Authorized Users is expressly forbidden. Users of public libraries at the Designated Sites are only Authorized Users while physically present at the library.

#### **5. Verified IP Addresses**

You warrant that the IP address(es) provided by You to UpToDate and any UpToDate provided Security Agent(s) herein allow Access to the Licensed Materials by the aforementioned Authorized Users only and that no other users are provided Access through the IP address(es) and/or UpToDate provided Security Agent(s).

#### **6. Audit**

You agree that UpToDate may audit Your use of the Licensed Materials for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Licensed Materials by You that is in violation of the terms of the Agreement, You shall reimburse UpToDate for all reasonable expenses related to such audit.

#### **7. Fees and Payments**

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

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

#### **8. Marketing Support**

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

#### **9. Systems Performance**

During the Term, the Licensed Materials will be updated by UpToDate. During this time, the online service may be unavailable

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

For online Access from a desktop (or laptop) computer, the Licensed Materials are validated for use with the current versions of the browsers and the technical specifications UpToDate supports. For a current list of those technical specifications please see: <http://www.uptodate.com/help/manual/sysreq>.

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

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

#### **10. User Access Restrictions**

You may not allow or facilitate any Access to the Licensed Materials by any persons who are not Authorized Users. Access by persons who are not Authorized Users is prohibited no matter how such Access is obtained, including without limitation by use of modem, VPN, proxy server, LAN or web-based technology. You shall notify UpToDate promptly if you become aware of any Access to the Licensed Materials by users within Your organization who are not Authorized Users. You and Your registered Authorized Users may not transfer or share Access, usernames, or passwords with anyone. You shall not attempt to defeat or circumvent any system designed to protect Access to UpToDate.

#### **11. Ownership**

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

You have purchased the right to Access the Licensed Materials for a specific limited period of time, i.e., the subscription period. At the end of this period, Your license and associated rights, such as technical support, if any, expire automatically, unless You have

renewed Your subscription on UpToDate then-current terms. The Agreement and Your license to use the Licensed Materials will also terminate if You fail to comply with any term or condition in this Agreement.

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

## **12. Permitted Uses and Prohibitions**

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

Your registered Authorized Users may not share or transfer usernames and passwords. Any sharing or transferring of usernames and passwords is a violation of this Agreement. Access to the Licensed Materials by non-Authorized Users is expressly forbidden.

In addition to its rights set forth in Section 3 (Term and Termination) but excluding "Re-verification" above, UpToDate reserves the right in its sole discretion to limit or suspend Your Authorized Users' Access to the Licensed Materials, by electronic self-help or other means and without notice, if UpToDate believes in good faith that any Authorized User has committed a breach of security or violated the terms of this Agreement.

## **13. Restriction against Transfer**

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

## **14. Data**

a) Protected Health Information. UpToDate is not intended to receive protected health information or "PHI" (as defined under the Health Insurance Portability and Accountability Act, also known as "HIPAA") in connection with this Agreement and You shall not, and shall not permit Your Authorized Users, to provide UpToDate with or allow UpToDate access to, any PHI as part of this Agreement.

b) Data Use. UpToDate may collect information regarding Access of the Licensed Materials by Authorized Users including, but not limited to: (i) the URL that an Authorized User visits from, or visits after, Accessing the Licensed Materials; (ii) information broadcast by the Authorized User's computing device, such as the Internet browser used, the type of operating system used, device identifier, the Authorized User's location, the Authorized User's IP address, and other similar information, (iii) information about the Authorized User's Access of the Licensed Materials, such as queries submitted, content viewed, other information used to track a session, or for system administration purposes, and (iv) if applicable, limited registration information if an Authorized User registers for a username and password to Access the Licensed Materials or redeems Continuing Medical Education credits. UpToDate has the right to use and disclose any information collected for purposes, including, but not limited to: (a) making the Licensed Materials available to You and Your Authorized Users, (b) performing services, system administration and providing support under this Agreement, (c) providing reports to You and Your Authorized Users (for example, if applicable, Continuing Medical Education reports), (d) if applicable, redeeming an Authorized User's accumulated Continuing Medical Education credits (only upon such Authorized User's request), (e) monitoring Your and Your Authorized Users' use of the Licensed Materials to ensure compliance with this Agreement and applicable law, (f) improving or modifying the Licensed Materials or creating derivative or new products and services, (g) marketing or advertising, including sending information and notices of new functionality or services to

current or former registered Authorized Users, and/or (h) research or population health initiatives.

c) De-Identification, Anonymization, and Aggregation. With regard to information UpToDate collects through Authorized User's Access of the Licensed Materials including the information identified in this section, UpToDate shall have the right to anonymize and aggregate such information with other customers' information. UpToDate will own all such de-identified and/or anonymized information, provided that You will not hereby be prevented from yourself creating and using Your own information.

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

#### **15. Access to Books and Records**

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

#### **16. Use of Professional Judgment**

The editors and authors of the Licensed Materials have conscientiously and carefully tried to create the identified diagnosis measures, treatment alternatives and drug dosages in the Licensed Materials that conform to the standards of professional practice that prevailed at the time of publication. However, standards and practices in medicine change as new data become available and the individual medical professional should consult a variety of sources. For this reason, only the most current release of the Licensed Materials should be consulted when information is sought. New updates are issued periodically; do not rely on older versions. In addition, when prescribing medications, the user is advised to check

the product information sheet accompanying each drug to verify conditions of use and identify any changes in dosage schedule or contraindications, particularly if the agent to be administered is new, infrequently used or has a narrow therapeutic range.

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

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

Any access to the Licensed Materials provided under contract to the U.S. Government is provided with limited rights. The Licensed Materials consist of data, as defined in 48 CFR 27.401 or 48 CFR 27.404-2(a), as applicable, and restricted computer software as defined in 48 CFR 27.401. The Licensed Materials may be reproduced and used by the U.S. Government, provided that they will not be used for or in connection with manufacturing and will not be disclosed outside of the U.S. Government or to any U.S. Government contractor, without the prior express written permission of UpToDate.

#### **18. Limited Warranty**

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

UpToDate agrees to indemnify You against any third party claim that the Licensed Materials infringe a U.S. copyright, patent, or trademark ("IP Claims"), and any damages awarded on such a claim, provided that You provide UpToDate with prompt notice of the claim and sole control of the defense and settlement of the claim. In the event such a claim is made against You or anticipated by UpToDate, UpToDate shall have the option of terminating this Agreement and refunding a prorated portion of the fees paid by You



for the unused portion of the then-current Term and terminating Your right to use the Licensed Materials. The foregoing indemnity and optional termination shall be Your sole remedy and UpToDate's sole obligation and liability in the event of any IP Claim.

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

#### **19. Limitation of Liability**

IN NO EVENT WILL UPTODATE, ITS AFFILIATES OR LICENSORS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF DATA OR PROFITS OR FOR INABILITY TO USE THE LICENSED MATERIALS, TO ANY PARTY EVEN IF UPTODATE OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL UPTODATE'S OR SUCH OTHER PARTY'S LIABILITY FOR ANY DAMAGES OR LOSS TO YOU OR ANY OTHER PARTY IN CONNECTION WITH THIS AGREEMENT IN THE AGGREGATE EXCEED THE FEES PAID BY YOU TO UPTODATE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

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

#### **20. Confidentiality**

"Confidential Information" shall mean any information regarding either party's (the "Disclosing Party") intellectual property rights, product designs and plans, product development plans, release dates, strategies, pricing, and other marketing and technical information and other unpublished information provided to the other party ("Receiving Party"); and all other information which the Disclosing Party characterizes as confidential at the time of its disclosure either in writing or orally, except for information which the Receiving Party can demonstrate: (a) is previously rightfully

known to the Receiving Party without restriction on disclosure; (b) is or becomes, from no act or failure to act on the Receiving Party's part, generally known in the relevant industry or public domain; (c) is disclosed to the Receiving Party by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by the Receiving Party without access to the Confidential Information. The Receiving Party shall at all times, both during the Term hereof and for a period of at least three years after termination of the Agreement, keep in confidence all such Confidential Information. The Receiving Party shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of the Disclosing Party. The Receiving Party shall not use any Confidential Information other than in the course of the activities permitted hereunder. The Receiving Party shall only disclose Confidential Information to another employee or contractor who has a need to know such information and is subject to obligations of confidentiality substantially similar to those set forth herein. The Receiving Party shall notify the Disclosing Party in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with the Disclosing Party in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If the Receiving Party is legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, the Receiving Party will: (i) immediately notify the Disclosing Party prior to such disclosure to allow the Disclosing Party an opportunity to contest the disclosure; (ii) assert the privileged and confidential nature of the Confidential Information; and (iii) cooperate fully with the Disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, the Receiving Party shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements.

#### **21. General**

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

If any provision of this Agreement is determined to be invalid or unenforceable under any applicable law, it shall be deemed omitted and the remaining provisions shall continue in full force and effect. This Agreement may be modified only in writing executed by authorized representatives of You and UpToDate. Either party's

waiver of any right shall not constitute waiver of that right in the future.

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

If You use purchase orders in conjunction with this Agreement, then You agree that the following statement is hereby automatically made part of such purchase orders: "The terms and conditions set forth in the UpToDate Contract No.: 00070716 are made part of this purchase order and are in lieu of, and shall replace, all terms and conditions, express or implied, in this purchase order, including any renewals hereof. "

In addition to any other provision of this Agreement that by their terms survive termination of this Agreement, the following provisions of this Agreement will survive expiration or termination of this Agreement: Sections 7, 11, 12, 14-16 and 18-21.

**22. Insurance**

Insurance. Subject to the policies' terms and conditions, UpToDate will maintain, at its cost and expense, the following minimal levels of insurance:

TYPE OF COVERAGE	MINIMUM COVERAGE (US DOLLARS)
<b>Commercial General Liability</b>	\$1,000,000 per occurrence  \$2,000,000 aggregate
<b>Cyber and Professional Liability</b>  Including Data and Network Wrongful Act liability, Tech & Professional Services Liabilities, Media Services Liabilities (defamation, libel, slander, product disparagement), Regulatory Defense and Penalties liability, and certain other cyber and error & omissions coverages	\$1,000,000 per claim made  \$2,000,000 aggregate
Workers Compensation	Statutory Limits

UpToDate will, upon written request, provide You with commercially acceptable proof of insurance evidencing that the above noted insurance have been satisfied. The requirements set forth in this section will not in any manner increase or otherwise affect the limits of UpToDate's liability in connection with the transaction contemplated by this Agreement.

**23. Non-Discrimination**

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

**24. Independent Contractor**

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

**25. Notices**

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

County of Monterey:

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

With copy to:  
Clinic Services Bureau: Contracts Monitor  
1615 Bunker Hill Way, Ste. 140  
Salinas, CA 93906

UpToDate Inc.:

UpToDate, Inc.

Attn: Legal

230 Third Ave

Waltham, MA 02451

Fax: 781-642-8840

**26. Conflict of Interest**

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