



## Monterey County Board of Supervisors

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

### Board Order

**Agreement No.: A-14094**

Upon motion of Supervisor Parker, seconded by Supervisor Adams and carried by those members present, the Board of Supervisors hereby:

- a. Approved and authorize the Director of Health or Assistant Director of Health to execute an Agreement with Oregon Community Health Information Network, Inc. (OCHIN) for the utilization of a combined Electronic Medical Record (EMR) and Practice Management (PM) System for the term September 1, 2018 to August 31, 2023 and a contract amount not to exceed \$6,700,000; and
- b. Approved the recommendation of the Director of Health to approve the following non-standard risk provisions: insurance, indemnification, limitation of liability, limitation of damages; and
- c. Authorized the Director of Health or Assistant Director of Health to sign up to three (3) future, no extension amendments to this Agreement where the amendments do not exceed 10% of the contract amount (\$670,000), and do not significantly change the scope of work.

PASSED AND ADOPTED on this 28th day of August 2018, by the following vote, to wit:

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

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 81 for the meeting August 28, 2018.

Dated: August 28, 2018  
File ID: A 18-378

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

  
Joel G. Pablo, Deputy

up to current environment standards and in compliance with current federal and state laws protecting the health and personal information of the County's patients.

The Health Department will continue to seek and assess future, financially viable EMR system opportunities that may one day allow for integration or partial integration of an electronic health record system across all County healthcare providers, including Natividad and Behavioral Health. OCHIN continues to be Health Department's primary choice for PMS and EMR services, as OCHIN is the server of choice for many FQHCs across the country, complying with evolving state and federal requirements affecting them.

While this work is not directly in support of a Health Department strategic initiative, it is in support of one or more of the ten essential public health services, specifically: 1) Monitor health status to identify and solve community health problem; and 3) Inform, educate, and empower people about health issues.

OTHER AGENCY INVOLVEMENT:

County Counsel and Auditor-Controller have reviewed as to form, Risk Management has reviewed and requests Board approval of the non-standard risk provisions. The Health Department recommends moving forward with this Agreement to maintain uninterrupted access and usage of OCHIN's Epic EMR and PM System.

FINANCING:

Sufficient appropriations are available in FY 2018-19 Adopted Budget of Clinic Services Bureau, Health Department (4000-HEA007). The Agreement will be funded by revenues from Medi-Cal and Medicare. There is no financial impact to the General Fund resulting from approval of this Agreement.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Check the related Board of Supervisors Strategic Initiatives:

Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

Administration:

- Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency.

Health & Human Services:

- Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and healthy environments in collaboration with communities.

Infrastructure:

- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and

**COUNTY OF MONTEREY STANDARD AGREEMENT  
(MORE THAN \$100,000)**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and: OCHIN Inc., an Oregon not-for-profit corporation, (hereinafter "CONTRACTOR").

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

**1.0 GENERAL DESCRIPTION.**

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

Provide the County with access to certain components and modules of the Epic Systems Corporation ("Epic") practice management and electronic medical records ("EMR") software as well as ancillary IT and associated services.

**2.0 PAYMENT PROVISIONS.**

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of six million and seven hundred thousand dollars (\$6,700,000.00).

**3.0 TERM OF AGREEMENT.**

3.01 The term of this Agreement is from September 1, 2018 to August 31, 2023, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

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

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

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

**Exhibit A Scope of Services/Payment Provisions**  
**Exhibit B EPCS and Duo T&Cs**

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving Written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.
- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

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

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

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

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

9.04 **Other Requirements:**

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

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

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

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

11.0 NON-DISCRIMINATION.

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

15.0 MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

16.0 SIGNATURE PAGE.

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

**COUNTY OF MONTEREY**

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

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

By: SV for  
Department Head (if applicable)

Date: 08/31/2018

By: \_\_\_\_\_  
Board of Supervisors (if applicable)

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

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

By: Deputy County Counsel

Date: 8/9/18

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

By: Auditor/Controller

Date: 8/9/18

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

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

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

**CONTRACTOR**

OCHIN Inc.

Contractor's Business Name\*

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

Abigail Sears CEO  
Name and Title

Date: 7-31-18

By: Sam Whiteley-Ross  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*  
Sam Whiteley-Ross CFO  
Name and Title

Date: 7-31-18

County Board of Supervisors' Agreement Number: A-14094, approved on (date): 08/28/2018

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

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

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

<sup>3</sup> Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9



Canto  
 EpicCare Link\*  
 Reporting Workbench  
 Charge Router  
 Registry  
 OpenText Right Fax  
 Dragon  
 EPCS

**Medical Records Software**

Release of Information (ROI)

**Tapestry\***

**Wisdom\***

**Call Center\***

**Nurse Triage \***

**Visit Navigators**

Navigator	Information
OB/GYN with Custom Results Console.	Visit Navigator to support prenatal and postnatal care. Special tracking tools for pregnancies are incorporated into the tool for reporting, alerts and health of mom and baby. Special build has been done for our members in California to support their government funded CPSP program
BH Primary Care Navigator	Visit navigator supporting a behavioral health encounter.
Behavioral Health/Mental Health	Navigators to support both specialty mental health practices as well as clinics that provide integrated behavioral health service in primary care.
HIV Navigator	The HIV navigator supports the needs of our members that serve both HIV and AIDS populations, Very specific tools for HIV mutation tracking and charting tools to help with these complex patients.
Ophthalmology/Optomety	Navigator to support Optometry departments and some ophthalmology tools. Mostly for Optometry. Allows for ease in prescribing eye glasses and contacts as well as documenting basic eye care.

**Integrated Devices\***

MidMark – see Pricing P for chosen integrated devices  
 NOTE: Hardware is the responsibility of the County

**Exhibit A.2**  
**System Terms and Conditions**

*Unless otherwise defined, capitalized terms in this exhibit have the meanings given on the Standard Agreement or the other exhibits.*

**System Access.** CONTRACTOR will provide County with access to the System on the terms and conditions specified below.

**Software.** Exhibit A.1 specifies software modules to which County will have access pursuant to this agreement.

**Clinical Environment.** County is responsible for establishing and maintaining a clinical environment suitable for use of the System. At a minimum, County will take the actions described below.

**Clinical Content.** County will designate a practicing physician (or highest ranking Provider, as defined herein) to participate in the Clinical Oversight Workgroup or other CONTRACTOR Board-designated committee. This workgroup will be primarily responsible for providing input to CONTRACTOR regarding the clinical content of the System. County and other users of the System acting through the workgroup, and not CONTRACTOR, will be responsible for the accuracy of such content.

**Internal Guidelines.** County will be responsible for maintaining its own internal scope-of-practice guidelines governing use of the System at each County. These guidelines will specify, without limitation, the scope of authority, responsibility, and oversight of County's personnel using the System. CONTRACTOR will not be responsible for monitoring compliance with those guidelines.

**Provider Definition.** For purposes of this agreement, a "Provider" means a physician or other billable provider such as a nurse practitioner or physician's assistant.

**Technical Infrastructure.** CONTRACTOR will procure and maintain the computer hardware to operate the System, and the networking equipment and telecommunications facilities needed to establish a wide-area network ("WAN") for communication of System data to and from County. The computer hardware, networking equipment, and telecommunications facilities are referred to as the "Technical Infrastructure". The Technical Infrastructure will include:

**Hardware.** Hardware having capacity sufficient to accommodate a production environment for the application software described on Exhibit A.1 (including a Clarity reporting environment) based on usage estimates available to CONTRACTOR as of the date of this agreement, a testing environment for the software described on Exhibit A.1, and a training environment.

**Database and Operating Environments.** Operating environment software provided through third party vendors. This operating software will include: (a) a Cache

overlapping functionality with, or that competes with, or is intended to compete with, any software product offered by Epic now or in the future. County will provide such access only to the extent such third parties must have access to the System in order to make proper use of or support the System in County's operations. County will not provide access to the System to any individual or entity that licenses software to health care facilities or any other potential competitor of Epic or CONTRACTOR without CONTRACTOR's consent (which shall not be unreasonably withheld) and Epic's consent. County will have the same responsibilities to CONTRACTOR for the actions and omissions of third parties, Affiliates, and Permitted Users allowed access to the System by County as County has for its own acts and omissions.

**"Affiliate"** means any entity which is now or hereafter, directly or indirectly, owned or controlled by, controlling or under common ownership or control with, or managed by or under a joint venture or partnership agreement with County.

**"Permitted Users"** means the following persons, subject in each case to the requirements of the below: (a) County, its Affiliates, and their collective employees; (b) authorized agents, students (medical, nursing and other students), volunteers, nurses, physicians, medical staff members, technologists, clinicians, and other personnel on staff or otherwise associated with County and its Affiliates, in each case to the extent involved in any way in the care of any patient involving the System; and (c) any medical practice of a physician who now or hereafter has the privilege to admit patients at, or who provides medical consultation at, County or an Affiliate to the extent involved in any way in the care of any patient involving the System.

**Lab Interface Requirements.** County designates CONTRACTOR as County's representative for transmitting and receiving lab test orders and results. County is required to have at least one operational interface with its lab vendor at the time of Go-Live for use of the System and to update CONTRACTOR promptly and on at least a monthly basis of any modifications requested by the designated lab vendor. Exhibit P lists CONTRACTOR's standard lab interfaces. CONTRACTOR will develop and implement additional lab interfaces only to the extent and on terms agreed between CONTRACTOR and County.

**Indexing Solution.** County is responsible for scanning information in paper format at the County and for determining the amount of information to be scanned for the System. In the event County is more than one week behind staying current on scanning information, CONTRACTOR may require County to provide CONTRACTOR with a written plan for staying current.

**Initial Payment.**

**Adjustments.** The Initial Payment for County has been determined based on estimates of County's billable visits as set forth in Exhibit P. During the first quarter of each calendar year, CONTRACTOR will review County's actual annual billable visits for the prior calendar year and will charge County for any increased level of

**Additional Capacity.** If County substantially increases its visit volume and CONTRACTOR is required to obtain additional bandwidth, County will pay additional telecommunication facilities charges assessed by CONTRACTOR.

**Compliance.**

**Compliance with Epic Agreement.** County's use of the System must in all respects comply with the terms and conditions of the Epic Agreement, including, without limitation, covenants relating to limiting access to authorized users, exercising independent professional judgment in providing patient care, and protecting the trade secrets and other proprietary rights of Epic. County will not be permitted to copy, reverse engineer, or modify code supplied by Epic, except as permitted by CONTRACTOR and the terms of the Epic Agreement. County will be required to take certain affirmative steps identified by CONTRACTOR to assure that County's users comply with the covenants set forth in the Epic Agreement. Additionally, County's use of the System must comply with the terms of any agreements between Epic and CONTRACTOR that arise out of, amend, or relate to the Epic Agreement. CONTRACTOR will provide a copy of the Epic Agreement to County upon request.

**Compliance with Laws and Regulations.** Each party will at all times comply with all applicable laws and regulations including, without limitation, all governmental, Medicare, Medicaid, and whistleblower laws, rules, and regulations governing each party's performance hereunder. County and CONTRACTOR specifically acknowledge that County will provide services to beneficiaries of federal and state health care programs, including Medicare, and that CONTRACTOR and County have an obligation to comply with the requirements of such programs. Additionally, CONTRACTOR shall inform any employees in writing, in the predominate native language of the workforce, that they are subject to whistleblower rights and remedies to the extent applicable under 41 USC 4712.

**County's Additional Implementation Responsibilities.** County has the following responsibilities in connection with implementing the System:

County will adhere to CONTRACTOR's standards and specifications, or County's own standards and specifications if approved in writing by CONTRACTOR, for desktop equipment (such as cabling, workstations, and printers), related desktop software, and connectivity,

County will be responsible for any other costs or responsibilities relating to implementation of the System and not specifically assigned to CONTRACTOR in this agreement, including, but not limited to: (a) backfill resources for staff training or practice time during implementation or upgrades, (b) building tables and master files for County's service area within the System and participating in building shared tables and master files for all service areas, (c) the expenses of any services County requests directly from Epic, (d) providing a facility conducive to the training of County's personnel, and (e) staff expenses owing to

conjunction with grant and other subsidy programs, and other information as required to manage and report on grants and contracts.

**MyChart.** MyChart (Epic's patient portal) provides patients access to health information and education in addition to scheduling and a convenient communication path to their care team. MyChart is a critical component of patient engagement and the successful use of Epic by the County, providers and patients. MyChart implementation requires the portal to be branded with County's logo, colors, and contact information in addition to have a designated representative at the County level that is responsible for insuring the successful use and education of MyChart within the clinic setting. In addition, patients will be considered to be automatically opted in to MyChart unless they specifically opt out. All corresponding fees for MyChart branding and use are included on Exhibit P.

**Data Conversion.** CONTRACTOR will convert demographic data at no cost using CONTRACTOR's then-standard fields. If County chooses to convert either financial data or a large amount of historical data so that additional hardware must be acquired as part of the Technical Infrastructure, County will pay the cost of the additional hardware and any related goods or services. The amount of data converted is at County's discretion; provided, however, that CONTRACTOR may require conversion of any data that CONTRACTOR determines is reasonably necessary to assure that County's use of the System will not be disruptive to other users.

### **Ownership.**

**Ownership of the System.** Epic and other third-party vendors will retain ownership of any application source code or associated written materials used in the System. CONTRACTOR will maintain complete ownership of the Technical Infrastructure hardware, with the exception of telecommunications facilities owned by third parties.

**Ownership of Patient Information.** County will retain ownership of County's patient information. Notwithstanding the foregoing, in order to facilitate continuity of health care and quality assessment activities, the System will utilize a master patient index ("MPJ") permitting aggregation of each patient's data in a central patient record accessible by authorized users of the System. As part of this agreement, County agrees to certain terms relating to the establishment of an organized health care arrangement in accordance with state and federal law (the "OHCA Terms") attached to this agreement. County agrees that continued compliance with the OHCA Terms is a condition to continued access to the System and a material obligation of County under this agreement.

**HIPAA.** In performing their obligations under this agreement, County and CONTRACTOR will comply with applicable provisions of the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder ("HIPAA"). Without limiting the generality of the foregoing, County

**Disclaimer.** THE ABOVE EXPRESS LIMITED WARRANTIES ARE EXCLUSIVE AND ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE AND TITLE, AND ANY IMPLIED WARRANTY AGAINST INTERFERENCE WITH COUNTY'S ENJOYMENT OF THE SYSTEM OR AGAINST INFRINGEMENT, County acknowledges that no employee of Epic or CONTRACTOR, or any other party, is authorized to make any representation or warranty beyond that stated in this agreement.

**Responsibility for Use.**

**Customer Responsible.** Certain components of the System allow County to maintain patient medical records in a computerized, digital format. The System is intended to assist with the accuracy of, and improve accessibility to, medical records. The System, however, does not determine the content of medical records. As with manually kept records, records kept using the System may contain errors, whether resulting from incorrect recording of information, software errors, or other causes. County and authorized users are solely responsible for ensuring that errors that may occur in medical records kept using the System are detected and corrected, and that patient care is not compromised on account of such errors.

**Professional Judgment.** Physicians and other Permitted Users should use the system as a resource in the exercise of professional medical judgment, not as a substitute for that judgment. County acknowledges that neither CONTRACTOR nor Epic practice medicine.

**Medical Care.** County and Permitted Users are solely responsible for any medical diagnosis, treatment, and advice rendered with the assistance of the System.

**Dispute Resolution.** Disputes initiated by either County or CONTRACTOR that arise out of County's use of the System or the terms of this agreement will be resolved through the following procedures:

The complaining party will send a written notice to the other party describing the basis of the dispute and stating that the complaining party is initiating the dispute resolution procedures of this Section.

The party receiving the notice will be required to respond in writing or by telephone within 15 working days of receipt. Any party failing to respond within this time frame will be responsible for the full cost of any resulting arbitration proceeding.

Both parties will be required to meet and negotiate within twenty (20) working days of the date on which the initial notice of the dispute was received. Any party failing to attend this negotiation proceeding (and receiving adequate notice of the proceeding) will be solely responsible for any and all fees and costs of the arbitral tribunal that is convened in any resulting arbitration proceeding unless both parties fail to attend in which case the fees and costs of the arbitral tribunal will

County's patient information by CONTRACTOR shall be in accordance with Exhibit A.5 (HIPAA Compliance Terms).

**Security Provided by CONTRACTOR.** CONTRACTOR (through a third party) will host data servers and other mechanisms that will store, protect, and provide controlled access to County's patient information. This environment will be physically secure and provide the appropriate technical security measures required for such sensitive information and required by law, including current HIPAA regulations. CONTRACTOR will make best efforts to comply with future HIPAA regulations concerning data security. To the extent CONTRACTOR is unable to comply with future HIPAA regulations concerning data security that are applicable to hosting County's data, CONTRACTOR shall inform County in writing, and County shall have the right to terminate the Agreement immediately for good cause as provided in Section 7.02 of the Standard Agreement.

**Security Provided by County.** Because County is subject to HIPAA, County is also independently responsible for protecting the privacy and security of PHI (as defined in Exhibit A.5) contained within the System. To satisfy this responsibility, County must establish, within the appropriate time frame, any privacy and security policies or procedures that are necessary to ensure that County's operations satisfy the requirements of HIPAA. County will ensure that County's policies and procedures regarding access to patient information stored in the System respect the privacy and confidentiality rights of patients and maintain the integrity of the overall System. These policies and procedures should include, but are not limited to, maintaining current user lists, limiting user access, and managing typical network security processes (such as passwords).

**Additional County Security Responsibilities.** In addition to any other security responsibilities of County under this agreement, CONTRACTOR will enable County to set security authorities for County and its personnel with respect to the System, subject to limitation by CONTRACTOR. County is not permitted to give more than two individuals the right to set those security authorities. County is responsible for ensuring that all actions taken by such individuals are in compliance with the Epic Agreement and applicable laws and regulations, and will indemnify CONTRACTOR against any misuse of security authority.

**Meaningful Use.** CONTRACTOR will use commercially reasonable efforts to ensure that the EMR software provided to County is "Certified EHR Technology" as that term is defined at 45 C.F.R. § 170.102 as of the date of this agreement, County acknowledges that whether County is a "Meaningful EHR user" as that term is defined at 42 C.F.R. § 495.4 ultimately depends on how and the extent to which County makes use of the EMR software and other factors beyond the control of CONTRACTOR,

**Force Majeure.** Neither party shall be held responsible because of any delay in performance or noncompliance with any provisions of this agreement that results from an unforeseeable act, event, or omission beyond its reasonable control and without its fault or negligence,

**Exhibit A.3  
SERVICES**

County utilizes services of CONTRACTOR as follows:

County utilizes the electronic prescribing solution offered by OCHIN entitled EPCS consistent with the attached Exhibit B with pricing contained in Exhibit P.

County utilizes CareMessage currently as a pilot subject to the Statement of Work attached hereto as Exhibit C and pricing as captured in Exhibit P. Effective May 1, 2019, County will utilize CareMessage consistent with the terms and conditions contained in Exhibit C.1



Basic generic analysis and development of operation procedures and work flows.

Application configuration.

Electronic table loads and updates.

Setup of the CONTRACTOR network and telecommunications equipment included in the Technical Infrastructure.

Providing standard configuration information and requested consultation for workstations and printers.

Security setup within application and technical environment.

Support during Go-Live to supplement County's support resources during this period.

**Ongoing Support.** After Go-Live, CONTRACTOR will arrange for provision of the following support services, which may be provided in person or by telephone, fax, email, modem, or other form of remote communication or access:

**Help Desk.** CONTRACTOR will provide assistance to County's Contact Personnel designated to request support from CONTRACTOR, by making support representatives reasonably available at the CONTRACTOR help desk in the event County's Contact Personnel are unable to resolve a software problem. This support service will be available according to the following schedule:

Monday through Friday

Normal help desk hours	On call
8:00 a.m. – 5:00 p.m.	5:00 p.m. – 8:00 a.m.

Saturday

On call
7:00 a.m. — 7:00 p.m.

(All times are Pacific Time)

If County makes a service request outside of normal help desk hours or requires that help desk hours be extended on a regular basis, County will be billed at CONTRACTOR's then-standard rate for such services. Outside of normal help desk hours, County should contact the help desk through CONTRACTOR's work order management system, or by phone to the help desk number in case of an emergency.

CONTRACTOR must provide in writing a detailed breakdown of authorized expenses, identifying what was expended and when.

**Availability of County Personnel for Training.** Training will be provided as agreed upon in writing by the parties.

**Implementation Training Materials.** CONTRACTOR may provide County with standardized implementation training materials at cost. County can request customized materials to be prepared at rates agreed to by CONTRACTOR.

**Provider Workload.** County must be prepared to decrease temporarily the patient load of its clinical providers in amounts necessary to facilitate safe and effective implementation of the System.

**Upgrade Training.** Training for upgrades to the System will be provided by County's System specialist. County can request upgrade training directly by CONTRACTOR at rates agreed to by CONTRACTOR.

- 2.4 Disclosure Procedure.** Unless such disclosure is required by law, CONTRACTOR may not disclose PHI unless: (a) CONTRACTOR obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (b) the person notifies CONTRACTOR of any instances of which the person is aware of breaches of confidentiality of the PHI.
- 2.5 Responses to Third Party Requests.** As required by CONTRACTOR's policies, CONTRACTOR will provide County with notification of any third-party requests for County's PHI that are otherwise permitted or required by law. County's failure to object to CONTRACTOR's processing of PHI consistent with any such lawful requests constitutes County's consent to the uses or disclosures of PHI contained within any such request. CONTRACTOR may charge County reasonable fees for responding to third party PHI disclosure requests; subject to the mutual agreement of the parties,

### **3. Data Use**

- 3.1 Data Aggregation.** A.2 permits CONTRACTOR to use PHI for certain Data Aggregation services relating to County's health care operations, including a state-wide data warehouse and the Epic Data Service. "Data Aggregation" means, with respect to PHI disclosed to CONTRACTOR, combining such PHI with PHI received by CONTRACTOR in its capacity as a business associate of another entity covered by the HIPAA Regulations to permit data analyses that relate to the health care operations of the respective covered entities.
- 3.2 Use of Electronic Health Information Exchanges.** County wishes to use and disclose PHI as authorized under HIPAA through the use of electronic health information exchanges ("HIE"). County has requested that CONTRACTOR facilitate the electronic exchange and disclosure of PHI related to County's patients by transmitting data through HIEs on County's behalf. County authorizes CONTRACTOR to disclose PHI related to County's patients through HIEs as may be requested and directed by County. County authorizes CONTRACTOR to manage County's requests for, and disclosures of, PHI from and to the other participants in HIEs. County represents and warrants that all consents required under HIPAA for the transmission of PHI through an HIE shall have been obtained by County and that the transmissions and disclosures requested by County will be in furtherance of and in compliance with County's permitted uses and disclosures of PHI as a covered entity under HIPAA. County will indemnify, defend, and hold harmless CONTRACTOR and its officers, directors, employees, and agents from and against all Claims arising from any improper use or disclosure of PHI and incurred as a result of County's request or directive to use or disclose PHI through an HIE, except to the extent the Claims arise from CONTRACTOR's failure to comply with this Agreement. This indemnification obligation will be in addition to all other indemnification obligations provided for in the Agreement.

CONTRACTOR agree to the same restrictions and conditions that apply to CONTRACTOR with respect to such PHI.

- 4.4 **Availability.** CONTRACTOR shall make PHI in its possession available to the individual who is the subject of the PHI as required by the HIPAA Regulations.
  - 4.5 **Amendment.** CONTRACTOR shall make available PHI in its possession for amendment of the PHI by the person identified in the PHI and incorporate any such amendments in accordance with the HIPAA Regulations,
  - 4.6 **County.** If CONTRACTOR has PHI in a designated record set, CONTRACTOR will provide County, upon County's reasonable request, access for inspection of CONTRACTOR's books, records, policies, practices, and procedures concerning the use and disclosure of PHI for purposes of assisting County with its obligations for record keeping and compliance with complaint investigations and compliance reviews as required by the HIPAA Regulations.
  - 4.7 **Mitigation.** CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use of PHI by CONTRACTOR in violation of the terms of this Exhibit .
  - 4.8 **County's Obligations.** To the extent that CONTRACTOR carries out County's obligations under the HIPAA Regulations, CONTRACTOR shall comply with the requirements of the HIPAA Regulations that apply to the County in the performance of such obligations.
5. **Accounting of Disclosures.** Although CONTRACTOR does not anticipate making disclosures other than for the purposes of the Agreement and this Exhibit, CONTRACTOR will maintain a record of all disclosures of PHI made otherwise than for the purposes of the Agreement, including the date of the disclosure, the name and address (if known) of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure as necessary to permit County to respond to a request by an individual for an accounting of disclosures in accordance with 45 CFR § 164.528. CONTRACTOR will make such record available to County on request.
  6. **Disclosure to U.S. Department of Health and Human Services.** CONTRACTOR will make its internal practices, books, and records relating to the use and disclosure of PHI received from County (or created or received by CONTRACTOR on behalf of County) available to the Secretary of the United States Department of Health and Human Services, for purposes of determining CONTRACTOR's and County's compliance with the HIPAA Regulations.
  7. **Termination.** In the event of a material breach of these HIPAA Compliance Terms by CONTRACTOR, County shall provide CONTRACTOR notice and not less than thirty (30) days opportunity to cure. County may terminate the Agreement if CONTRACTOR does not cure the breach within this thirty (30) day period.

**Exhibit A.6**  
**Organized Health Care Arrangement Terms**

*Unless otherwise defined, capitalized terms in this exhibit have the meanings given on the Standard Agreement or the other exhibits.*

**1. Purpose.**

**OHCA Established.** The Organized Health Care Arrangement ("OHCA") described herein is established, in accordance with the HIPAA Standards for Privacy of Individually Identifiable Health Information set forth at 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164 (hereafter the "Privacy Rules") for the purpose of better serving County patients and enhancing the benefits of information technology services provided by CONTRACTOR, including joint quality improvement and assessment activities conducted by CONTRACTOR in conjunction with County and other CONTRACTOR members participating in the OHCA (hereafter collectively the "OHCA Participants").

**Limitations.** The OHCA described herein is established for the sole and limited purpose of meeting the OHCA requirements set forth in the Privacy Rules. County shall exercise medical judgment free of any direction or control by CONTRACTOR or the OHCA Participants. The OHCA described herein shall not be construed to (a) constitute a partnership, joint venture, or other common undertaking of any kind whatsoever, or (b) allow any party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

**Obligations of County.**

**Compliance with OHCA Exhibit; Amendments.** County understands and agrees that compliance with this exhibit is required to permit County's ongoing use of the CONTRACTOR practice management or electronic medical record systems. Further, County agrees that amendments to this exhibit approved by a majority vote of the OHCA Participants will become binding and enforceable thirty (30) days following written notice to County (the "Amendment Notice Period"), provided that County continues to use either CONTRACTOR's practice management or electronic medical record system following the Amendment Notice Period.

**Compliance with HIPAA.** County is responsible for County's own compliance obligations under HIPAA and any other applicable law or regulation including without limitation the obligation to prepare, use, and distribute a notice of privacy practices consistent with the requirements of the Privacy Rules. Other than the limited responsibilities as an OHCA Participant described herein, neither CONTRACTOR nor any OHCA Participant is undertaking any responsibility whatsoever in relation to compliance obligations of County.

**Standards and Guidelines.** As a participant in the OHCA, County agrees to abide by the terms of this exhibit, as well as the standards and guidelines for the

**Exhibit A.7**  
**Care Everywhere Module**

*Unless otherwise defined, capitalized terms in this exhibit have the meanings given on the Standard Agreement or the other exhibits.*

**A. Background.** Epic and CONTRACTOR are parties to the Epic Agreement, pursuant to which CONTRACTOR has obtained the right to offer County access to the Care Everywhere module ("Care Everywhere") as an additional component of the System. This exhibit sets forth the terms on which CONTRACTOR will provide County with access to and use of Care Everywhere.

**B. County Consent to Functionality.** Subject to the terms and conditions of this exhibit, CONTRACTOR will implement Care Everywhere, which provides the following functionality:

- County's employees may query patient records of any Care Everywhere Member. For purposes of this exhibit, "Care Everywhere Member" means an organization, other than CONTRACTOR and its members that participate in Epic's Care Everywhere community,
- County's clinicians may view patient records from Care Everywhere Members.
- Care Everywhere Members may query and view County's patient records.

County consents to the uses of patient data described above.

**C. Fees.** Initially, there is no additional fee for implementation and use of Care Everywhere. If, in the future, Epic determines to impose fees on CONTRACTOR for use or maintenance of Care Everywhere, CONTRACTOR and County will either reach an agreement with all members on an appropriate fee structure and amount or will cease the use of Care Everywhere. If CONTRACTOR chooses to cease use of Care Everywhere for any reason, CONTRACTOR shall give County 60 days' notice of the intent to cease use of Care Everywhere, and, subject to approval by Epic, CONTRACTOR will continue to allow County access to Care Everywhere at no charge to County for 60 days from the date of notice by CONTRACTOR.

**D. CONTRACTOR Responsibilities.** CONTRACTOR will:

- Create reports of requests by Care Everywhere Members for County's patient records.
- Comply with requirements of the Epic Agreement relating to Care Everywhere and the attached Rules of the Road established by Epic for use of Care Everywhere (together, as may be amended or supplemented from time to time, the "Epic Requirements"), to the extent applicable to acts or omissions of CONTRACTOR in providing County access to Care Everywhere.

CONTRACTOR, Care Everywhere Members, and Epic. Epic would like to protect those customer representatives, their organizations, and Epic from liability for agreeing to help with the Oversight Activities, Therefore, to the extent permitted by the law applicable to CONTRACTOR, CONTRACTOR has agreed to hold harmless, indemnify, and defend Ombudsman Committee Members (and to the extent Epic is providing any Oversight Activities, Epic), and each of their officers, employees, contractors, and agents (collectively the "Indemnitees") from and against any Claim brought by CONTRACTOR, CONTRACTOR's End Users or CONTRACTOR's Patients asserted against the Indemnitees or any of them, arising out of, or in any way connected with the Oversight Activities including without limitation claims based on an Indemnitees' negligence. For purposes of this exhibit: (a) "Claim" means a claim, damage, liability, claim of loss, lawsuit, cause of action, or other claim and includes without limitation, reasonable attorneys' fees; (b) "CONTRACTOR's End Users" means any individual or entity to whom CONTRACTOR provides access to any Program Property (as defined In the Epic Agreement) if the Claim relates to any situation in which the individual or entity had or would have had access to the Program Property through CONTRACTOR; and (c) "CONTRACTOR's Patients" means any patient of CONTRACTOR or CONTRACTOR's End Users or any person making a claim as a result of financial or familial relationship with such patient, in each case if the Claim relates to any situation in which the patient was receiving or seeking medical care from CONTRACTOR or CONTRACTOR's End Users. Capitalized terms used in this paragraph without definition have the meanings given in the Epic Agreement.

**2. County's Obligations to CONTRACTOR.** In addition to any other indemnification obligations under this agreement, County will hold harmless, indemnify, and defend CONTRACTOR and its officers, employees, contractors, and agents from and against any Claim arising under or from CONTRACTOR's obligations to Indemnitees as described above to the extent attributable to negligent acts or omissions of County or County's willful violations of its obligations under this Agreement.

4. You agree that You will not restrict any other CE Customer from obtaining any of the patient information available through the CE Item with the following exceptions:
  - (i) Information for a patient You have marked in the system as having opted out of the use of Care Everywhere to transfer Your records for such patient;
  - (ii) Information for a patient marked by You in the system as having a specific status that is available in Care Everywhere (e.g. VIP patients) to restrict the transfer of information for patients having such status; or
  - (iii) Encounter Summary reports for a patient if You have chosen not to make such information available for any patient via Care Everywhere.
  
5. CE creates a community of users, all with the same goal of improving patient care by making additional patient information available to other providers. It is critical that all CE Customers cooperate with each other regarding issues that may arise regarding use of CE. As such, it is not Epic's role to act as a policing authority to enforce these Rules. At the request of a majority of the CE Customers, Epic and the CE Customers will work together to define and create a committee to oversee compliance by CE Customers with the Rules of the Road (the "Ombudsman Committee"). However, until such time as an Ombudsman Committee is created and implements a new procedure to enforce the Rules of the Road, if You believe that another CE Customer has violated these Rules and are unable to resolve the issue with such customer, then the following procedure will apply ("Review Procedure");
  - (i) You may file a petition with Epic that identifies the CE Customer allegedly in violation and includes a complete description of the alleged violation and any supporting documentation.
  - (ii) All CE Customers named in the petition agree to cooperate with any investigation conducted concerning violations.
  - (iii) For purposes of the use of CE only, Epic will determine, in its sole discretion, whether a violation occurred and the appropriate CE remedy for such violation, which may include, without limitation, permitting individual CE Customers to elect to discontinue exchanging information with the individual who violated the requirements (if possible) or with the CE Customer in violation or entirely removing the CE Customer in violation from the CE community (either permanently or for a specified period of time). You agree to accept Epic's decision and to permit Epic to modify any configurations in Your system to carry-out its decision. You agree not to sue Epic, its officers, employees, contractors, or agents with respect to Epic's action or inaction in the Review Procedures, including without limitation, Epic not removing a CE Customer from the CE community, or Epic removing You or another CE Customer from the CE community, or any harm to a patient because You or Your end users do not have access to the patient's information as a result of Epic's action or inaction.



## **Exhibit A.8**

### **Help Desk / Work Orders Responsibilities and Expectations**

*Unless otherwise defined, capitalized terms in this exhibit have the meanings given on the Standard Agreement or the other exhibits.*

#### **Overall Process**

CONTRACTOR members are supported by their organizations' subject matter experts as a first level of assistance with CONTRACTOR systems. Larger member organizations additionally have an application help desk as a second level of assistance. A third level of assistance is the CONTRACTOR Help Desk, which monitors requests received through CONTRACTOR's work order management system (called work orders) and maintains a centralized Help Desk phone during extended office hours.

Once a problem or request is entered in the work order management system, it is assigned to the CONTRACTOR technician responsible for the type of assistance needed. The CONTRACTOR technician will assess the request and either manage it to conclusion—or, if reassignment is required, ensure an effective handoff for another technician's attention and management to completion. All activities documented in the work order are date/time stamped by the handling technician.

#### **Work Order Management System**

A work order management system is used by member organizations to request information, solutions, and services from CONTRACTOR. It is used by CONTRACTOR staff to receive member requests, document status as the request is being worked, and communicate resolution. It is CONTRACTOR's goal to manage and fulfill requests through this system in a way that ensures quality work and reasonable and responsive outcomes.

Work order requests that are determined to be development project requests will be classified in the work order management system as a project. An e-mail will be sent to the requestor indicating that the work order is being reclassified in the system and will be handled as a development project. Development projects are subject to CONTRACTOR's review, prioritization, schedule, and if applicable, statement of work process.

#### **County Responsibilities and Expectations**

- Provide first level of support, and in some instances, second level help desk support to their organization.
- Use CONTRACTOR's electronic work order process as the primary mode of communication for work order request and other support needs.
- During County's business hours, only use CONTRACTOR Help Desk phone for critical or high-level issues and/or unique support situations. The issue must still be entered into the work order management system.

- Any time that a work order is transferred from one CONTRACTOR analyst to another, CONTRACTOR will send the requestor an e-mail notifying them of the change.
- After 10 business days of no response from County for additional information, CONTRACTOR can close a work order request. Before closing the work order, CONTRACTOR will contact County by telephone or e-mail for second and third requests for information.

#### Acknowledgement and Prioritization Expectations/Standards

CONTRACTOR will use reasonable efforts to provide support services in accordance with the prioritization of reported problems described below for those support functions provided directly by CONTRACTOR personnel. The initial determination of priority shall be made solely by County in its reasonable discretion. As specified in the CONTRACTOR and Epic Agreement, certain support and maintenance services are provided by Epic rather than by CONTRACTOR personnel. Epic's commitments to CONTRACTOR regarding response times are provided below for reference, but are not guaranteed by CONTRACTOR.

As part of the initiation of action phase, CONTRACTOR will conduct an initial analysis of the issue/problem and determine a tentative resolution and/or workaround due date that will be shared with County. Upon receipt of the due date and within 24 hours, County will agree or disagree with the due date (failure to do so, will be an indication of agreement with the due date). If County disagrees with the due date, the parties shall promptly escalate the issue to the Chief Operating Officer of CONTRACTOR and the equivalent officer of County's organization. The goal is to have CONTRACTOR and County mutually agree on reasonable due dates.

Since some County requests may require enhancements to the System, involve specialty builds or pre-scheduled imports, or otherwise require extensive consultation between the requestor (County) and CONTRACTOR or between Epic and CONTRACTOR, due dates can be revised following analysis or unforeseen problems. Whether it is the initial or revised, the goal is to have CONTRACTOR and County mutually agree on due dates. Requestor's failure to timely respond to CONTRACTOR's reasonable request (e.g. request for information, testing request, clarification request, etc.) may cause additional due date changes. All due date changes are documented in the work order management system for direct and immediate communication to County.

**Level 1 — Critical:** Problem either stops normal processing and impacts one or more clinics, or threatens the quality of clinical data.

**CONTRACTOR** — Reasonable efforts will be made to acknowledge the problem within 1 hour, initiate action immediately thereafter, and resolve the problem within 8 hours. If a Level 1 problem occurs, CONTRACTOR personnel shall diligently and continuously work on resolving the problem (before, during and after normal business hours) and if the problem cannot be promptly resolved, CONTRACTOR shall escalate its response and commit additional and more experienced personnel to resolving the problem.

- A downed printer that does not stop daily processing (e.g., Provider View Schedule, Daily Arrival Report)
- Issues with reports

**Level 4 – Low:** Problem is of minor nature and does not substantially impact the use of the System by individual or departmental group of users.

**CONTRACTOR** – Reasonable efforts will be made to acknowledge the problem within 1 business day and initiate action within 10 business days.

**Epic Commitment to CONTRACTOR** – After being notified of the issue/problem by CONTRACTOR, acknowledgement of the problem within 1 business day

Examples:

- Letters for follow-up appointments (new functionality)
- Remove provider from provider table

**Exhibit A.10**  
**Additional Uses and Disclosures**

*Unless otherwise defined, capitalized terms in this exhibit have the meanings given on the Cover Pages or the other exhibits.*

**1. Background.**

From time to time, County must report certain health data pertaining to County's patients, including personal health information ("PHI") for such patients, for public health activities. County would like for CONTRACTOR to facilitate County's compliance with such reporting requirements, and to otherwise assist County with fulfilling requests for PHI for public health activities by permitting CONTRACTOR to use and disclose PHI related to County's patients on behalf of County for such purposes.

CONTRACTOR has entered into an arrangement with the Social Security Administration ("SSA") to assist with SSA's process of confirming a patient's eligibility in the SSA disability program ("Program") and other uses directly related to the Program. CONTRACTOR's arrangement with the SSA for this purpose requires CONTRACTOR to participate in the electronic data exchange known as the National Health Information Network ("NHIN") under that certain Data Use and Reciprocal Support Agreement entered into by CONTRACTOR on August 4, 2010 ("DURSA").<sup>1</sup> County would like CONTRACTOR to use and disclose PHI related to County's patients on behalf of County through the NHIN for purposes of confirming eligibility of County's patient in the Program and other uses directly related to the Program.

County wishes to use and disclose PHI as authorized under HIPAA through the use of electronic health information exchanges ("HIE"). County can request that CONTRACTOR facilitate the electronic exchange and disclosure of PHI related to County's patients by transmitting data through HIEs on County's behalf through a Statement of Work. Any corresponding potential cost will be agreed to by County prior to the beginning of the related project.

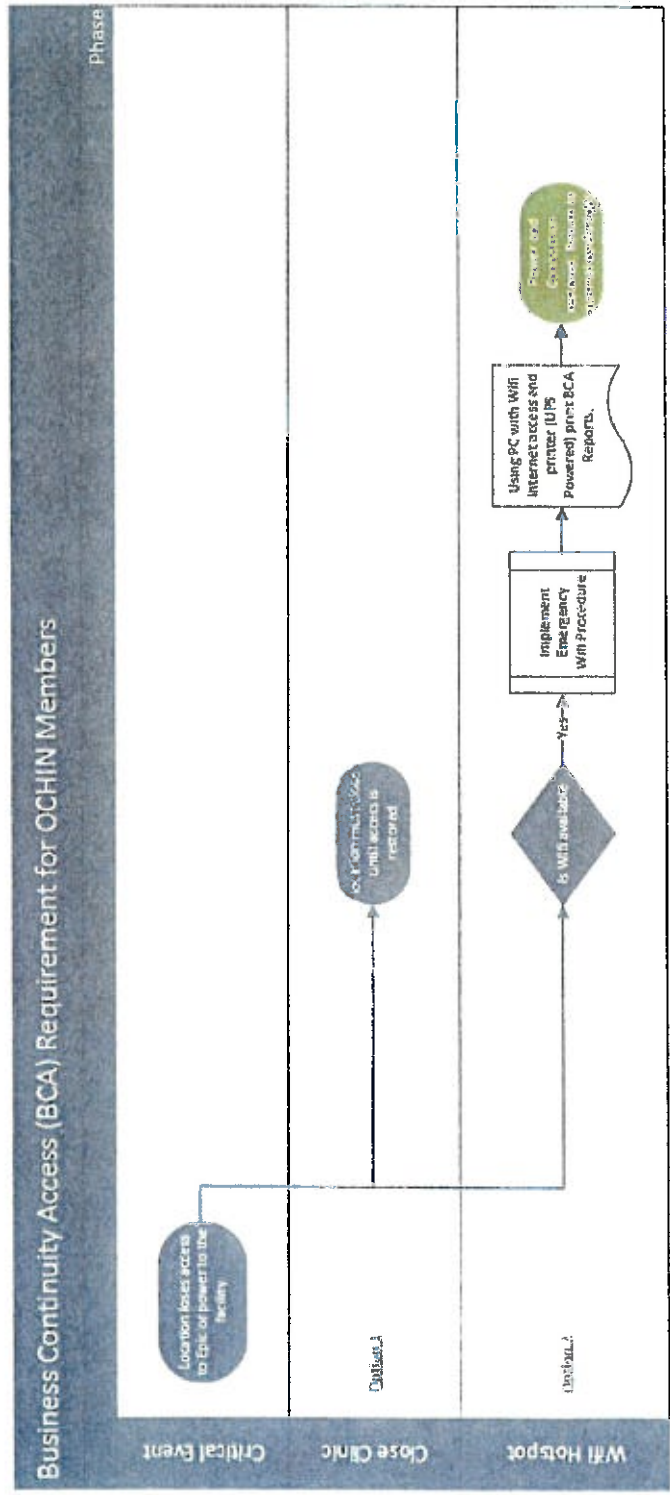
- 2. Disclosures for Certain Public Health Activities.** County authorizes CONTRACTOR to use and disclose PHI pertaining to County's patients to a public health authority (as that term is defined at 45 CFR § 164.501) on behalf of County in response to data requests for public health activities in accordance with 45 CFR § 164.512(b)(1)(i) provided that CONTRACTOR provides County with written notice not less than thirty (30) days in advance of any such proposed disclosure. If County objects in writing within the thirty (30) day notice period, the disclosure will not be made on behalf of County, except to the extent CONTRACTOR is required by law to make such disclosure. Written notice may be made via email to the Contact for Notices as set forth on the Cover Pages, or to other authorized individual(s) as designated by County from time to time.

<sup>1</sup> The DURSA entered into by CONTRACTOR on August 4, 2010 is available at: <https://memberochin.org/documentation>

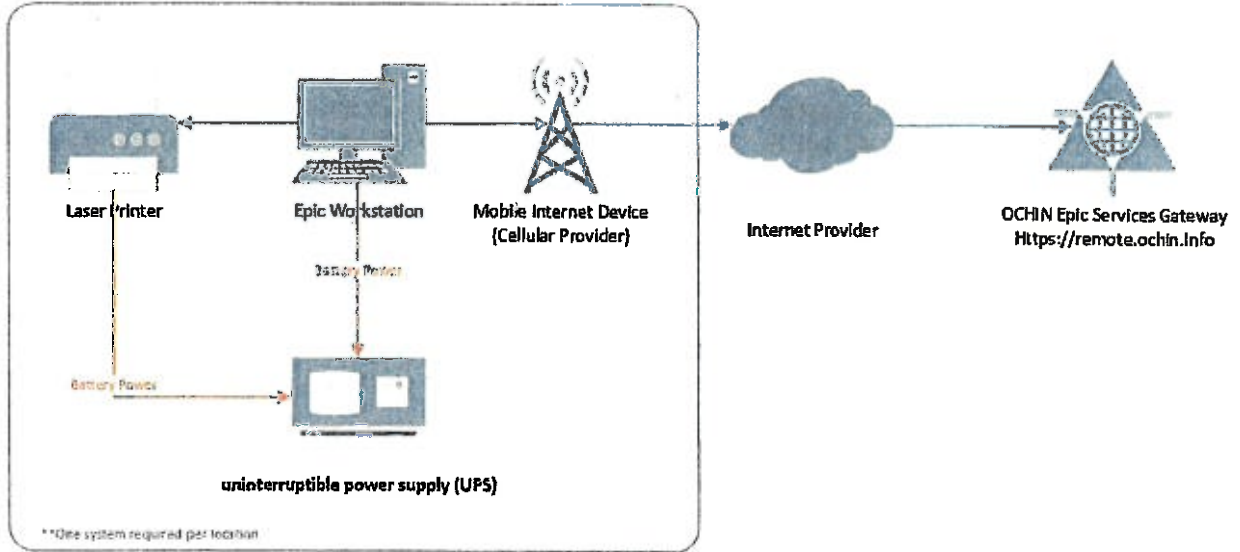
**Exhibit A.11**  
**Business Continuity Access**

1. **Business Continuity.** Pursuant to Epic requirements governing County's access to and use of EMR and the System, County hereby adopts and implements the Business Continuity Plan ("BCP") indicated by County on the attached "Business Continuity Access Requirements". In addition, County hereby adopts and implements all other Business Continuity Access Requirements identified on the attached. County's BCP will be subject to the access fees indicated on Exhibit P and payable upon the terms and conditions described in A.2. Access fees are subject to change by CONTRACTOR's Board of Directors at its sole discretion.
  
2. **Lab Demographic Errors.** County hereby acknowledges and agrees that, to the extent County uses the services of a third-party lab ("Lab"), County shall be solely responsible for all Lab-generated Information and demographics. County will be solely responsible for ensuring that Lab-generated demographic information matches the Epic demographic information for each applicable patient prior to transmission of any Lab information or data. CONTRACTOR will not be responsible or liable for any Lab information that is improperly filled due to mismatched demographic information. County will be solely responsible for monitoring transmissions of Lab information, for ensuring that such information is accurately filed, and resolving and correcting any errors in a timely manner.

Attachment 1 to Exhibit AA  
Workflow and Wi-Fi Hot Spot Diagram



TITLE  
OCHIN Wifi Hotspot (BCA Requirement)



## Service Terms and Conditions

**EFFECTIVE AS OF OCTOBER 30TH, 2017**

These Service Terms and Conditions ("Agreement") constitute a contract between Duo Security, Inc. with offices at 123 North Ashley Street, Suite #200, Ann Arbor, MI 48104 ("Duo Security"), and you. This Agreement includes and incorporates the webpage Order Form with which Customer purchased the Services and any subsequent Order Forms (submitted in written or electronic form). By accessing or using the Services, you agree to be bound by this Agreement. If you are entering into this Agreement on behalf of a company, organization or other entity, you represent that you have such authority to bind such entity and are agreeing to this Agreement on behalf of such entity. If you do not have such authority to enter into this Agreement or do not agree with these terms and conditions, you may not use the Services.

### 1. DEFINITIONS

- 1.1 "Applicable Law" means the Data Protection Laws and any other applicable laws, rules and regulations.
- 1.2 "Customer" means the customer that has signed up for the Services and agreed to the terms of this Agreement.
- 1.3 "Customer Data" means any information or data about Customer or Users (and its and their staff, customers or suppliers, as applicable) that is supplied to Duo Security by or on behalf of Customer or any User in connection with the Services, or which Duo Security is required to access, generate, process, store or transmit pursuant to this Agreement, including (without limitation) information about Customer's and Users' respective devices, computers and use of the Services. Customer Data shall not be deemed to include any Performance Data
- 1.4 "Customer Personal Data" means any Customer Data that is personal data (as defined under the applicable Data Protection Laws).
- 1.5 "Data Protection Laws" means all data protection and privacy laws, rules and regulations applicable to a party and binding on that party in the performance of its obligations under this Agreement, including, where applicable, EC Directive 2002/58/EC and (i) prior to 25 May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the Processing of Personal Data and on the free movement of such data; and (ii) on and after 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection Regulation), Welfare and Institutions Code sections 5328, et seq., 14100.2, and 10850, et seq; Title 45 Code of Federal Regulations section 205.50, and Title 42, CFR, section 431.300 et seq., 42 CFR Part 2, Health and Safety Code §120980, Civil Code 56.10, 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



- 1.14 "Payment Schedule" means the schedule selected by Customer for payment of Fees (on either an order webpage or an attached Order Form), which may be either monthly by credit card or annually or multi-year and invoiced in advance, with payment due within thirty (30) days of receipt of invoice.
- 1.15 "Performance Data" means any and all aggregate, de-identified data relating to the access or use of the Services by or on behalf of Customer or any User, including any performance, analytics or statistical data, that Duo Security may collect from time to time.
- 1.16 "Services" means the products and services that are ordered by or made available to Customer under a free trial or an Order Form, including, where applicable, the Software, Hardware Tokens and services using only the Duo Mobile Software, and made available online by Duo Security, including associated offline components, as described in the Documentation.
- 1.17 "Service Level Agreement" or "SLA" means the description of the availability of the Services, which descriptions may be found at: <https://www.duo.com/legalisla>.
- 1.18 "Software" means (i) Duo Security proprietary software (including the Duo Mobile Software), and (ii) open source software used in providing the Services which integrates with Customer's network or application, including SSL or other VPN, Unix operating system, Microsoft application, or web application, as provided in the Documentation and any updates, fixes or patches developed from time to time.
- 1.19 "Telephony Credits" mean credits for Customer's Users to provide authentication by telephone or SMS.
- 1.20 "Term" means the subscription term indicated on the Order Form and any subsequent renewal terms.
- 1.21 "User" means any user of the Services whom Customer may authorize to enroll to use the Services under the terms of this Agreement.

2. SERVICES FOR CUSTOMER; DUO SECURITY OBLIGATIONS

- 2.1 Subject to and conditioned on Customer's payment of Fees and full compliance with all other terms and conditions of this Agreement, Duo Security grants Customer and Users a non-exclusive, non-sublicensable, non-transferrable license to access and use the Services, along with such Documentation as Duo Security may make available during the Term. Duo Security Services are provided for commercial use only, not for private use,
- 2.2 The Services and SLA are subject to modification from time to time at Duo Security's sole discretion, provided the modifications do not materially diminish the functionality of the Services provided by Duo Security and the Services continue to perform according to the description of the Services specified in

- 3.3 Use of the Services may require Users to install Duo Mobile Software on their mobile devices, which use shall be subject to this Agreement. Customer's use of third party products or services that are not licensed to Customer directly by Duo Security ("Third Party Services") shall be governed solely by the terms and conditions applicable to such Third Party Services, as agreed to between Customer and the third party. Duo Security does not endorse or support, is not responsible for, and disclaims all liability with respect to Third Party Services, including without limitation, the privacy practices, data security processes or other policies related to Third Party Services, Customer agrees to waive any claim against Duo Security with respect to any Third Party Services,
- 3.4 Customer acknowledges that the Services will require Users to share with Duo Security certain information which may include personal information regarding Users (such as usernames, Duo Admin Panel passwords, email address and/or phone number) solely for the purposes of providing and improving the Services. Prior to authorizing an individual to become a User, Customer is fully responsible for obtaining the consent of that individual, in accordance with Applicable Law, to the use of his/her information by Duo Security, which use is described in Duo Security's privacy policy, located at <https://www.duo.com/legal/privacy>. Customer represents and warrants that all such consents have been or will be obtained prior to authorizing any individual to become a User.
- 3.5 Customer will be fully responsible for Users' compliance with this Agreement and any breach of this Agreement by a User shall be deemed to be a breach by Customer. Duo Security's relationship is with Customer and not individual Users or third parties using the Services through Customer, and Customer will address all claims raised by its Users, and third parties using the Services through Customer, directly with Duo Security, Customer must ensure that all third parties that utilize the Services through Customer agree (a) to use the Services in full compliance with this Agreement, and (b) to the extent permitted by Applicable Law, to waive any and all claims directly against Duo Security related to the Services,

#### 4. RESTRICTIONS

Customer will not, and will not permit any Users nor any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services, Software, Hardware Tokens or any data related to the Services (except to the extent such prohibition is contrary to Applicable Law that cannot be excluded by the agreement of the parties); modify, translate, or create derivative works based on the Services or Software; share, rent, lease, loan, resell, sublicense, distribute, use or otherwise transfer the Services or Software for timesharing or service bureau purposes or for any purpose other than its own use, except as expressly provided in an applicable Order Form; or use the Services or Software other than in accordance with this Agreement and in compliance with Applicable Law.

#### 5. PAYMENT OF FEES

- 6.1 The term "Confidential Information" means any information disclosed by one party ("Disclosing Party") to the other party ("Receiving Party") in any form (written, oral, etc.) that is marked as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure, including, without limitation: trade secrets; technology and technical information (intellectual property, inventions, know-how ideas and methods); business, financial and customer information (including Customer Data and Customer Personal Data); pricing, forecasts, and strategies and product development plans. Each party understands that the Disclosing Party has or may disclose Confidential Information in connection with this Agreement, but that Receiving Party shall receive no rights in, or licenses to, such Confidential Information.
- 6.2 The Receiving Party agrees: (i) not to disclose Confidential Information to any third person other than those of its employees, contractors, advisors, investors and potential acquirers ("Representatives") with a need to have access thereto and who have entered into non-disclosure and non-use agreements applicable to the Disclosing Party's Confidential Information, and (ii) to use such Confidential Information solely as reasonably required in connection with the Services and/or this Agreement. Each party agrees to be responsible for any breach of this Agreement caused by any of its Representatives. The Receiving Party further agrees to take the same security precautions to protect against unauthorized disclosure or unauthorized use of such Confidential Information of the Disclosing Party that the party takes with its own confidential or proprietary information, but in no event will a party apply less than reasonable precautions to protect such Confidential Information. Each party acknowledges that the use of such precautions is not a guarantee against unauthorized disclosure or use. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document: (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Notwithstanding the foregoing, nothing in this Agreement will prevent the Receiving Party from disclosing Confidential Information as required in response to a request under applicable public records laws or pursuant to any judicial or governmental order, provided that, to the extent permitted by law, the Receiving Party gives the Disclosing Party reasonable prior notice to contest disclosures pursuant to judicial or government order. For the avoidance of doubt, Customer acknowledges that Duo Security utilizes the services of, and Customer may request additional services from, certain third parties in connection with Duo Security's provision of the Services (such as data hosting and telephony service providers and Customer's Third Party Services providers) and such third parties will have access to Customer's Confidential Information, including Customer Data, in accordance with this Agreement. The parties agree that Performance Data is not Confidential

Customer is responsible for providing any and all instructions to the Third Party Service provider about the use and protection of Customer Data. Duo Security and Third Party Service providers are not subprocessors of each other.

- 8.4 As the data controller of Customer Personal Data, Customer represents and warrants to Duo Security that its provision of personal data to Duo Security and instructions for processing such personal data in connection with the Services shall comply with all Data Protection Laws. This shall include (without limitation) ensuring that Customer: (i) has given adequate notice and made all appropriate disclosures to data subjects regarding Customer's and Duo Security's use and disclosure of Customer Personal Data; and (ii) has or obtains all necessary rights, and where applicable, all appropriate and valid consents from the data subjects to share such personal data with Duo Security and to permit use of Customer Personal Data by Duo Security in connection with its obligations under this Agreement or as may be required by Applicable Law, including (without limitation) notifying the data subject of the transfer of Customer Personal Data outside of the European Economic Area to countries whose laws they have acknowledged may provide a lower standard of data protection than exists in the European Economic Area.
- 8.5 At the request of Customer, Duo Security and Customer shall negotiate a separate data processing agreement and/or model contract clauses setting forth each party's obligations in respect of any processing of Customer Personal Data, which agreement and/or model contract clauses will be incorporated herein by reference once executed by the parties.
- 8.6. Customer acknowledges that Duo Security is reliant on Customer for direction as to the extent to which Duo Security is entitled to use and process Customer Personal Data. Consequently, Duo Security will not be liable for any claim brought by a data subject to the extent that such action or omission resulted directly from Customer's instructions. Customer undertakes to comply in all respects with Applicable Law applicable to personal data and shall use all reasonable endeavors to where possible anonymize personal data sent to Duo Security.
- 8.7 In accordance with applicable Data Protection Laws, Duo Security shall take all commercially reasonable measures to protect the security and confidentiality of Customer Personal Data against any accidental or illicit destruction, alteration or unauthorized access or disclosure to third parties. Duo Security will provide Customer with its security policy, upon request, that sets forth the technical specifications and the detailed measures taken to protect the security and confidentiality of Customer Personal Data.
- 8.8 Customer may, upon at least thirty (30) days prior notice, and no more than once per 12 month period, appoint an independent third party auditor to physically inspect and audit, at Customer's sole cost and expense, any facilities owned or controlled by Duo Security in which Customer Personal Data is processed or

expired. Each Order Form and this Agreement shall automatically renew after the Initial Term and any renewal Term for a renewal Term equal to the expiring subscription Term, unless either party provides to the other at least thirty (30) days prior written notice that it will not renew. The Fees per User for each renewal Term will be equal to the Fees per User for the immediately prior Term, plus a price increase. Any pricing increase will not exceed seven percent (7%) per year, unless the pricing was designated in the applicable Order Form as promotional or one-time; provided, however, the Fees for each renewal Term shall not exceed the list price as of the start date of such renewal Term.

- 10.2 In the event of any material breach of this Agreement by either party (other than Customer's payment obligations), the non-breaching party may terminate this Agreement by giving fifteen (15) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such fifteen-day period. If Customer fails to pay any Fees or other amounts in IN applicable Order Form in accordance with the Payment Schedule, Duo Security may terminate this Agreement prior to the end of the Term by giving five (5) business days prior written notice to Customer; provided, however, that this Agreement will not terminate if Customer has paid all Fees and other amounts in the applicable Order Form prior to the expiration of such five business-day period.
- 10.3 Either party may terminate this Agreement, without notice, (i) upon the institution or if a petition is filed, notice is given, a resolution is passed or an order is made, in each case by or against the other party under Applicable Law relating to insolvency, administration, liquidation, receivership, bankruptcy or any other winding up proceedings, (ii) upon the other party's making an assignment for the benefit of creditors or making a voluntary arrangement with its creditors, (iii) upon the other party's dissolution or ceasing, or threatening to cease to do business or (iv) if any event occurs, or proceeding is instituted, with respect to the other party that has the equivalent or similar effect to any of the events mentioned in Section 10.3(1) through (iii), Notwithstanding anything in this Agreement to the contrary, Duo Security may, without penalty or liability and with or without notice, modify or discontinue its provision of Free Services at any time and to the extent Customer is only using Free Services immediately terminate this Agreement.
- 10.4 The Sections of this Agreement which by their nature should survive termination or expiration of this Agreement, including but not limited to Sections 3 through 14, will survive termination or expiration of this Agreement. No refund of Fees shall be due in any amount on account of termination by Duo Security pursuant to this Section 10. In the event of termination by Customer pursuant to this Section 10, Customer shall be entitled as its sole and exclusive remedy, to receive a refund of any pre-paid subscription Fees paid by Customer to Duo Security for Services not rendered as of the termination date. When this Agreement expires or terminates, Duo Security shall cease providing the Services to Customer.

WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT,

12. LIMITATION OF LIABILITY

- 12.1 NOTHING IN THIS AGREEMENT (OR ANY ORDER FORM) SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR (I) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR THE NEGLIGENCE OF ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; (II) FRAUD OR FRAUDULENT MISREPRESENTATION; (III) ITS INDEMNIFICATION OBLIGATIONS; (IV) BREACH OF SECTION 4 "RESTRICTIONS," SECTION 5 "PAYMENT OF FEES," OR SECTION 7 "INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP;" OR (V) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.
- 12.2 SUBJECT TO SECTION 12.1, IN NO EVENT WILL EITHER PARTY OR THEIR SUPPLIERS BE LIABLE TO THE OTHER PARTY (OR ANY PERSON CLAIMING THROUGH SUCH PARTY) FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, (I) LOSS OF REVENUE OR ANTICIPATED PROFITS (WHETHER DIRECT OR INDIRECT) OR (II) LOST BUSINESS OR (III) LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE AND STRICT LIABILITY) BREACH OF STATUTORY DUTY OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES,
- 12.3 SUBJECT TO SECTION 12.1, THE MAXIMUM LIABILITY OF EITHER PARTY OR THEIR SUPPLIERS FOR ANY AND ALL CLAIMS UNDER AN APPLICABLE ORDER FORM, WHETHER BASED IN CONTRACT, TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID OR TO BE PAID TO DUO SECURITY UNDER SUCH ORDER FORM DURING THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT SUCH CLAIM IS FIRST ASSERTED. THE FOREGOING LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

13. GOVERNMENT MATTERS

dispute, fire, earthquake, flood or any other event beyond the reasonable control of a party, provided that such party promptly notifies the other party thereof and uses reasonable efforts to resume performance as soon as possible.

- 14.6 **Governing Law; Arbitration.** This Agreement will be governed by the laws of the State of California, U.S.A. without regard to its conflict of laws provisions. Any dispute arising from or relating to the subject matter of this Agreement shall be finally settled by arbitration in California in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with the Streamlined Arbitration Rules and Procedures of JAMS. Judgment upon the award so rendered may be entered in a court having jurisdiction, or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief pending a final decision by the arbitrator.
- 14.7 **Venue.** The federal and state courts in and around Monterey County, California, U.S.A. will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement. Notwithstanding the foregoing, each party shall have the right to commence and prosecute any action for injunctive relief before any court of competent jurisdiction.
- 14.8. **Publicity.** Customer agrees to participate in press announcements, case studies, trade shows, or other marketing reasonably requested by Duo Security. During the Term and for thirty (30) days thereafter, Customer grants Duo Security the right, free of charge, to use Customer's name and/or logo, worldwide, to identify Customer as such on Duo Security's website or other marketing or advertising materials.

Contact Support

**support@duo.com**

Call Sales

**1.866.760.4247**

Email Sales

Contact Sales

## 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



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

**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. Notwithstanding the foregoing, the County shall not be required to give notice to CareMessage before making disclosures required by public records laws.

**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

("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 of the Standard Agreement. 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 County may terminate this Agreement upon written notice to CareMessage if CareMessage has materially breached this Agreement and the breach has not been substantially cured within thirty (30) days after the date of the County's written notice

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

**EXHIBIT C-1**  
**OCHIN CareMessage Participation Agreement & Terms of Service**  
**Acknowledgment**

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.

## EXHIBIT C-3

**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 CashMonkeys ("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 B 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, Cal. 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

(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 HITBCA, 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 each 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;

(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 hereof.

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, 4.1, 4.6, and 4.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associate 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.



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 Bullock


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

MyChart - MyChart fee is per Active MyChart Patient MyChart custom home web page	\$2.60 \$5,000	0 \$ 0 \$	Per active patient per year - enter patient estimate
Medication File Maintenance (per provider)	\$144	0 \$	Medication files are from FirstDatabank
EPCS			
Coding Support Services SOW	Not to exceed \$20,000 Not to exceed \$10,000		

**CONTRACTORS BILLING PROCEDURES:**

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

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

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

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