

EMS MEDICAL DIRECTOR SERVICES AGREEMENT

by and between

COUNTY OF MONTEREY ("**County**")

And

JOHN BEUERLE, M.D., M.S. (**Contractor**)

EMS MEDICAL DIRECTOR SERVICES AGREEMENT'

MEDICAL DIRECTOR SERVICES AGREEMENT (this "**Agreement**") is entered into as of August 1, 2019, by and between COUNTY OF MONTEREY ("**County**") acting through its Emergency Medical Services Agency ("**EMS Agency**") and John Beuerle, M.D., M.S. ("**Contractor**"). County and Contractor are sometimes referred to in this Agreement as a "Party" or, collectively, as the "**Parties.**"

RECITALS

Pursuant to California Health and Safety Code Section 1797.200, the Monterey County Board of Supervisors has designated the Health Department's Emergency Medical Services Agency ("**EMS Agency**") as the County's local EMS agency.

Pursuant to California Health and Safety Code Section 1797.202, Every local EMS agency shall have a full- or part-time licensed physician and surgeon as medical director, who has substantial experience in the practice of emergency medicine, as designated by the county or by the joint powers agreement, to provide medical control and to assure medical accountability throughout the planning, implementation and evaluation of the EMS system.

To ensure compliance with these requirements, the EMS Agency desires to contract the services of a well-qualified physician and surgeon to act as the Medical Director for the EMS Agency provide medical control and to assure medical accountability throughout the planning, implementation and evaluation of the EMS system.

AGREEMENT

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

ARTICLE I CONTRACTOR'S OBLIGATIONS

The EMS Agency hereby engages Contractor to perform, and Contractor hereby agrees to perform, the following services:

- 1.1 Function as the Medical Director of the Monterey County EMS Agency; performing the EMS Medical Director responsibilities identified in California Health and Safety Code, Section 1797 through 1799, and specifically California Health and Safety Code Sections 1797.202, 1798, and 1798.200.

- 1.2 Provide technical medical expertise to and on behalf of the Monterey County EMS Agency and ensure that policies and procedures, treatment protocols, decisions, and activities of the EMS Agency are medically sound.
- 1.3 Attend and chair all meetings of the Monterey County Medical Advisory Subcommittee. Review and approve all minutes and agendas for such meetings. Whenever unable to attend meetings, arrange for an alternate to chair the meeting.
- 1.4 Represent the Monterey County EMS Agency at meetings as needed or requested.
- 1.5 Revise, monitor, and lead the EMS Agency's Quality Improvement (QI) program, to specifically include the following functions:
 - a. Based on evidence, data, research, and best practice, determine clinically-significant performance metrics and measurement methods for first responders, ambulance providers, hospitals, specialty centers and EMS communication centers.
 - b. Monitor the overall performance of all aspects of the local EMS system.
 - c. Assure regulated stakeholders achieve desired levels of clinical outcomes.
 - d. Report clinical outcomes to the EMS Director, Medical Advisory Committee, Emergency Medical Care Committee, and other approved committees.
 - e. Evaluate system changes.
 - f. Ensure that intended results are achieved.
- 1.6 Develop performance indicator reports in conjunction with EMS Agency staff.
- 1.7 Assist with the updating of the Monterey County Trauma Plan and Monterey County EMS Plan.
- 1.8 Monitor the efficacy of field treatment protocols and modify the protocols, as needed.
- 1.9 Develop and maintain positive professional relationships with representatives of all local EMS system stakeholders. Cultivate effective working relationships with local EMS system field personnel.

- 1.10 Modify, as needed, the system and protocol for controlled substances utilized by organizations that provide Advanced Life Support (ALS) services within Monterey County including:
 - a. Procedure for processing appropriate Drug Enforcement Agency forms.
 - b. Oversight procedures for the distribution and inventory tracking of controlled substances.
- 1.11 Assist the EMS Director in the resolution of conflicts within the EMS system, whenever technical medical expertise is required or appropriate in the resolution of such conflicts.
- 1.12 Assume primary responsibility for the development of all local EMS Agency medical policies and procedures. All such policies and protocols shall be reviewed and approved by the EMS Director prior to distribution. The EMS Director shall consult the Medical Director prior to institution of any changes to medical procedures or protocols.
- 1.13 Participate in disciplinary hearings involving medical issues or the performance of EMS personnel in matters directly affecting patient care; and take disciplinary action when needed.
- 1.14 Assist the EMS Director in assuring that all medical aspects of the EMS Agency's programs comply with Federal, State and local laws and regulations.
- 1.15 When requested, prepare reports and drafts of materials requiring technical medical expertise, and submit to the EMS Director.
- 1.16 Provide other services related to the EMS system requiring technical medical expertise upon request.
- 1.17 Maintain an on-site presence within EMS Agency offices during normal business hours, or other locations within Monterey County to be determined by the EMS Director, for an average minimum of six (6) hours per week. Be available during the balance of the business week by telephone, or through e-mail for an additional average of two (2) hours per week.

1.18 Respond within 24 hours from the time communication is initiated to telephone calls or e-mails marked as urgent or 48 hours for non-urgent communications except during an approved absence when an alternate medical director is assigned.

1.19 As needed, represent Monterey County EMS at State and local meetings including, but not limited to:

- a. Monterey County Board of Supervisors
- b. Monterey County Medical Advisory Committee
- c. Emergency Medical Care Committee
- d. Emergency Medical Director Association of California (EMDAC)
- e. State of California EMS Commission
- f. Community Meetings

1.20 Prevention of Conflict of Interest and Incompatible Offices

- a. Contractor shall not be employed, volunteer, contract or receive remuneration in any form from any air or ground ambulance provider, first responder, hospital or other organization regulated by the EMS Agency.
- b. Contractor shall notify the EMS Agency of all employment, contracts, and sources of remuneration before this contract is approved and before accepting any new employment, entering into any contract, and accepting any sources of remuneration.

1.21 Professional Qualifications

- a. Contractor shall maintain a current and valid California State Physician and Surgeon's Certificate authorized by the Board of Medical Examiners of the State of California.
- b. Maintain Board Certification in Emergency Medicine by the American Board of Emergency Medicine.

- 1.22 Continuing Medical Education. Contractor shall participate in continuing medical education ("**CME**") as necessary to maintain licensure, professional competence and skills commensurate with the standards of the medical community, as required under the American College of Surgeons trauma center requirements and guidelines ("**ACS Requirements**") or as otherwise required by the medical profession.
- 1.23 Use of Space. Contractor shall use County's premises and space solely and exclusively for the provision of the services for which he/she is being contracted.
- 1.24 Notification of Certain Events. Contractor shall notify EMS Agency in writing within twenty-four (24) hours after the occurrence of any one or more of the following events:
- a. Contractor becomes the subject of, or materially involved in, any investigation, proceeding, or disciplinary action by: Medicare and Medicaid programs or any other Federal health care program, as defined at 42 U.S.C. Section 1320a-7b(f) (collectively, the "**Federal Health Care Programs**") or state equivalent, any state's medical board, any agency responsible for professional licensing, standards or behavior, or any medical staff.
 - b. the medical staff membership or clinical privileges of Contractor at any hospital are denied, suspended, restricted, revoked or voluntarily relinquished, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;
 - c. Contractor becomes the subject of any suit, action or other legal proceeding arising out of Contractor's professional services;
 - d. Contractor voluntarily or involuntarily retires from the practice of medicine;
 - e. Contractor's license to practice medicine in the State is restricted, suspended or terminated, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;
 - f. Contractor is charged with or convicted of a criminal offense;
 - g. Contractor changes the location of Contractor's office;
 - h. any act of nature or any other event occurs which has a material adverse effect on Contractor's ability to provide the Services; or
 - i. Contractor is debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program or state

equivalent

- 1.25 Representations and Warranties by Contractor. Contractor represents and warrants that: (a) Contractor's license to practice medicine in any state has never been suspended, revoked or restricted; (b) Contractor has never been reprimanded, sanctioned or disciplined by any licensing board or medical specialty board; (c) Contractor has never been excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program; (d) Contractor has never been denied membership and/or reappointment to the medical staff of any hospital or health care facility; (e) Contractor medical staff membership or clinical privileges at any hospital or health care facility have never been suspended, limited or revoked for a medical disciplinary cause or reason; and (f) Contractor has never been charged with or convicted of a felony, a misdemeanor involving fraud, dishonesty, controlled substances, or moral turpitude, or any crime relevant to the provision of medical services or the practice of medicine.
- 1.26 Nondiscrimination. Contractor shall not differentiate or discriminate in performing the Services on the basis of race, religion, creed, color, national origin, ancestry, sex, physical disability, mental disability, medical condition, marital status, age, sexual orientation, or on any other basis prohibited by applicable law.
- 1.27 Non-Exclusive Services. The Services provided by Contractor hereunder are intended to be non-exclusive.
- 1.28 Compliance with Grant Terms. If this Agreement has been or will be funded with monies received by EMS Agency or County pursuant to a contract with the state or federal government or private entity in which EMS Agency or County is the grantee, Contractor shall comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, EMS Agency shall deliver a copy of said contract to Contractor at no cost to Contractor.
- 1.29 Evaluation. The EMS Director shall evaluate Contractor's contract compliance on an annual basis.

ARTICLE II COMPENSATION AND PAYMENT

- 2.1 Compensation. The total amount payable by EMS Agency to Contractor under this Agreement shall not exceed the sum of Two Hundred Forty-Nine Thousand, One Hundred and Eighty-Three Dollars (\$249,183).
- 2.2 Payment Provisions.

- a. During the period from August 1, 2019 through June 30, 2022, County shall pay Contractor **\$6,851** monthly.
- b. County shall reimburse the Contractor an amount not to exceed Five Hundred Dollars (**\$500**) annually for Emergency Medical Directors Association of California (EMDAC) dues.
- c. All contract related expenditures including travel shall be the sole responsibility of the Contractor, unless otherwise authorized by the EMS Director, except that the County shall reimburse Contractor actual travel, registration and lodging expenses, not to exceed One Thousand, Five Hundred (**\$1,500**) annually for attendance at the EMS Administrators' Association of California (EMSAAC)/Emergency Medical Directors' Association of California (EMDAC) Conference. Contractor shall adhere to County's Travel Policy.
- d. County shall reimburse the Contractor an amount not to exceed Five Thousand Seven Hundred Dollars (**\$5,700**) annually, for the purpose of securing and maintaining the necessary insurance coverage required under the terms of this Agreement. Such insurance shall cover only those medical and/or administrative services rendered by Contractor within the course and scope of his obligations under the terms and provisions of this agreement.
- e. To receive payment for services performed and reimbursable expenses incurred each month, Contractor shall submit an invoice to County in mutually agreeable format, by the tenth (10th) day of the following month. Contractor shall include, with the invoice, such information as may be required by the EMS Director to document the services performed and the expenses incurred. The EMS Director shall certify the amount of the claim, or such lesser amount, in conformity with the terms of this Agreement and any applicable County policies and procedures. If the EMS Director certifies a lesser amount, the EMS Director shall promptly notify Contractor in writing of the lesser amount certified and shall state the reason(s) for the certification of the lesser amount.
- f. EMS Agency may, in its sole discretion, terminate the contract or withhold payments claimed by Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Agreement.
- g. No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by EMS Agency.
- h. EMS Agency 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.
- i. **DISALLOWED COSTS:** Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

2.3 Payment Conditions.

- a. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided in this paragraph. The County does not guarantee any minimum or maximum number of dollars to be spent under this Agreement.
- b. Negotiations for rate changes shall be commenced, by Contractor, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the EMS Agency and the Contractor.
- c. Invoice amounts shall be billed directly to the EMS Agency.
- d. Contractor shall submit such invoice periodically or at the completion of services, but in any event, no later than 30 days after completion of services. The invoice shall set forth the amounts claimed by Contractor for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The EMS Agency shall certify the invoice, either in the requested amount or in such other amounts as the EMS Agency approves in conformity of this Agreement, and shall promptly submit such invoice to the county Auditor-Controller for payment. The county Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

**ARTICLE III
INSURANCE AND INDEMNITY**

- 3.1. Evidence of Coverage. Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to EMS Agency office, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and EMS Agency has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.
- 3.2. Qualifying Insurers. All coverages except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County of Monterey's Contracts/Purchasing Director.

- 3.3. Insurance Coverage Requirements. Without limiting Contractor's duty to indemnify, Contractor shall maintain in effect throughout the term of this Agreement, at Contractor's sole cost and expense, a policy or policies of insurance with the following minimum limits of liability:
- a. Professional liability insurance, covering Contractor with coverage of not less than One-Million Dollars (\$1,000,000) per occurrence and Two-Million Dollars (\$2,000,000) in the aggregate, to cover liability for malpractice and/or errors or omissions made in the course of rendering services under this Agreement. If any professional liability insurance is written on a "Claims Made" rather than "Occurrence" basis, then Contractor shall either continue such coverage or obtain extended reporting coverage ("Tail Coverage"), as appropriate, upon the occurrence of any of the following: (i) termination or expiration of this Agreement; (ii) change of coverage if such change shall result in a gap in coverage; or (iii) amendment, reduction or other material change in the then existing professional liability coverage of Contractor if such amendment, reduction or other material change will result in a gap in coverage. Any Tail Coverage shall have liability limits in the amount set forth above and shall in all events continue in existence until the greater of: (a) three (3) years or (b) the longest statute of limitations for professional and general liability for acts committed has expired. All insurance required by this Agreement shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact insurance business in the State.
 - b. Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than One Million Dollars (\$1,000,000) per occurrence.

■ Exemption/Modification (Justification attached as Exhibit B; subject to approval).
 - c. Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than One Million Dollars (\$1,000,000) per occurrence.

■ Exemption/Modification (Justification attached as Exhibit B; subject to approval).
 - d. 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 One Million

Dollars (\$1,000,000) each person, One Million Dollars (\$1,000,000) each accident and One Million Dollars (\$1,000,000) each disease.

3.4. Other Insurance Requirements

- a. All insurance required by this Agreement shall be with a company acceptable to County of Monterey and issued and executed by an admitted insurer authorized to transact insurance business in the State. 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 (3) years following the date Contractor complete their performance of services under this Agreement.
- b. Each liability policy shall provide that EMS Agency shall be given notice in writing at least thirty (30) 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 insured 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.
- c. Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 JO 11-85 or CG 20 10 JO OJ in tandem with CG 20 37 JO OJ (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.
- d. Prior to the execution of this Agreement by EMS Agency, Contractor shall file certificates of insurance with EMS Agency, showing that the Contractor has in effect the insurance required by this Agreement. The Contractor shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

- e. Contractor shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by EMS Agency, annual certificates to EMS Agency Office. If the certificate is not received by the expiration date, EMS Agency shall notify Contractor and Contractor shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Contractor to maintain such insurance is a default of this Agreement, which entitles EMS Agency, at its sole discretion, to terminate the Agreement immediately.

3.5. Right to Offset Insurance Costs

- a. In the event that Contractor does not purchase or otherwise have the liability insurance set forth in this Section at any time during the term of this Agreement, and without limiting any rights or remedies of EMS Agency, EMS Agency may at its option and within its sole discretion provide the liability insurance required by this Section and continue to pay the premiums therefor. If Contractor does not promptly reimburse all such amounts, then EMS Agency shall have the right to withhold and offset the compensation due to Contractor under this Agreement, in addition to such other rights or privileges as EMS Agency may have at law or in equity.
- b. EMS Agency's option to provide such insurance and to offset the compensation otherwise due to the Contractor shall also apply to the "Tail Coverage" referenced in Section 3.3, including for general liability if during the term of the Agreement such coverage has been written on a claims made basis, which is required to remain effective after the expiration or termination of this Agreement for any reason.

3.6. Indemnification

- a. Indemnification by Contractor. Contractor shall indemnify, defend, and hold harmless 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 Contractor's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "Contractor's performance" includes Contractor's acts or omissions and the acts or omissions of Contractor's officers, employees, agents and subcontractors. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the

County. Contractor shall reimburse County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Contractor is obligated to indemnify, defend and hold harmless County under this Agreement.

- b. Indemnification by County. County agrees to defend, indemnify, and hold harmless Contractor, to the extent permitted by applicable law, from and against any and all claims and losses whatsoever accruing or resulting to any person, firm or corporation for damages, injury or death arising out of or connected with any negligent act or omission or willful misconduct of County or any of its agents or employees.
- 3.7. Indemnification for Timely Payment of Tax Contributions. It is expressly agreed by the Parties hereto that no work, act, commission or omission of Contractor shall be construed to make or render Contractor the agent, employee or servant of County. Contractor agrees to indemnify, defend and hold harmless County and EMS Agency from and against any and all liability, loss, costs or obligations (including, without limitation, interest, penalties and attorney's fees in defending against the same) against County or EMS Agency based upon any claim that Contractor has failed to make proper and timely payment of any required tax contributions for itself, its employees, or its purported agents or independent contractors.
- 3.8. Survival of Obligations. Parties' obligations under this Article III shall survive the expiration or termination of this Agreement for any reason.

ARTICLE IV RECORDS AND CONFIDENTIALITY

- 4.1. Confidentiality. Contractor shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. Contractor shall not disclose any confidential or other confidential information received from EMS Agency or prepared in connection with the performance of this Agreement, unless EMS Agency specifically permits Contractor to disclose such records or information. Contractor shall promptly transmit to EMS Agency any and all requests for disclosure of any such confidential records or information. Contractor shall not use any confidential information gained by Contractor in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.
- 4.2. County Records. When this Agreement expires, or terminates, Contractor shall send to EMS Agency any EMS Agency records which Contractor used or received from EMS Agency to perform

services under this Agreement.

- 4.3. 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.
- 4.4. Access to and Audit of Records. County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of 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 County or as part of any audit of 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.
- 4.5. 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.

ARTICLE V. RELATIONSHIP BETWEEN THE PARTIES

- 5.1. Independent Contractor
 - a. Contractor is and shall at all times be an independent contractor with respect to EMS Agency in the performance of Contractor's obligations under this Agreement. Nothing in this Agreement shall be construed to create an employer/employee, joint venture, partnership, lease or landlord/tenant relationship between EMS Agency and Contractor. Contractor shall not hold himself out as an officer, agent or employee of EMS Agency, and shall not incur any contractual or financial obligation on behalf of EMS Agency without EMS Agency's prior written consent.

- b. If the Internal Revenue Service ("**IRS**") or any other governmental agency should inquire about, question or challenge the independent contractor status of Contractor with respect to County, the Parties hereto mutually agree that: (i) each shall inform the other Party hereto of such inquiry or challenge; and (ii) County and Contractor shall each have the right to participate in any discussion or negotiation occurring with the taxing agency, regardless of who initiated such discussions or negotiations. In the event the taxing agency concludes that an independent contractor relationship does not exist, County may terminate this Agreement effective immediately upon written notice.
- 5.2. No Benefit Contributions. EMS Agency shall have no obligation under this Agreement to compensate or pay applicable taxes for, or provide employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to, or on behalf of, Contractor or any other person employed or retained by Contractor. Notwithstanding the foregoing, if EMS Agency determines or is advised that it is required by law to compensate or pay applicable taxes for, or provide employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to, or on behalf of, Contractor or any other person employed or retained by Contractor, Contractor shall reimburse EMS Agency for any such expenditure within thirty (30) calendar days after being notified of such expenditure.
- 5.3. Form 1099 or W-2. If required to do so under applicable law, EMS Agency shall issue an Internal Revenue Service Form 1099 or Form W-2 to Contractor.
- 5.4. Contractor Compensation Arrangements. Contractor represents and warrants to EMS Agency that the compensation paid or to be paid by Contractor is and will at all times be fair market value for services provided.

ARTICLE VI TERM AND TERMINATION

- 6.1. Term. The term of this Agreement is from August 1, 2019 to June 30, 2022, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both Contractor and EMS Agency, with EMS Agency signing last, and Contractor may not commence work before EMS Agency signs this Agreement.
- 6.2. Termination by EMS Agency. EMS Agency shall have the right to terminate this Agreement upon the occurrence of any one or more of the following events:

- a. Breach of this Agreement by Contractor where the breach is not cured within thirty (30) calendar days after EMS Agency gives written notice of the breach to Contractor.
 - b. Neglect of professional duty by Contractor in a manner that poses an imminent danger to the health or safety of any individual, or violates EMS Agency policies, rules or regulations;
 - c. Breach by Contractor of any HIPAA Obligation (as defined in **Exhibit A**);
 - d. Contractor makes an assignment for the benefit of creditors, admits in writing the inability to pay its debts as they mature, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution liquidation or other similar law of any jurisdiction;
 - e. The insurance required to be maintained by Contractor under this Agreement is terminated, reduced below the minimum coverage requirements set forth in this Agreement, not renewed or cancelled (whether by action of the insurance company or Contractor) for any reason, and Contractor has not obtained replacement coverage as required by this Agreement prior to the effective date of such termination, reduction, non-renewal or cancellation;
 - f. Contractor is rendered unable to comply with the terms of this Agreement for any reason; or
- 6.3. Termination by Contractor. Contractor shall have the right to terminate this Agreement upon breach of this Agreement by EMS Agency where the breach is not cured within thirty (30) calendar days after Contractor gives written notice of the breach to EMS Agency.
- 6.4. Termination without Cause. Either Party may terminate this Agreement without cause, expense or penalty, effective ninety (90) calendar days after written notice of termination is given to the other Party.
- 6.5. Return of Property. Upon any termination or expiration of this Agreement, Contractor shall immediately return to EMS Agency all of EMS Agency's property, including equipment, supplies, furniture, furnishings and patient records, which is in Contractor's possession or under Contractor's control.
- 6.6. Termination or Amendment in Response to Reduction of Government Funding. Notwithstanding any other provision of this Agreement, if Federal, State or local government terminates or reduces its funding to County for services that are to be provided under this Agreement, County, in its sole and absolute discretion after consultation with the Contractor, may elect to terminate this Agreement by giving written notice of termination to Contractor effective immediately or on such other date

as County specifies in the notice. Alternatively, County and Contractor may mutually agree to amend the Agreement in response to a reduction in Federal, State or local funding.

6.7. Effect of Termination or Expiration

- a. All rights and obligations of the Parties shall cease except: (i) those rights and obligations that have accrued and remain unsatisfied prior to the termination or expiration of this Agreement; or (ii) those rights and obligations which expressly survive termination or expiration of this Agreement.
- b. Upon EMS Agency's request, Contractor shall immediately vacate the premises, removing any and all of Contractor's personal property, and EMS Agency may remove and store, at Contractor's expense, any personal property that either Contractor has not so removed;
- c. Contractor shall immediately return to EMS Agency all of EMS Agency's property, including equipment, supplies, furniture, furnishings and patient records, in Contractor's possession or under Contractor's control;
- d. Contractor shall not do anything or cause any other person to do anything that interferes with EMS Agency's efforts to engage any other person or entity for the provision of the Services, or interferes in any way with any relationship between EMS Agency and any other person or entity who may be engaged to provide the Services to EMS Agency.
- e. This Section 6.7 shall survive the expiration or termination for any reason of this Agreement.

**ARTICLE VII
NOTICES**

- 7.1. All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express, DHL). Notice shall be deemed given when sent, if sent as specified in this Section, or otherwise deemed given when received. In each case, notice shall be delivered or sent to:

For "EMS Agency"
EMS Bureau Chief
Monterey County EMS Agency
1441 Schilling Place, South Building

Salinas, CA 93901

For "Contractor"
Dr. John Beuerle, M.D., M.S.
209 Forrester Road
Los Gatos, CA 95032

ARTICLE VIII GENERAL PROVISIONS

- 8.1. Entire Agreement. This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.
- 8.2. Exhibits. The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated by reference into this Agreement wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.
- 8.3. Amendment. This Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated and signed by the Parties and attached to this Agreement.
- 8.4. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by EMS Agency and 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.
- 8.5. 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.
- 8.6. Disputes. Contractor shall continue to perform under this Agreement during any dispute.
- 8.7. Assignment and Subcontracting. Contractor shall not assign, sell, or otherwise transfer its interest or obligation in this Agreement without the prior written consent of EMS Agency. None of the services covered by this Agreement shall be subcontracted without the prior written approval of EMS Agency. Notwithstanding any such subcontract, Contractor shall continue to be liable for the performance of all requirements of this Agreement.

- 8.8. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of EMS Agency under this Agreement, to the extent assignable or delegable, shall be binding upon an inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 8.9. Compliance of Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 8.10. Headings. The headings are for convenience only and shall be given no effect in the construction or interpretation of the terms of this Agreement.
- 8.11. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 8.12. Governing Law. This agreement shall be governed by and interpreted under the laws of the State of California.
- 8.13. Construction of Agreement. EMS Agency and Contractor agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.
- 8.14. Compliance with HIPAA. Contractor shall comply with the obligations under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and all rules and regulations promulgated thereunder (collectively, "**HIPAA**," the obligations collectively referred to herein as "**HIPAA Obligations**"), as set forth in Exhibit A. The HIPAA Obligations shall survive the expiration or termination of this Agreement for any reason.
- 8.15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- 8.16. Authority. Any individual executing this Agreement on behalf of County or Contractor represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 8.17. Integration. This Agreement, including the exhibits, represent the entire Agreement between EMS Agency and Contractor with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between County and Contractor as of the effective date of this Agreement, which the date the County signs the Agreement.
- 8.18. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and

control.

- 8.19. Force Majeure. Neither Party shall be liable for nonperformance or defective or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), terrorism, action of any governmental authority, civil disturbances, riots, revolutions, vandalism, accidents, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions, information systems interruptions or failures, breakdown of machinery or strikes (or similar nonperformance, defective performance or late performance of employees, suppliers or subcontractors); provided, however, that in any such event, each Party shall use its good faith efforts to perform its duties and obligations under this Agreement.
- 8.20. No Conflicting Obligations. Contractor represents and warrants that the execution and delivery of this Agreement and the performance of its obligations hereunder do not and will not: (a) present a conflict of interest or materially interfere with the performance of Contractor's duties under any other agreement or arrangement; or (b) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice and/or lapse of time, would constitute a default) under, terminate, accelerate the performance required by, or result in a right of termination or acceleration under any of the terms, conditions or provisions of any other agreement, indebtedness, note, bond, indenture, security or pledge agreement, license, franchise, permit, or other instrument or obligation to which Contractor is a party or by which Contractor is bound. Contractor shall immediately inform County of any other agreements to which Contractor is a party that may present a conflict of interest or materially interfere with performance of Contractor's duties under this Agreement.
- 8.21. No Third-Party Beneficiary Rights. The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.
- 8.22. Representations. Each Party represents with respect to itself that: (a) no representation or promise not expressly contained in this Agreement has been made by any other Party or by any Parties' agents, employees, representatives or attorneys; (b) this Agreement is not being entered into on the basis of, or in reliance on, any promise or representation, expressed or implied, other than such as are set forth expressly in this Agreement; and (c) Party has been represented by legal counsel of Party's own choice or has elected not to be represented by legal counsel in this matter.
- 8.23. Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability of the remainder of this

Agreement.

- 8.24. Statutes and Regulations. Any reference in this Agreement to any statute, regulation, ruling, or administrative order or decree shall include, and be a reference to any successor statute, regulation, ruling, or administrative order or decree.

[signature page follows]

COUNTY OF MONTEREY

CONTRACTOR

By:

Michael Petrie, EMSA Director

Dr. John Beuerle, M.D., M.S

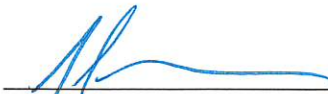
Date:

Name

By:

Department Head (if applicable)

By:



Date:

John Beuerle, MD
EMS medical Director

Name and Title

Approved as to Legal Form

By:



County Counsel

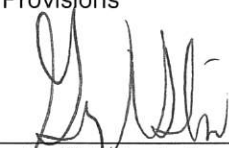
Date:

Date:

7/9/19

Approved as to Fiscal Provisions

By:



Auditor/Controller

By:

Date:

8-9-19

Name and Title

Date:

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective August 1, 2019 (“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 John Beuerle, M.D., M.S. (“Business Associate”) (each a “Party” and collectively the “Parties”).

Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“E PHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

1. DEFINITIONS

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

2. PERMITTED USES AND DISCLOSURES OF PHI

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents

agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

(l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

(e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Dr. John Beuerle, M.D., M.S.

Attn: Dr. John Beuerle
Tel: 509-251-9197
Fax: N/A

If to Covered Entity, to:

Monterey County
Emergency Medical Services Agency

Attn: Michael Petrie
Tel: 831-755-5013
Fax: 831-755-8040

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

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

5.7 Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

**COUNTY OF MONTEREY, ON BEHALF OF
THE HEALTH DEPARTMENT**

[BUSINESS ASSOCIATE]

Dr. John Beuerle, M.D., M.S.

By: _____

By:  _____

Print Name: _____

Print Name: Dr. John Beuerle, M.D., M.S. _____

Print Title: _____

Print Title: *Ems medical Director* _____

Date: _____

Date: July 8, 2019 _____

EXHIBIT B

INSURANCE EXEMPTION

1. **Commercial General Liability Insurance**
Past practice of the Department has been not to require Commercial General Liability insurance as the Medical Director provides consulting services only. He does not provide any medical services to any member of the County or the public.
2. **Business Automobile Liability Insurance**
The Department is requesting a modification to the County requirement for Business Automobile Insurance as the insurance company will not issue a certificate naming the County as additional insured. In addition, Dr. Beuerle's has a \$250,000/\$500,000 limit with a \$1,000,000 Personal Liability Umbrella Policy. The Department feels that a modification is appropriate as Dr. Beuerle will be on County property a limited amount of time.
3. **Workers Compensation Insurance**
This insurance is not required as Dr. Beuerle does not employ anyone in this position. In the unlikely event that he should hire someone while acting in his capacity as Medical Director, the EMS Agency would require Workers Compensation Insurance to be provided.