

**AGREEMENT BETWEEN  
CENTER FOR EMPLOYMENT TRAINING  
AND COUNTY OF MONTEREY**

**THIS AGREEMENT** is made and entered into as of the date set forth hereinbelow, by and between CENTER FOR EMPLOYMENT TRAINING, herein referred to as "INSTITUTION" and the COUNTY OF MONTEREY, a political subdivision of the State of California, through its Health Department, herein referred to as "COUNTY".

**RECITALS**

1. Center for Employment Training ("INSTITUTION") national headquarters located at 701 Vine Street, San Jose, CA 95110, provides an accredited health care program in Medical Assisting, which requires the use of clinical facilities for providing the clinical education experience component of its program. The Medical Assistant Externship Description is attached as Exhibit A.
2. Monterey County Health Department Clinic Services Division ("COUNTY") has facilities suitable for providing clinical experience for the INSTITUTION's Medical Assistant program.
3. It is to the mutual benefit of the parties hereto that INSTITUTION's Students have opportunities to use the COUNTY's facilities for their learning experience.

**NOW, THEREFORE**, in consideration of the covenants, conditions, and stipulations hereinafter expressed and in consideration of the mutual benefits to be derived therefrom, the parties hereto agree as follows:

**COUNTY RESPONSIBILITIES**

4. Provide appropriate general patient care facilities for the clinical aspects of the Medical Assistant program conducted under this Agreement. Designate the facilities to be used. Designate a member of its staff to participate with the designee of the INSTITUTION in planning, implementing and coordinating the clinical externship program.
5. Accept from INSTITUTION the mutually agreed upon number of Students enrolled in the Medical Assistant Externship Program, provided each student has the requisite maturity and academic background for participation, and provided further, that the COUNTY shall have the right to limit the number of students who may be allowed to participate at any one time.
6. Provide facilities as presently available and as necessary for the development and maintenance of a clinical educational experience for INSTITUTION's Students taking part in the Program. Permit said student(s) of INSTITUTION access to the appropriate COUNTY facilities for their clinical externship program, including classroom and conference room space when available; provided that the presence of the Students shall not be allowed to interfere with the regular activities of the COUNTY.

7. Assure that COUNTY staff is adequate in number and quality to insure safe and continuous management of the clinical Program in cooperation with INSTITUTION's educational program.

8. Provide emergency first aid and medical treatment for any student who becomes sick or injured on COUNTY's premises during said student's participation in the clinical experience at the COUNTY. Provide any additional medical examinations and/or other protective measures that may be required by the COUNTY. Except as provided herein, the COUNTY shall have no obligation to furnish medical or surgical care to any student or faculty member.

9. COUNTY reserves the right, without prior notice, to limit the use of any of its facilities when, the COUNTY deems such limitation necessary for the proper operation of the COUNTY.

10. COUNTY shall permit designated clinic personnel, to participate in the instruction and/or clinical experience of the students; however, this shall not interfere with the service commitments of the COUNTY's personnel.

11. Have the right, after consultation with the INSTITUTION, to request withdrawal from further clinical experience any student of the INSTITUTION who, in the COUNTY's judgment, is not participating satisfactorily in the clinical educational experience, or who refuses to follow the COUNTY's administrative and patient care policies, procedures, rules and regulations, including inappropriate behavior, dress and/or hygiene. The COUNTY's request must be in writing and must include a statement of the reason(s) for withdrawal. Said request shall be complied with immediately by the INSTITUTION, but not later than five (5) days from receipt of same, depending upon the severity of the problem. In the event that a student of the INSTITUTION violates COUNTY policies, procedures, rules, regulations, or protocols which jeopardize the health, safety and welfare of patients or COUNTY staff, COUNTY may immediately remove the student from the clinical experience and shall immediately so notify the student and the INSTITUTION by telephone or in person; the student and representatives of the INSTITUTION may meet with COUNTY to determine whether COUNTY will reinstate the student's clinical experience and, if so, upon terms and conditions determined by COUNTY to be appropriate.

12. COUNTY supervisory employees may, in an emergency or based upon applicable standards of client service, temporarily relieve a student from a particular assignment or require that a student leave an area or department, pending the parties' final determination of the student's future status.

### **INSTITUTION RESPONSIBILITIES**

13. The parties agree that the INSTITUTION's Medical Assistant Program is an externship program under the jurisdiction of the INSTITUTION and not of the COUNTY. The INSTITUTION shall be responsible for the academic content of the program and shall provide necessary instruction, academic supervision, attendance and academic record keeping functions. INSTITUTION shall be responsible for the evaluation of its Students even where certain evaluation activities may be delegated to COUNTY.

14. Furnish the COUNTY with such evidence as the COUNTY may require to assure itself that each student assigned for externship hereunder is free from any mental or physical impairment that would prevent the student from meeting the academic and technical standards necessary for successful participation in the externship experience.

15. Provide appropriate health and safety training to all students on a regular basis, in accordance with prevailing Federal and State laws and regulations.

16. Inform Students of their responsibility to perform their duties in a professional manner and conduct themselves appropriately while at the COUNTY. Instruct every student to conform to all applicable COUNTY policies, procedures and regulations, and all requirements and restrictions specified jointly by representatives of the INSTITUTION and COUNTY.

17. Notify Students that they are responsible for:

- a. Following the COUNTY's administrative policies and procedures;
- b. Providing the necessary and appropriate uniforms that shall be designated, but not provided, by the COUNTY;
- c. Arranging for their own transportation and living accommodations as this is not provided by the COUNTY;
- d. Reporting to the COUNTY on time and following all established rules and regulations of the COUNTY;
- e. Arranging for his/her own health insurance when not provided by the INSTITUTION;
- f. Assuming responsibility for the personal illness, necessary immunizations, tuberculin test, chest x-ray and annual health examination;
- g. Maintaining the confidentiality of any and all patient information in accordance with applicable state and federal law and regulations, including the Health Insurance Portability and Accountability Act ("HIPAA"). No student shall have access to, or have the right to, review any medical record except where necessary in the regular course of the program. The discussion, transmission or narration in any form by Students of any patient information of a personal nature, medical or otherwise, obtained in the regular course of the clinical experience program is forbidden, except when specifically made a necessary part of the program.

18. Certify to COUNTY at the time each student first reports at COUNTY to participate in the clinical educational experience that said student has been informed of the requirement to comply with all agreed upon health and health insurance requirements for Students in the program.

19. INSTITUTION shall establish a rotational plan for the clinical experience by mutual agreement between appropriate representatives of the parties.

- a. The parties may formalize by letter the operational details of the clinical experience program.

- b. Designate those Students who are enrolled in the program of the INSTITUTION to be assigned for clinical educational experience at the COUNTY, in such numbers as are mutually agreed to by the parties from time to time.
- c. The period of time for each student's clinical experience shall be agreed upon by the parties before the beginning of the training.
- d. The COUNTY shall have the right not to accept Students, or to terminate individual Students as set forth herein, at any time during the term of this Agreement; provided, however, that such refusal/termination complies with the non-discrimination statement set forth in Paragraph 22 of this Agreement.

20. Designate a faculty member to coordinate and consult with a designee of the COUNTY in the planning of the externship program to be provided to Students of the INSTITUTION, and arrange for periodic discussions between appropriate representatives of the INSTITUTION and COUNTY to evaluate and improve the Medical Assistant Externship Program.

21. Supply the COUNTY with the name, biographical data, report of health status, and information about health care coverage or insurance of each student to the COUNTY at least two (2) weeks before the beginning date of each externship program. INSTITUTION shall supply any additional information required by the COUNTY prior to the beginning date of each clinical experience program.

22. The parties agree that all students receiving clinical training pursuant to this Agreement shall be selected and be treated throughout their clinic experience without discrimination on account of race, color, religious creed, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation.

#### **INSURANCE & INDEMNIFICATION PROVISIONS:**

23. Insurance Coverage Requirements. Without limiting INSTITUTION's duty to indemnify, INSTITUTION shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- a. Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Contractual Liability and Personal Injury with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.  
 Exemption/Modification (Justification attached; subject to approval).
- b. Professional Liability Insurance, if required for the professional service being provided, (e.g., those persons authorized by a licensed 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 INSTITUTION 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. The COUNTY shall be provided with verification of each student's professional liability insurance prior to the beginning of each clinical experience program.

Exemption/Modification (Justification attached; 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 \$500,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

- d. Workers Compensation Insurance, INSTITUTION shall provide Worker's Compensation Insurance for its employees, agents, instructors, Students and others employed 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.

Exemption/Modification (Justification attached; subject to approval).

Other Insurance 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 INSTITUTION completes its performance of the program 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 INSTITUTION and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the INSTITUTION'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 INSTITUTION's insurance. The required endorsement form for Commercial General Liability additional Insured is the ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, INSTITUTION shall file

certificates of insurance with the County's contract administrator, showing that the INSTITUTION has in effect the insurance required by this Agreement. The INSTITUTION shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

INSTITUTION shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator. If the certificate is not received by the expiration date, County shall notify INSTITUTION and INSTITUTION shall have five calendar days to send the certificate, evidencing no lapse in coverage during the interim. Failure by INSTITUTION to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

**24. Indemnification.**

INSTITUTION 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 INSTITUTION's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "INSTITUTION's performance" includes INSTITUTION'S action or inaction and the action or inaction of INSTITUTION's officers, employees, agents and subcontractors.

**ACCESS TO RECORDS & DISPOSITION OF CLAIMS**

**25. Access to Records.** To the extent authorized by law, COUNTY and INSTITUTION shall each have reasonable and timely access to the medical records, charts, and relevant quality assurance data of the other party regarding any particular claim or investigation related to activities encompassed by this Agreement; provided, however, that nothing shall require either COUNTY or INSTITUTION to disclose any peer review or quality assurance documents, records or communications which are privileged under Evidence Code §1157, under the Attorney-Client Privilege, or under the Attorney Work-Product Privilege.

**26. Cooperation in Disposition of Claims.** COUNTY and INSTITUTION mutually agree to cooperate with each other in the timely investigation and disposition of audits, peer review matters, disciplinary actions and third-party liability claims arising out of any and all activities encompassed by this Agreement, or in the operation of the Program. The parties shall notify one another as soon as possible of any adverse event, which may result in liability to the other party. It is the intention of the parties to fully cooperate in the investigation and disposition of all such audits, actions or claims. Such cooperation may include, but is not limited to, timely notice, joint investigation, defense, disposition of third party claims arising from services performed under

this Agreement, and making witnesses available. INSTITUTION shall be responsible for any discipline of Students in accordance with INSTITUTION's applicable policies and procedures.

## **CONFIDENTIAL AND PROPRIETARY INFORMATION**

27. Confidential Information. The parties mutually agree to maintain the confidentiality of any and all patient information. No student shall have access to, or have the right to, review any medical record except where necessary in the regular course of the Program. The discussion, transmission or narration in any form by Students of any patient information of a personal nature, medical or otherwise, obtained in the regular course of the clinical experience program is forbidden except as a necessary part of the program. These confidentiality requirements include, but are not limited to those confidentiality requirements necessary to achieve and maintain corporate compliance. COUNTY shall require each of INSTITUTION's Students participating in the Program sign a statement of confidentiality prior to participating in the Program. COUNTY shall retain such signed statement.

28. Compliance with Confidentiality Requirements. The parties agree that Students shall be required to comply with any and all federal, state, and local laws that provide for the confidentiality of records and other information, including California Civil Code §§ 56 et seq. and 1798 et seq., as well as §§ 261-264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("the Administrative Simplification provisions") and regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule"), which are incorporated herein by this reference as though set forth in full herein. INSTITUTION shall not disclose any confidential records and/or other confidential information received from COUNTY or prepared in connection with the performance of this Agreement, unless INSTITUTION is specifically authorized in writing to disclose such records or information. INSTITUTION shall promptly transmit to COUNTY any and all requests for disclosure of any such confidential records or information. INSTITUTION shall not use any confidential information gained by it in the performance of this Agreement except for the sole purpose of carrying out its obligations under this Agreement.

29. Confidential Information. COUNTY asserts, and INSTITUTION acknowledges, the patient-identifiable, financial, clinical, and management information and other COUNTY-specific data that is not in the public domain, and that is disclosed to INSTITUTION by COUNTY so that INSTITUTION may provide services pursuant to this Agreement, is highly confidential and that in some cases such confidentiality is mandated by law. COUNTY further asserts, and INSTITUTION acknowledges, that particularly with respect to the financial and clinical information, disclosure of COUNTY's confidential information could have a severe adverse impact on COUNTY's business and/or market position. Therefore, INSTITUTION warrants and agrees that it shall not utilize any of COUNTY's confidential information for any purpose whatsoever, except to the extent necessary to provide the services identified in this Agreement and shall not disclose any of COUNTY's confidential information to any other person, firm or entity without prior written authorization of COUNTY's Director of Health or his/her designee. INSTITUTION may disclose or provide access to COUNTY's confidential information only to those of INSTITUTION's employees who (i) require access to COUNTY's confidential information in order for INSTITUTION to exercise its rights and perform its obligations hereunder; and (ii) have executed a Non-Disclosure Agreement in form and

substance satisfactory to COUNTY, that effectively prohibits the disclosure and unauthorized use of COUNTY's confidential information. Notwithstanding any provision of this Agreement to the contrary, in the event of a breach of this Section, COUNTY shall have the right to seek direct damages.

**30. Proprietary Information.** The parties acknowledge that during the term of this Agreement, each party shall have access to certain data, procedures, forms, trade secrets, techniques, copyrighted materials, and trade information of the other party, that such party protects from unrestricted disclosure to others (hereinafter referred to as "Proprietary Information"). Except as shall be necessary to effectuate the terms of this Agreement, both parties agree to maintain all such Proprietary Information in strictest confidence and agree not to publish, divulge, disclose, display, or otherwise make available such Proprietary Information to any third party (including, without limitation, any other governmental agency) other than to such employees or agents of a party who have a reasonable need to know such information and who have agreed to hold such information in confidence, without the prior written consent of the other party or as otherwise required by law, governmental regulation, court order, or subpoena.

Upon termination of this Agreement for any reason, each party shall, at its own expense, deliver to the other party all the Proprietary Information of such other party that is in its possession or under its control, and each party shall promptly destroy or delete from its records (electronic or otherwise) all Proprietary Information provided to it by the other party.

#### **GENERAL PROVISIONS:**

**31. Non-Exclusive Agreement.** The parties recognize COUNTY may have agreements with other educational colleges/institutions to provide training facilities of the type contemplated by this Agreement.

**32. No Student Billing for Services.** The parties agree that no Student shall bill or charge any other party or entity including, without limitation, the Medicare program or any other third party payor, for clinical internship services. To the extent permitted by law, COUNTY shall be solely responsible for billing and collecting fees and charges from patients, payers or other responsible third parties for any services performed by any Student during his/her clinical internship.

**33. Relationship of the Parties; Independent Contractors.** It is expressly understood and mutually agreed that this Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between the INSTITUTION and the COUNTY; instead, it is an agreement between independent contractors for the sole purpose of establishing a clinical experience component to the INSTITUTION's program of instruction, whereby some of INSTITUTION's students may be physically present at COUNTY for a period of time to gain experience while enrolled in INSTITUTION's Medical Assistant Externship Program. This Agreement is not intended to, and shall not be construed to, create rights or benefits of any kind or type in any third parties – such as those Students who participate in the clinical experience program – except and unless specifically set forth herein.



34. No Third Party Rights. It is expressly agreed and understood by the parties to this Agreement that the Students who take part in this program are in attendance at the COUNTY for educational purposes only. Without limiting the foregoing, no offer or obligation of permanent employment with the County or with any department of the County is intended or implied in any manner by this Agreement. INSTITUTION's Students are not employees of either party and thus shall not become entitled, by virtue of this Agreement, to any form of employee benefits or fringe benefits whatever, including but not limited to compensation for services, employee benefits of any and all types, including workers compensation, unemployment compensation or insurance, vacation pay, sick leave, retirement benefits, social security benefits, disability insurance benefits, or any other employee benefits, except and unless specifically set forth herein.

35. Term of Agreement. The Term of this Agreement is effective March 1, 2006 and shall continue for a period of five (5) years, and shall be renewable thereafter by mutual agreement of the parties for a period mutually agreed to by them; provided, however, that it may be terminated earlier by either party after giving the other party not less than ninety (90) days' advance written notice of its intention to so terminate. In the event of such earlier termination, any student(s) currently participating in the clinical educational experience at COUNTY shall be allowed to complete his/her experience at COUNTY unless the parties to this Agreement mutually agree otherwise.

36. This Agreement may at any time be altered, changed or amended by mutual written agreement of the parties. Additionally, this Agreement is not legal and binding upon either of the parties until executed by both the INSTITUTION and the COUNTY.

37. Any written notice given under this Agreement shall be sent by registered mail to each address below:

Art Casper  
Director of Clinic Services  
Monterey County Health Department  
559 E. Alisal Street, Suite 201  
Salinas, CA 93905

Ramiro Garcia  
Center for Employment Training  
National Headquarters, Sobrato CET Center  
701 Vine Street  
San Jose, CA 95110

38. Entire Agreement. This Agreement supercedes all previous agreements between the parties and constitutes the entire agreement between them.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties hereto, the day and year first set forth above.

CENTER FOR EMPLOYMENT TRAINING

COUNTY OF MONTEREY

By: *Stemmiada Papier*

Title: *pres/CEO*

Dated: *5/9/06*

By: *[Signature]*  
Len Foster, Director of Health

Dated: *4/24/06*

APPROVED AS TO CONTENT:

By: *[Signature]*  
Art Casper, Clinic Services Director

Dated: *04-21-06*

APPROVED AS TO LEGAL FORM:

CHARLES J. McKEE, County Counsel

By: *[Signature]*  
W. Allen Bidwell, Deputy County Counsel

Dated: *03-28-2006*

RISK MANAGEMENT  
COUNTY OF MONTEREY

APPROVED AS TO INDEMNITY/

APPROVED AS TO LIABILITY PROVISIONS:

By: *[Signature]*  
Steve Marok, Risk Management

Date: *7/12/06*

## **Exhibit A**

### **Medical Assistant Externship Description- Center for Employment Training**

A practicum is the supervised practical application of previously studied theory or material. During the externship the student may perform any number of duties within the scope of practice. The following are examples of duties that you may or may not be asked to perform. Like wise, you may be asked to perform duties that are not listed. Either way the externship is designed to give the student hands on experience and a balanced practicum and whether he or she have the opportunity to do all of the following or just one... the experience is priceless to the student.

#### **Back office procedures**

##### **Room patient**

- Obtain Chief Complaint
- Take Vital Signs
- Prepare, drape and position patient
- Perform Urinalysis/ pregnancy test
- Obtain Throat Culture
- Perform Injection/ Immunization/ Administer Medication
- Perform EKG
- Clean wound/bandaging
- Assist Minor Surgery
- Assist OB-GYN procedure
- Perform Hematocrit / Hemoglobin test
- Perform Glucose test
- Perform Autoclaving / Sterilization
- Perform Snellen Chart
- Use Medical Terminology / Patient education
- Perform Venipuncture
- Follow Universal Precaution/ guideline
- Document performed procedure

#### **Front Office procedures**

- Communication Skill
- Schedule appointment
- Handle telephone calls / triage
- Filing
- Prepare patient chart
- Inventory Control
- Mail processing
- Maintain reception area

**Please note:**

**Skills performed in externship depend on department, specialty and medical facility.**

#### **Overall performance**

Besides subject knowledge (Theory) Students most demonstrate Good attendance, appearance, work habits time management, patient relations, staff relations and confidentiality.

**EXHIBIT B**  
**BUSINESS ASSOCIATE AGREEMENT**

This Agreement is made effective the \_\_\_\_ of \_\_\_\_, 2006, by and between **MONTEREY COUNTY HEALTH DEPARTMENT**, hereinafter referred to as "Covered Entity", and **CENTER FOR EMPLOYMENT TRAINING**, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy Rule (the agreement evidencing such arrangement is entitled **AGREEMENT BETWEEN CENTER FOR EMPLOYMENT TRAINING AND COUNTY OF MONTEREY**, dated March 1, 2006, and is hereby referred to as the "Arrangement Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the HIPAA Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Agreement shall control.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an

individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

## II. CONFIDENTIALITY REQUIREMENTS

(a) Business Associate agrees:

(i) to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Privacy Rule), or the HIPAA Privacy Rule, and (3) as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by Covered Entity;

(ii) at termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

(iii) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

(b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

(i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it 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 the person

notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule. Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

### III. AVAILABILITY OF PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

### IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.

### V. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the

Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of California. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

**COVERED ENTITY:**

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

Name: Len Foster

Title: Director of Health

Date: 5/22/06

**BUSINESS ASSOCIATE:**

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

Name: Hermelinda Sapien

Title: Pres/CEO

Date: 5/9/06