

Practice Management System Agreement

Between:

OCHIN:

Oregon Community Health Information Network Inc. **and**
Union Bank of California Building
707 S.W. Washington St., Ste. 1200
Portland, Oregon 97205
Contact for Notices: Mike Leahy
Fax: (503) 943-2501
E-mail: leahym@community-health.org

Member:

County of Monterey
1270 Natividad
Salinas, CA 93906
Contact for Notices: John Maddock
Fax: (831)
E-mail: maddockjr@co.monterey.ca.us

OCHIN will provide Member with access to OCHIN's practice management system comprising Epic Systems Corporation ("Epic") software, other software, and Technical Infrastructure (the "System") and will provide support and related services. Capitalized terms not otherwise defined on this page have the meanings given in Exhibits A through D.

1. Software Modules: Member will have access to the software modules as described in Exhibit A.

2. Initial Payment: Member will pay OCHIN an Initial Payment of \$ 542,910, which includes:

150,000 annual visits @ \$3.00	= \$450,000
75 InterSystems Cache licenses @ \$1,200	= \$ 90,000
2 Clarity Designer License	= \$ 690
2 Clarity Scheduler license	= \$ 1020
Telecommunications facilities charges (routers & installation)	= <u>\$ 1,200</u>
Total	<u>\$ 542,910</u>

The Initial Payment is payable within 30 days of mutual execution of this agreement as described in Exhibit B.

3. Per-Visit Fees: Member will pay OCHIN Per-Visit Fees at a rate of \$1.50 per visit for access to and use of the System, subject to change by the OCHIN Board as stated in Exhibit B.

4. Connectivity Costs: Member will pay OCHIN Connectivity Costs based on the actual monthly cost of connectivity for Member. Connectivity Costs are payable as stated in Exhibit B.

5. Other Costs: Member is also responsible for certain costs specified in Exhibit B and support fees as described in Exhibit C.

6. Cash-Flow Payment: Member will pay a cash-flow payment of **\$ 46,875** within thirty days of mutual execution of this agreement, as provided in Exhibit B.

7. CCNEA. If OCHIN supplies software to the CCNEA network, Member agrees to participate in that network on its then standard terms and conditions.

8. Exhibits: Exhibits marked below are part of this agreement:

<input checked="" type="checkbox"/> Exhibit A	Software Modules
<input checked="" type="checkbox"/> Exhibit B	System Terms and Conditions
<input checked="" type="checkbox"/> Exhibit C	Technical Support Terms and Conditions
<input checked="" type="checkbox"/> Exhibit D	HIPAA Compliance Terms
<input checked="" type="checkbox"/> Exhibit D - A	Additional HIPAA Compliance Terms
<input checked="" type="checkbox"/> Exhibit E	Public Contracting Terms
<input checked="" type="checkbox"/> Exhibit F	Epic Standard License and Support Agreement
<input type="checkbox"/> Exhibit G	Billing Service Terms and Conditions
<input type="checkbox"/> Exhibit H	Organized Health Care Arrangement Terms

[signature page follows]

This page and the attached exhibits are the entire agreement between OCHIN and Member regarding the System and supersede all prior written or oral proposals, agreements, or other communications relating to the System.

OCHIN:

By: Michael Leahy
Michael Leahy, Chief Executive Officer
Date: 6/19/2007

Member:

By: Len Foster
Name: Len Foster
Title: Director of Monterey County Health Department

Approved as to form:

Carol M Ford 6/19/07
Carol Ford, Chair, OCHIN Board of Directors

For Monterey County

APPROVED AS TO LEGAL FORM
By: W. Allen Bidwell
County Counsel Deputy
Date: 06-14-2007

APPROVED AS TO FISCAL PROVISIONS
By: [Signature]
Auditor-Controller
Date: 6/14/07

APPROVED AS TO INDEMNITY/INSURANCE LANGUAGE
RISK MANAGEMENT
COUNTY OF MONTEREY
APPROVED AS TO INDEMNITY/
INSURANCE LANGUAGE
By: [Signature]
Risk Management
Date: 6/19/07

X

Exhibit A

Software Modules and Hardware Capacity

Unless otherwise defined, capitalized terms in this exhibit have the meanings given on the cover page of this agreement (the "Cover Page") or Exhibits B through D.

Member will have access to the following software modules described on Exhibit 1(a) to the Epic Standard License and Support Agreement ("Epic License Agreement"):

- Resolute Professional Billing System
- Electronic Remittance
- Cadence Scheduling System
- Health Information Management – Chart Tracking
- Identity Embedded Master Person Index
- Clarity and Analyst Reporting Package
- SmartForms and Advantage Development Kit
- Bridges EDI Developer's License
- InterSystems Cache *
- KB Systems SQL
- Seagate Crystal Info for Windows (Version 7.x)
- Diagnostic Data
- Distinct Corporation – Object code version of TELNET.DLL
- CPT Code License

**Member will pay an additional \$1,200 license fee for each InterSystems Cache license in excess of those included in the Initial Payment.*

Member will have access to the following software modules described on Exhibit 1(c) to the Epic License Agreement only if OCHIN exercises its option to purchase a license for the module and Member agrees to pay an additional charge for the module as allocated by the OCHIN Board:

- Identity Enterprise Master Person Index
- MyChart for Patients
- MyEpic Executive Information System
- Customer Relationship Management / Call Management
- Tapestry Managed Care Administration – Enrollment and Benefits Management for Payors
- Tapestry Managed Care Administration – Utilization Review and Case Management for Payors
- Tapestry Managed Care Administration – AP Claims / Capitalization for Health Plan and Insurers
- Tapestry Managed Care Administration – Premium Billing for Payors
- Tapestry Managed Care Administration – Claims Repricing for Payors
- Nurse Triage
- Chronicles Plus
- EpicCare Ambulatory EMR
- EpicWeb Light
- EpicWeb Medium

Member will not have access to the following software modules described on Exhibits 1(a) or 1(c) to the Epic License Agreement:

- Advanced Rules-Based Scheduling
- Dental Billing

Exhibit B System Terms and Conditions

Capitalized terms not defined below have the meanings indicated on the Cover Page or in Exhibits A, C, or D.

1. **System Access.** OCHIN will provide Member access to the System on the terms and conditions specified below.

of this agreement, a testing environment for the software described on Exhibit A, and a training environment.
2. **Software.**
 - 2.1 **General.** Exhibit A specifies software modules to which Member will have access pursuant to this agreement.
 - 2.2 **Interfaces; Clearinghouse.** The System will include direct claims and remittance interfaces for Medi-Cal and Alliance. Member is responsible for any other direct interfaces, including development costs, license fees, and ongoing maintenance fees. A clearinghouse will be selected for all claims, remittance submission, and patient statements for patient-paid billings. Member will be billed a direct per-transaction cost for use of this clearinghouse at prices to be determined.
 - 2.3 **Forms.** OCHIN will provide forms in common formats, including labels, receipts, and patient statements. Member will be responsible for the costs for any forms that are customized for Member's own use.
 - 2.4 **Clarity Reporting.** Reporting through Clarity requires the purchase of Crystal and Seagate at additional cost. Member will be required to purchase at least one copy of Crystal and Seagate and will be responsible for any associated maintenance fees. Standard reports directly from Epic applications are included.
3. **Technical Infrastructure.** OCHIN will procure and maintain the computer hardware to operate the System, and the networking equipment and telecommunications facilities needed to establish a wide-area network ("WAN") for communication of System data to and from Member. The computer hardware, networking equipment, and telecommunications facilities are referred to as the "Technical Infrastructure". The Technical Infrastructure will include:
 - 3.1 **Hardware.** Hardware having capacity sufficient to accommodate a production environment for the application software described on Exhibit A (including a Clarity reporting environment) based on usage estimates available to OCHIN as of the date
 - 3.2 **Database and Operating Environments.** Operating environment software provided through third party vendors. This operating software will include: (a) a Cache post-relational database management system ("RDBMS") and production environments and (b) a database for Clarity reporting to be provided through Microsoft Corp. or Oracle Corporation.
 - 3.3 **Networking and Telecommunications.** The WAN connection to Member's primary local area network ("LAN") and all associated routers, equipment, telecommunications facilities, and cabling from the data center to the connection point. OCHIN will establish technical standards and requirements for Member to establish connectivity to the System WAN. Member will be provided a single connection to the System WAN. OCHIN will contract with third parties to provide telecommunications facilities.
4. **Data Center.** OCHIN has established a data center to house the central Technical Infrastructure. OCHIN contracts with a third party, currently Multnomah County Information Systems Division ("MCISD"), to provide and maintain the data center.
5. **Member Hardware and Equipment Responsibilities.** The Technical Infrastructure does not extend beyond the router or other point at which the WAN connects to Member's LAN. Member will be solely and directly responsible for obtaining and maintaining any hardware or equipment outside of the Technical Infrastructure. The hardware and equipment for which Member is responsible includes, but is not limited to: (a) desktop equipment, workstations, printers, and scanners; (b) equipment necessary to accommodate desktop equipment (such as wall mounts and keyboard trays); (c) construction or renovation expenses relating to desktop equipment; (d) supplies (such as printer cartridges, paper, forms, and labels); and (e) all internal network connectivity hardware and installations, including all LAN hardware and appropriate cabling to connect to the System WAN, such as routers, hubs, servers, and

communication lines among and between Member's sites and offices.

6. Initial Payment.

6.1 General. Member's Initial Payment is intended to cover Member's share of license fees to Epic, a portion of fees to third party vendors, and the initial costs of the Technical Infrastructure.

6.2 Cache Licenses. The Initial Payment includes the number of licenses for InterSystems Cache shown on the Cover Page. If Member's level of usage requires additional licenses for InterSystems Cache at any time, Member will be billed an additional license fee of \$1,200 for each additional license required. Member will pay maintenance fees at OCHIN's cost for all InterSystems Cache licenses after the first year of this agreement.

6.3 Payment. Member will pay the Initial Payment within 30 days of mutual execution of this agreement. If payment is late, interest will thereafter accrue at the rate of 10 percent per annum.

6.4 Adjustments. The Initial Payment for Member has been determined based on estimates of Member's usage levels set forth in Section 2 of the Cover Page. During the first quarter of each calendar year, the OCHIN Board of Directors (the "OCHIN Board") will review Member's actual annual visits and will charge Member for any increased level of annual visits.

7. Future Payments.

7.1 All Members. The OCHIN Board may require OCHIN members to make additional payments to cover costs of additional or replacement computer hardware, software licenses, interfaces, enhancements, or comparable items, if due to an increase in visits substantially beyond estimates, changes in technology, equipment failure, or other causes beyond OCHIN's control. The OCHIN Board will allocate such amounts among users of the System in a manner it deems fair and equitable.

7.2 Member-Specific Items. At Member's request, OCHIN may agree to procure or provide for Member additional or customized goods or services related to the System. Member will pay OCHIN additional amounts for obtaining, implementing, and maintaining

such goods or services (including any additional maintenance costs for the System generally that are attributable to such goods or services) at OCHIN's then-standard rates.

8. Cash-Flow Payment. Member will make a payment to OCHIN for cash flow in the amount stated on the cover page within 30 days of mutual execution of this agreement. The payment will be retained through at least 2008, at which time the OCHIN Board will determine whether Member will receive any refund of the payment. If Member terminates this agreement prior to December 31, 2008, the OCHIN Board will determine in its sole discretion whether Member will receive a refund of the payment at the time of termination.

9. Per-Visit Fees.

9.1 Payment. After first use of the System to process Member's patient data for production purposes ("Go-Live"), Member will pay Per-Visit Fees on a monthly basis. Member will pay OCHIN the Per-Visit Fees for each month within 30 days after the end of that month.

9.2 Adjustment. The Per-Visit Fee may be increased from time to time as the OCHIN Board determines necessary to cover actual and anticipated costs.

9.3 Service Adjustments. If Per-Visit Fees and funds from other sources (such as grants) are not adequate to cover OCHIN's costs, OCHIN may reduce or eliminate certain services. In addition, because OCHIN's agreements with various vendors are subject to change without OCHIN's approval, OCHIN may cancel these agreements if vendors fail to offer terms acceptable to OCHIN. In either case, Member will lose related software and services and will need to contract directly with the vendor if desired.

9.4 Visits Definition. For purposes of determining the Per-Visit Fee, a "visit" means a completed patient appointment or encounter (including medical, dental, mental health and enabling services, and other visits). A missed appointment for which a patient is nonetheless charged a fee constitutes a visit. Multiple visits for the same patient on the same day constitute a single visit.

10. Connectivity Costs.

10.1 General. The Connectivity Costs to be paid by Member are costs of telephone lines and similar telecommunication facilities needed to transmit System data from the Member's LAN to the data center.

10.2 Payment by Member. Connectivity Costs are payable monthly. Member will pay OCHIN the Connectivity Costs incurred by OCHIN each month by the end of the following month.

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

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

12. Member's Implementation Responsibilities. Member has the following responsibilities in connection with implementing the System:

12.1 Member will allocate sufficient personnel and resources to participate significantly during the initial implementation and on an ongoing basis for subsequent implementations and software upgrades.

12.2 Member will designate adequate personnel to serve as an initial contact for providing support to Member's users ("Contact Personnel") during the conversion period and for subsequent upgrades and implementations.

12.3 Member will adhere to OCHIN's standards and specifications, or Member's own

standards and specifications if approved in writing by OCHIN, for desktop equipment (such as cabling, workstations, and printers), related desktop software, and connectivity.

12.4 Member will allocate resources within Member's organization and clinics that are sufficient to assure the level of security maintenance required by Section 23 below.

12.5 Member will be responsible for any other costs or responsibilities relating to implementation of the System and not specifically assigned to OCHIN in this agreement, including, but not limited to: (a) backfill resources for staff training or practice time during implementation or upgrades, (b) building tables and master files for Member's service area within the System and participating in building shared tables and master files for all service areas, (c) the expenses of any services Member requests directly from Epic, (d) providing a facility conducive to the training of Member's personnel, and (e) staff expenses owing to new roles or responsibilities, such as implementation coordination, coordination liaison, end user training, and direct user support (application and technical).

13. Member's Ongoing Responsibilities. Following Go-Live, Member will have the following responsibilities:

13.1 Support Personnel. Member will designate sufficient Contact Personnel to provide support services to Member's users on an ongoing basis. Member must assign at least one of these Contact Personnel to each of the following areas: billing office operations support, front office operations support, report writing, desktop equipment support, and network and telecommunications support. The same individual may be assigned to more than one of these support areas.

13.2 OCHIN Help Desk Contacts. Member will designate and identify to OCHIN no more than four of its Contact Personnel to be responsible for contacting the OCHIN help desk. OCHIN may decline to provide help desk support to other individuals, or may charge Member at OCHIN's then-current rates for help desk support provided to other individuals.

13.3 Upgrade Support. Member will substantially assist in any upgrades and in readying Member's organization for the

transition to new releases, including any necessary planning, testing, or training. Member will implement the upgrades and new releases within time frames mutually agreeable.

13.4 Ongoing Table Maintenance and Master Files Updates. Member will be responsible for the quality and timeliness of updates to the master files required for Member's service area and will contribute to the upkeep of tables and master files across all service areas.

13.5 Workgroup Participation. Member will designate personnel to serve as one member of each of the OCHIN Maintenance/Operational Team, Claims Workgroup, Reporting Workgroup, and IT Workgroup. The same person may serve as the member of more than one group.

14. Data Conversion. Member will pay any conversion costs attributable to the conversion of Member's data. If Member chooses to convert a sufficiently large amount of historical data that additional hardware must be acquired as part of the Technical Infrastructure, Member will pay the cost of the additional hardware and any related goods or services. The amount of data converted is at Member's discretion; provided, however, that OCHIN may require conversion of any data that OCHIN determines is reasonably necessary to assure that Member's use of the System will not be disruptive to other users.

15. Ownership.

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

15.2 Ownership of Patient Information. Member will retain ownership of Member's patient information. Notwithstanding the foregoing, in order to facilitate continuity of health care and quality assessment activities, the System will utilize a master patient index ("MPI") permitting aggregation of each patient's data in a central patient record accessible by authorized users of the System. As part of this agreement, Member agrees to certain terms relating to the establishment of an organized health care arrangement in accordance with state and

federal law (the "OHCA Terms") attached as Exhibit H to this agreement. Member agrees that continued compliance with the OHCA Terms is a condition to continued access to the System and a material obligation of Member under this agreement.

15.3 HIPAA. In performing their obligations under this agreement, Member and OCHIN will comply with applicable provisions of the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder ("HIPAA"). Without limiting the generality of the foregoing, Member and OCHIN agree to comply with the HIPAA compliance terms set forth in Exhibits D and D-A to this agreement, and the OHCA Terms.

16. Funding Sources. Member will not satisfy any financial obligations incurred in connection with this agreement through use of funds obtained from state or federal governmental entities that give such entities an interest in the System or related property.

17. Warranties.

17.1 General. OCHIN warrants to Member that the software modules described on Exhibit A will be free from Substantive Program Errors to the extent those modules are so warranted by Epic in Section 8 of the Epic License Agreement. As used in this Section 17, "Substantive Program Error" has the same meaning ascribed to that term in the Epic License Agreement.

17.2 Third Party Vendors. As to any software module listed on Exhibit A that is provided through a third party other than Epic, OCHIN makes the same warranty to Member that the third party makes to OCHIN with respect to the module.

17.3 Customized Code. Any customized code that is added to or modifies the software modules listed on Exhibit A is warranted to be free from Substantive Program Errors only on condition, and to the extent, that the customized code is warranted by Epic under Section 8(d) of the Epic License Agreement.

17.4 Notice, Cure, and Response Time. Any claim under the warranty set forth in this Section 17 will be subject to the notice requirements, cure periods, and response time expectations set forth in Sections 8(a) through 8(c) of the Epic License Agreement; provided, however, that (a) notice of any

warranty claim under this agreement shall be made to OCHIN rather than Epic, and (b) the Substantive Program Error may be remedied by either OCHIN or Epic.

17.5 Exclusive Remedy. Member's sole and exclusive remedy for breach of any warranty provided in Section 17.1 through 17.3 above shall be termination of this agreement with respect to the particular software module containing the Substantive Program Error and refund of any portion of Member's Initial Payment attributable to that module. If, however, there is a breach of the warranties under this agreement as a result of a Substantive Program Error in the Cadence or Resolute software modules, Member may terminate this entire agreement and receive a refund of that portion of Member's Initial Payment attributable to Epic software license fees.

17.6 Software Performance Expectations. OCHIN also warrants that the System will meet the performance expectations set forth in Exhibit 10 to the Epic License Agreement to the same extent that, and under the same conditions under which, Epic has provided such warranties to OCHIN. Member's exclusive remedy for any failure to satisfy this warranty shall be a refund of that portion of Member's Initial Payment attributable to Epic software license fees refunded to OCHIN. Member will cooperate in making all software configuration changes required by Epic pursuant to Exhibit 10 of the Epic License Agreement and will pay its proportionate share of any deductible required under that exhibit.

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

18. Indemnification.

18.1 OCHIN's Obligations Relating to Intellectual Property. OCHIN will indemnify, defend, and hold Member harmless from Claims of third parties arising out of this agreement and relating to intellectual property. This indemnification obligation is limited to circumstances in which the Claim is based on infringement of a U.S. copyright, patent, or trade secret.

18.2 OCHIN's Obligations Relating to Claims by Epic. OCHIN will indemnify, defend, and hold Member harmless against Claims by Epic that arise out of the Epic License Agreement, provided that Member is in full compliance with, and has satisfied all of its obligations under, this agreement.

18.3 OCHIN's Obligations Relating to Other Claims. OCHIN shall indemnify, defend, and hold harmless Member, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by OCHIN and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by Member. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County of Monterey. OCHIN shall reimburse Member for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which OCHIN is obligated to indemnify, defend and hold harmless Member under this Agreement.

18.4 Member's Responsibilities. Member shall indemnify, defend, and hold harmless OCHIN, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Member and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by OCHIN. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County of Monterey. Member shall reimburse OCHIN for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Member is obligated to indemnify, defend and hold harmless OCHIN under this Agreement.

18.5 Claims. For purposes of this Section 18, "Claims" include, without limitation, all claims, demands, actions, liabilities, losses, fines, damages, and expenses, including, without limitation, settlement costs and reasonable attorneys' fees at or before trial and on appeal or petition or review.

18.6 Indemnification Procedures. Any party seeking indemnification under this Section 18 must promptly notify the indemnifying party of the Claim for which indemnification is sought and provide the indemnifying party with the information reasonably required for the defense of that Claim. The party seeking indemnification shall grant the indemnifying party exclusive control over defense and settlement of the Claim.

19. Responsibility for Use.

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

19.2 Professional Judgment. Physicians and other authorized users should use the system as a resource in the exercise of professional medical judgment, not as a substitute for that judgment. Member acknowledges that neither OCHIN nor Epic practice medicine.

19.3 Medical Care. Member and authorized users are solely responsible for any medical diagnosis, treatment, and advice rendered with the assistance of the System.

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

20.1 The complaining party will write a letter to the other party detailing the basis of the dispute.

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

20.3 Both parties will be required to meet and negotiate within twenty (20) working days of the date on which the initial letter describing the complaint was received. Any party failing to attend this negotiation proceeding (and receiving adequate notice of the proceeding) will bear the full costs of any resulting arbitration proceeding unless both parties fail to attend in which case arbitration costs will not be affected. Items that remain unresolved after negotiation become elements of a bona fide dispute.

20.4 A bona fide dispute will be resolved through binding arbitration, except that either party may seek injunctive relief from a court of competent jurisdiction. If the dispute involves Epic or another third-party vendor, governing law and venue for the arbitration proceeding will be as set forth in the applicable third-party agreement. Otherwise, the dispute will be governed by Oregon law and arbitration will occur in Portland, Oregon, before a single arbitrator utilizing the rules of Arbitration Service of Portland, Inc.

21. Limitation of OCHIN's Liability. IN NO CASE WILL OCHIN BE LIABLE TO MEMBER FOR ANY CLAIM ARISING OUT THIS AGREEMENT IN AMOUNTS EXCEEDING THE GREATER OF: (A) COVERAGE UNDER OCHIN'S THEN-CURRENT GENERAL LIABILITY INSURANCE POLICY AND (B) MEMBER'S TOTAL PAYMENTS TO OCHIN FOR THE SYSTEM DURING THE PRECEDING 12 MONTHS PLUS, STARTING IN THE 13TH MONTH FOLLOWING THE MUTUAL ACCEPTANCE OF THIS AGREEMENT, A PRORATED PORTION OF MEMBER'S INITIAL PAYMENT TO OCHIN (CALCULATED BY PRORATING THE INITIAL FEE PAID BY MEMBER OVER A SEVEN (7) YEAR PERIOD). OCHIN WILL NOT BE LIABLE FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS OR REVENUES RESULTING FROM OR IN ANY WAY RELATED TO MEMBER'S USE OF THE SYSTEM, INCLUDING CLAIMS BASED ON THE NEGLIGENCE OF EPIC, OCHIN, OR OTHER THIRD-PARTY VENDORS. IN NO EVENT WILL OCHIN BEAR ANY RESPONSIBILITY FOR ERRORS OR DAMAGES CAUSED BY OR RESULTING FROM INPUT ERRORS, CHANGES

BY MEMBER TO ANY SOFTWARE PROVIDED BY OCHIN, OR COMBINATIONS OF SOFTWARE PROVIDED BY OCHIN WITH OTHER SOFTWARE.

22. Termination.

22.1 For Default. Either party may terminate this agreement if the other party defaults in the performance of its material obligations and does not cure the default within 30 days after notice describing the default. In addition, either party may terminate this agreement if the other party defaults in the performance of the same or substantially the same material obligation more than two times in any 12-month period, regardless of whether the defaults are cured.

22.2 By Member for Convenience. Member may terminate this agreement on six months' written notice prior to terminating use of the System or beginning use of a replacement system. Member may terminate this agreement immediately in case of Member's bankruptcy. Except in case of bankruptcy, Member will remain responsible for Member's portion of OCHIN's financial obligations arising out of the System until the earlier of: (a) six months following termination of the agreement by Member, or (b) the time at which OCHIN's costs are reduced to reflect Member's departure, by an amount equal to the projected fees Member would have paid had Member not terminated this agreement. Except in case of bankruptcy, Member will also be responsible for funding any services or expenses incurred by OCHIN directly or indirectly as a result of activities related to Member's exit, including expenses related to facilitating the removal of the System, guaranteeing the privacy and security of System data, and converting System data to a new format.

22.3 By OCHIN. OCHIN may terminate this agreement on 12 months' notice to Member if the OCHIN Board decides to discontinue the System. If OCHIN gives notice of termination under this Section 22.3, Member and other OCHIN members then using the System will be provided an opportunity to obtain (i) any hardware provided to Member by OCHIN in connection with the System and (ii) all rights of OCHIN under the terms of the Epic License Agreement.

23. System and Data Security.

23.1 Disclosure of Patient Information. OCHIN will not disclose Member's patient information except as necessary to (a) administer and manage the business of OCHIN, including administration of the System, (b) satisfy applicable legal requirements, (c) comply with the terms of the Epic License Agreement (including making "de-identified" patient data, which is cleansed of all patient-identifying information under the HIPAA Regulations set forth at 45 CFR § 164.574, available to Epic for use in connection with its EpicData service), (d) participate in a state-wide data warehouse that will contain aggregated and de-identified patient data, (e) comply with the terms of Exhibit D, which is intended to include all provisions required in a "business associate contract" under applicable HIPAA regulations, (f) comply with the terms of Exhibit D-A, which include provisions required in a limited data set use agreement under HIPAA, or (g) comply with the OHCA Terms.

23.2 Security Provided by OCHIN. OCHIN (through MCISD or another third party) will host data servers and other mechanisms that will store, protect, and provide controlled access to Member's patient information. This environment will be physically secure and provide the appropriate technical security measures required for such sensitive information and required by law, including current HIPAA regulations. OCHIN will make best efforts to comply with future HIPAA regulations concerning data security.

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

Further, Member agrees to implement policies and procedures consistent with any security standards or guidelines approved by participants in the OHCA Terms.

- 24. Assignment.** OCHIN may assign this agreement to any successor organization that acquires substantially all the assets of OCHIN. Neither Member nor OCHIN may otherwise assign any rights or obligations under this agreement without the other party's written consent. This agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns.
- 25. Notices.** Notices and other written communications under this agreement shall be deemed effectively given when delivered in person or by facsimile transmission, four days after being deposited for delivery by certified mail, return receipt requested, or one business day after being deposited for delivery by overnight courier, addressed as stated on the Cover Page. The original of any notice sent by facsimile transmission shall be sent promptly by certified mail or overnight courier to the recipient. Either party may change the address at which it receives notices by giving notice of the change to the other party.
- 26. Governing Law.** This agreement shall be governed by California law without regard to conflicts of law principles.
- 27. Force Majeure.** Neither party shall be held responsible because of any delay in performance or noncompliance with any provisions of this agreement that results from an unforeseeable act, event, or omission beyond its reasonable control and without its fault or negligence, including but not limited to, negotiation deadlock, strikes, walkouts, civil commotion, riots, wars, fires, explosions, floods, earthquakes, embargoes, or acts of civil or military authorities.
- 28. Payment; Late Fees.** Unless otherwise provided in this agreement, payment is due 30 days after invoice date. Member will pay a late fee for any overdue amounts at the rate of 10 percent per annum from the invoice date, or at any other late fee rate established from time to time by the OCHIN Board.
- 29. Severability.** If any provision of this agreement is held invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the affected provision shall remain in full force and effect in all other jurisdictions and (b) all other provisions shall remain in full force and effect.
- 30. Amendment.** Any amendment to this agreement must be in writing, signed by both parties, and approved by the OCHIN Board, as evidenced by the signature of the chair and OCHIN's executive director. Amendments may be made in the form of additional exhibits to this agreement.
- 31. Taxes.** Member is responsible for all taxes arising out of this agreement or Member's use of the System, including sales taxes, use taxes, business and occupation taxes, gross receipts taxes, and personal property taxes, including any assessments or taxes imposed by foreign governments, but excluding corporate franchise taxes imposed on OCHIN, taxes based on OCHIN's gross or net income, and taxes required to be paid with respect to OCHIN's officers, employees, and agents engaged in the performance of this agreement (including unemployment insurance, social security, and payroll tax withholding). If OCHIN is required to pay any such taxes or penalties or interest relating to items allocated to Member in the preceding sentence, Member will promptly pay to OCHIN an amount equal to any such amounts actually paid or required to be collected or paid by OCHIN. If Member is exempt from paying applicable sales or use taxes, then Member agrees to provide OCHIN, upon OCHIN's request, with a copy of Member's tax exemption certificate or other evidence satisfactory to Member demonstrating that Member is exempt from state, county, city or other local sales or use taxes. Member also agrees to notify OCHIN in a timely manner of any change in Member's sales or use tax status.
- 32. Insurance Requirements.** Without limiting OCHIN's duty to indemnify, OCHIN shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:
- 32.1** Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent OCHINs, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- 32.2** 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 \$1,000,000 per occurrence.

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

32.4 Professional liability insurance, if required for the professional services being provided (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the OCHIN 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.

32.5 Other Insurance Requirements: All insurance required by this Agreement shall be with a company acceptable to the County. In general, insurance companies should be rated A or better, and be an admitted insurer in the State of California. The initial policies and endorsements provided by OCHIN are acceptable to the County, but the County reserves the right of refusal for any changes in carrier or policy limits during the term of this Agreement, which shall not be unreasonably withheld. 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 OCHIN completes its performance of services under this Agreement.

32.6 OCHIN shall give the County written notice at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof of each liability policy. Each policy shall provide coverage for OCHIN 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.

32.7 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 OCHIN'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 OCHIN's insurance. The required endorsement form for Commercial General Liability Additional Insured is 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 endorsement is ISO Form CA 20 48 02 99.

32.8 Prior to the execution of this Agreement by the County, OCHIN shall file certificates of insurance with the County's Contract Administrator and County's Purchasing Division, showing that the OCHIN has in effect the insurance required by this Agreement. The OCHIN 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.

32.9 OCHIN shall at all times during the term of this Agreement maintain in force the General Liability, Professional Liability, and Workers' Compensation insurance coverage required under this Agreement. OCHIN shall at all times while providing hourly professional services to the County maintain in force the Business Automobile liability insurance. OCHIN shall send, without demand by County, annual certificates to County's Contract Administrator and County's Purchasing Division. If the certificate is not received by the expiration date, County shall notify OCHIN and OCHIN shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by OCHIN to

maintain such insurance is a default of this Agreement, which entitles County to terminate this agreement under the circumstances described in Section 22.1 above.

32.10 In the event OCHIN is required to obtain additional insurance beyond its current coverage as a result of this Section 32, Member will reimburse OCHIN for the cost of obtaining and maintaining such additional insurance.

Exhibit C

Technical Support Terms and Conditions

Unless otherwise defined, capitalized terms in this exhibit have the meanings given on the Cover Page or Exhibits A, B, or D.

1. **General.** This exhibit describes the technical support that OCHIN will provide to Member in connection with Member's use of the System. Additional support will be provided as agreed by OCHIN.
2. **Charges.** The Per-Visit Fees paid by Member cover normal support provided by or through OCHIN, including the Technical Infrastructure support, implementation support, ongoing support, vendor management services, and standard training described below. Member will be billed additional amounts for:
 - 2.1 Any support services requested by Member directly from Epic or provided directly by Epic to Member unless the expenses for such services are covered by the warranties or Maintenance Program provided under the Epic License Agreement;
 - 2.2 Any direct costs assessed to OCHIN by third parties related to implementation or support services requested by Member that OCHIN cannot provide through its own personnel;
 - 2.3 Any additional training described in Section 8 below;
 - 2.4 Any of the additional services described in Section 10 below;
 - 2.5 Assistance provided by OCHIN help desk personnel outside normal help desk hours or to individuals other than Contact Personnel designated to request support from OCHIN; and
 - 2.6 Travel expenses of OCHIN incurred in connection with implementation support services, as described in Section 9 below.
3. **Technical Infrastructure Support.** OCHIN will maintain and make reasonably available a team of trained personnel to provide support services to Member and Member's personnel in connection with the Technical Infrastructure. These services will include database operations and maintenance, operating environment maintenance, data center operations to maintain the data center hardware and related equipment in a safe and secure environment, and disaster recovery operations for backup and restoration.
4. **Implementation Support.** OCHIN will provide implementation support services to facilitate conversion of Member's site to the Epic platform. These services include:
 - 4.1 Project planning, management, and coordination.
 - 4.2 Analysis and development of operation procedures and work flows.
 - 4.3 Application configuration.
 - 4.4 Electronic table loads and updates.
 - 4.5 Setup of the OCHIN network and telecommunications equipment included in the Technical Infrastructure.
 - 4.6 Providing standard configuration information and requested consultation for workstations and printers.
 - 4.7 Completion of a scanner interface for ScanTron or similar patient contact records.
 - 4.8 Security setup within application and technical environment.
 - 4.9 Support during Go-Live to supplement Member's support resources during this period.
5. **Ongoing Support.** After Go-Live, OCHIN will arrange for provision of the following support services, which may be provided in person or by telephone, facsimile, modem, or other form of remote communication or access:
 - 5.1 **Help Desk.** OCHIN will provide assistance to Member's Contact Personnel designated to request support from OCHIN, by making support representatives reasonably available at the OCHIN help desk in the event Member's Contact Personnel are unable to resolve a software problem. This support service will be available according to the following schedule:

Monday through Friday

On call	Normal help desk hours	On call
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7:00 a.m. – 8:30 a.m.	8:30 a.m. – 5:00 p.m.	5:00 p.m. – 9:00 p.m.
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Saturday

On call
7:00 a.m. – 7:00 p.m.

(All times are Pacific Time.)

If Member makes a service request outside of normal help desk hours or requires that help desk hours be extended on a regular basis, Member will be billed at OCHIN's then standard rate for such services. Outside of normal help desk hours, Member should contact the help desk through the Track-It system, or by cell phone in case of an emergency.

- 5.2 Response Times.** When Member makes a service request to the OCHIN help desk regarding a software problem that severely impacts normal processing at one or more of Member's sites or threatens the integrity of Member's clinical data, OCHIN will make reasonable efforts to respond within one business hour. In all other cases, OCHIN will make reasonable efforts to respond within four business hours. The time it will take to resolve Member's problem will depend on the nature of Member's request.
- 5.3 Upgrades.** OCHIN will make reasonable efforts to incorporate the most recent major version of the application environment software within 12 months of Epic's release of that version. OCHIN will also conduct software testing for upgrades and new releases in conjunction with Member's representatives before the release is put in productive use.
- 5.4 Ongoing Updates.** OCHIN will provide system maintenance support for ongoing updates such as assigning and disabling user passwords, electronic uploads to master files or tables, and adjustments to Member's system set-up.
- 5.5 Project Management.** OCHIN will provide project management services to support Member's preparation for, and transition to, new releases of the software described in Exhibit A.
- 6. Vendor Management; Outsourcing.** OCHIN will manage the Epic License Agreement and will

facilitate and coordinate Member's requests for direct services and support from Epic, to the extent Member is entitled to any such direct services and support under the terms of the Epic License Agreement. OCHIN may outsource its service and support obligations under this agreement and will manage third party outsourcing contracts as well.

- 7. Standard Training.** OCHIN will provide training in the following areas ("Standard Training"): (i) patient registration; (ii) scheduling; (iii) billing; (iv) claims processing; (v) reporting-database model; and (vi) manager's reporting. Training for reporting-database model and manager's reporting will be conducted at OCHIN. Other training will be provided at Member's facility. Charges for Standard Training, except travel expenses, are included in the Per-Visit Fees.
- 8. Additional Training.** If OCHIN provides training other than the standard training described in Section 7 above, Member will be charged at OCHIN's then-current rates for the training (or at the applicable fee for any class in which such training is provided).
- 9. Travel Expenses.** If OCHIN personnel must travel in connection with providing implementation support services, including without limitation attending implementation preparation meetings, or standard or additional training, Member will pay OCHIN for reasonable travel expenses, including without limitation: (i) mileage at OCHIN's then-current rate, plane fare, car rental, and other transportation charges; (ii) reasonable meal and lodging expenses; and (iii) for travel more than 60 miles from OCHIN's offices, travel time billed at ½ OCHIN's then-current rate for training services.
- 10. Additional Services.** OCHIN may also make available such additional services as the OCHIN Board agrees to provide consistent with OCHIN's evolving role as a practice management service organization. The additional services OCHIN expects to provide include, but are not limited to, consulting services related to compliance with HIPAA and other consulting services relating to Member's operation and utilization of the System.

Exhibit D

HIPAA Compliance Terms

Unless otherwise defined, capitalized terms in this exhibit have the meanings given on the Cover Page or Exhibits A through C.

- 1. Purpose.** The purpose of this exhibit is to set forth the terms and conditions of disclosure of "protected health information" (as defined in Section 2.1 of this exhibit) by Member to OCHIN. It is the intent of OCHIN and Member that this exhibit will meet the requirements of 45 CFR § 164.504(e) of the privacy regulations and 45 CFR § 164.314(a) of the security regulations promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (collectively the "HIPAA Regulations").
- 2. Use And Disclosure Of PHI.**

 - 2.1 Definitions.** For purposes of this exhibit, the term "protected health information" (PHI) means Individually Identifiable Health Information transmitted or maintained in any form or medium. "Individually Identifiable Health Information" is information, including demographic information, that: (a) relates to (i) the past, present, or future physical or mental health or condition of an individual person, (ii) the provision of health care to an individual person, or (iii) the past, present, or future payment for the provision of health care to an individual person; and (b) identifies that person (or with respect to which there is a reasonable basis to believe the information can be used to identify the person). "Electronic Protected Health Information" (EPHI) means the subset of PHI that is transmitted or maintained by electronic media. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations of an information system. Terms used by but not otherwise defined in this exhibit shall have the same meaning as those in 45 CFR Parts 160, 162, and 164.
 - 2.2 Security and Confidentiality.** If Member discloses any PHI to OCHIN, or if OCHIN creates or receives any PHI on behalf of Member, OCHIN will maintain the security and confidentiality of such PHI in OCHIN's possession as is required by the HIPAA Regulations.
- 2.3 Use and Disclosure.** OCHIN may not use or disclose PHI except as permitted by this exhibit or other parts of this agreement, or as required by law.
- 2.4 Disclosure Procedure.** Unless such disclosure is required by law, OCHIN may not disclose PHI unless: (a) OCHIN obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (b) the person notifies OCHIN of any instances of which the person is aware of breaches of confidentiality of the PHI.
- 3. Data Aggregation.** Exhibit B permits OCHIN to use patient information for certain Data Aggregation services relating to Member's health care operations, including a state-wide data warehouse and the EpicData Service. "Data Aggregation" means, with respect to PHI disclosed to OCHIN, combining such PHI with PHI received by OCHIN in its capacity as a business associate of another entity covered by the HIPAA Regulations to permit data analyses that relate to the health care operations of the respective covered entities.
- 4. Limited Data Sets.** In addition to the permitted uses set forth in Section 14.2 of Exhibit B, member authorizes OCHIN to create limited data sets of Member information for research purposes, as permitted by HIPAA. OCHIN may disclose limited data sets to third party researchers, provided that OCHIN obtains and maintains with each such third party researcher an agreement that is consistent with the requirements for limited data set use agreements under HIPAA.
- 5. Other Obligations.**

 - 5.1 Safeguards.** OCHIN will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as permitted by this exhibit. OCHIN will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that OCHIN

creates, receives, maintains, or transmits on behalf of Member.

- 5.2 Reports.** OCHIN will report to Member any use or disclosure of PHI by OCHIN or its Workforce not provided for by this exhibit of which OCHIN becomes aware. In addition, OCHIN shall report to Member any Security Incident of which OCHIN becomes aware in a reasonable time and manner considering the nature of the Security Incident and the information to be reported.
- 5.3 Agents.** OCHIN will ensure that any agents, including subcontractors, to whom OCHIN provides PHI received from Member (or created or received by OCHIN on behalf of Member) agree to the same restrictions and conditions that apply to OCHIN with respect to such PHI.
- 5.4 Availability.** OCHIN shall make PHI in its possession available to the individual who is the subject of the PHI as required by the HIPAA Regulations.
- 5.5 Amendment.** OCHIN shall make available PHI in its possession for amendment of the PHI by the person identified in the PHI and incorporate any such amendments in accordance with the HIPAA Regulations.
- 5.6 Access.** If OCHIN has PHI in a designated record set, OCHIN will provide Member, upon Member's reasonable request, access for inspection of OCHIN's books, records, policies, practices, and procedures concerning the use and disclosure of PHI for purposes of assisting Member with its obligations for record keeping and compliance with complaint investigations and compliance reviews as required by the HIPAA Regulations.
- 5.7 Mitigation.** OCHIN agrees to mitigate, to the extent practicable, any harmful effect that is known to OCHIN of a use of PHI by OCHIN in violation of the terms of this Exhibit D.
- 6. Accounting Of Disclosures.** Although OCHIN does not anticipate making disclosures other than for the purposes of this agreement, OCHIN will maintain a record of all disclosures of PHI made otherwise than for the purposes of this agreement, including the date of the disclosure, the name and address (if known) of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure as necessary to permit Member to respond to a request by an individual for an accounting of disclosures in accordance with 45 CFR § 164.528. OCHIN will make such record available to Member on request.
- 7. Disclosure To U.S. Department Of Health And Human Services.** OCHIN will make its internal practices, books, and records relating to the use and disclosure of PHI received from Member (or created or received by OCHIN on behalf of Member) available to the Secretary of the United States Department of Health and Human Services, for purposes of determining OCHIN's and Member's compliance with the HIPAA Regulations.
- 8. Termination.** In the event of a material breach of these HIPAA Compliance Terms by OCHIN, Member shall provide OCHIN notice and not less than thirty (30) days opportunity to cure. Member may terminate this Agreement if OCHIN does not cure the breach within this thirty (30) day period.
- 9. Procedure Upon Termination.** Upon termination of this agreement, OCHIN will, if feasible, return or destroy all PHI that OCHIN maintains in any form, and will retain no copies of such PHI or, if the parties agree that return or destruction is not feasible, OCHIN will continue to extend the protections of this exhibit to such PHI, and limit further use of the PHI to those purposes that make the return or destruction of the PHI infeasible.
- 10. No Third Party Beneficiaries.** There are no third party beneficiaries to the agreement or this exhibit.
- 11. Business Associate Status.** Nothing contained in the agreement or this exhibit causes OCHIN to be a "covered entity" as defined in the HIPAA Regulations or otherwise requires OCHIN to comply with the HIPAA Regulations as a covered entity.

Exhibit D-A

Additional HIPAA Compliance Terms

Unless otherwise defined, capitalized terms in this exhibit have the meanings given on the Cover Page or Exhibits A through D.

- 1. Purpose.** OCHIN performs or arranges for the performance of certain research activities (the "Activities") regarding medically underserved populations which require access to certain Member data meeting the definition of a limited data set under HIPAA (the "Limited Data Sets"). Member agrees to the disclosure of the Limited Data Sets to OCHIN for use by OCHIN in performance of the Activities. OCHIN agrees to limit its use of the Limited Data Sets and protect the Limited Data Sets according to the terms and conditions of this exhibit, HIPAA, and Oregon law.
- 2. Disclosure of Limited Data Sets to OCHIN.** OCHIN agrees to use, and Member agrees to disclose, certain Limited Data Sets for use by OCHIN in the performance of the Activities as the parties may agree from time to time, but in any event the scope such information shall be limited to the definition of a limited data set as set forth in HIPAA.
- 3. Obligations of OCHIN.**

 - 3.1 Use and Disclosure of Limited Data Sets.** OCHIN may use and disclose a Limited Data Set only as permitted under the terms of this exhibit or required by law, but shall not otherwise use or disclose a Limited Data Set and shall ensure that its directors, officers, employees, contractors, and agents do not use or disclose a Limited Data Set in any manner that would constitute a violation of HIPAA if used by the Member. OCHIN agrees not to use the Limited Data Set in such a way as to identify any individual and further agrees not to contact any individual. OCHIN shall limit the use or receipt of the Limited Data Set to the following individuals or classes of individuals who need the Limited Data Set for the performance of the Activities: qualified researchers as identified by senior management or the OCHIN Board and, where applicable, subject to Institutional Review Board approval of the study.
 - 3.2 Safeguards against Misuse of Information.** OCHIN shall use appropriate safeguards to prevent use or disclosure of the Limited Data Sets other than as permitted under this exhibit.
 - 3.3 Reporting of Disclosures of Protected Health Information.** OCHIN shall, within a reasonable amount of time of becoming aware of any use or disclosure of a Limited Data Set in violation of this exhibit by OCHIN, its officers, directors, employees, contractors, or agents or by a third party to which OCHIN disclosed the Limited Data Set pursuant to Section 3.4 below, report any such disclosure to the Member.
 - 3.4 Agreements by Third Parties.** OCHIN may engage third party agents or subcontractors to perform the Activities. OCHIN shall obtain and maintain an agreement with each such agent or subcontractor that has or will have access to a Limited Data Set, pursuant to which agreement such agent or subcontractor agrees to be bound by substantially the same restrictions, terms, and conditions that apply to OCHIN pursuant to this exhibit with respect to the Limited Data Set.
 - 3.5 Ownership of Information.** OCHIN acknowledges that, as between OCHIN (including any third party agents or subcontractors) and Member, all Limited Data Sets shall be and remain the sole property of Member, including any and all forms thereof developed by OCHIN in the course of its fulfillment of its obligations pursuant to the agreement.
- 4. Termination.**

 - 4.1 Termination upon Breach of Provisions Applicable to Protected Health Information.** Any other provision of this agreement notwithstanding, this exhibit may be terminated by the Member upon ten days' written notice to OCHIN in the event that OCHIN breaches any provision contained in this exhibit and such breach is not cured within such ten-day period. OCHIN acknowledges and agrees that in the event OCHIN's efforts to cure the breach are unsuccessful, Member has a duty to discontinue disclosure of Protected Health Information and to report the breach to the Secretary, notwithstanding any other provision of this agreement to the contrary.

4.2 Return or Destruction of Protected Health Information upon Termination. Upon termination of this agreement or this exhibit, OCHIN shall either return or destroy all Limited Data Sets received from Member or created or received by OCHIN on behalf of Member and which OCHIN still maintains in any form. OCHIN shall not retain any copies of such Limited Data Sets. Notwithstanding the foregoing, to the extent that OCHIN determines that it is not feasible to return or destroy such Limited Data Sets, the terms and provisions of this exhibit that protect the Limited Data Set from disclosure or misuse shall survive termination and such Protected Health Information shall be used or disclosed solely for such purpose or purposes that prevented the return or destruction of such Limited Data Sets.

4.3 OCHIN's Right of Cure. OCHIN shall have the right to cure any breach of OCHIN's obligations under this exhibit. OCHIN shall give Member notice of its election to cure any such breach and Member shall cooperate fully in the efforts by OCHIN to cure the OCHIN's breach.

Exhibit E Public Contracting Terms

Unless otherwise defined, capitalized terms in this exhibit have the meanings given on the Cover Page or Exhibits A through D.

1. As required by ORS Section 279.312, OCHIN shall:
 - 1.1 Make payment promptly, as due, to all persons supplying to OCHIN labor or material for the prosecution of the work provided for in this agreement.
 - 1.2 Pay all contributions or amounts due the Industrial Accident Fund from OCHIN or any subcontractor incurred in the performance of this agreement.
 - 1.3 Not permit any lien or claim to be filed or prosecuted against Member on account of any labor or material furnished.
 - 1.4 Pay to the Department of Revenue of the State of Oregon all sums withheld from employees pursuant to ORS 316.167.
2. Pursuant to ORS 279.314, if OCHIN fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to OCHIN (or OCHIN's subcontractors) by any person in connection with this agreement as such claim becomes due, the proper officer or officers representing Member may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due OCHIN by reason of such contract. The payment of the claim in the manner authorized in this section shall not relieve OCHIN or OCHIN's surety from obligation with respect to any unpaid claims.
3. Pursuant to ORS 279.316, no person shall be employed for more than 10 hours in any one day, or for 40 hours in any one week in connection with this agreement except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as described in ORS 279.051, the employee shall be paid at least time and a half pay:
 - 3.1 For all overtime in excess of eight hours a day or forty hours in any one week when the work week is five consecutive days, Monday through Friday; or
 - 3.2 For all overtime in excess of ten hours a day or forty hours in one week when the work week is four consecutive days, Monday through Friday; and
 - 3.3 For all work performed on Saturday and on any legal holiday specified in ORS 279.334.
4. Pursuant to ORS 279.320, OCHIN shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of OCHIN, of all sums which OCHIN agrees to pay for such services and all monies and sums which OCHIN collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service. All employers working under this agreement are subject employers that will comply with ORS 656.017.