

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

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

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

**1.0     GENERAL DESCRIPTION.**

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

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

**2.0     PAYMENT PROVISIONS.**

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

**3.0     TERM OF AGREEMENT.**

- 3.01   The term of this Agreement is from September 1, 2018 to August 31, 2023, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**
- 3.02   The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

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

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

**Exhibit A Scope of Services/Payment Provisions**

**Exhibit B EPCS and Duo T&Cs**

Exhibit C CareMessage Participant Agreement and T&Cs  
Exhibit P Pricing Schedule

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR'S agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS.

- 6.01 CONTRACTOR may adjust its standard rates annually during the term of this Agreement, provided that in no circumstance shall County be charged rates that are more than 15% higher than CONTRACTOR's standard rates in effect on the first day of the term of this Agreement. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

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

8.0 INDEMNIFICATION.

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

## 9.0 INSURANCE REQUIREMENTS.

### 9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

### 9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

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

**Commercial General Liability Insurance**, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

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

**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.

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

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

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

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

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

9.04 **Other Requirements:**

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

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

**Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance.** The required endorsement 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.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five 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.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's

Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

#### 10.0 **RECORDS AND CONFIDENTIALITY.**

- 10.01 **Confidentiality.** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by

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

- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement. Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.03 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.04 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.
- 11.0 NON-DISCRIMINATION.
- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

**12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.**

12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

**13.0 INDEPENDENT CONTRACTOR.**

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

**14.0 NOTICES.**

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

<b>FOR COUNTY:</b>	<b>FOR CONTRACTOR:</b>
Elsa Jimenez, Director of Health	President and Chief Executive Officer
Name and Title	Name and Title
1270 Natividad Road	1881 SW Naito Parkway
Salinas, CA 93906	Portland, Oregon 97201
Address	Address
831 755 4526	(503) 943-2500
Phone	Phone

## 15.0 MISCELLANEOUS PROVISIONS.

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

- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

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

**COUNTY OF MONTEREY**

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

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

By: \_\_\_\_\_  
Department Head (if applicable)

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

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

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

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

By: Steph Delle  
County Counsel

Date: 8/9/18

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

By: [Signature]  
Auditor/Controller

Date: 8/18

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

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

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

**CONTRACTOR**

OCHIN Inc.

Contractor's Business Name\*

By: [Signature]  
(Signature of Chair, President, or Vice-President)\*

Abigail Sears CEO  
Name and Title

Date: 7-31-18

By: [Signature]  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*

Sean W. Kelly-Ross CFO  
Name and Title

Date: 7-31-18

County Board of Supervisors' Agreement Number: \_\_\_\_\_, approved on (date): \_\_\_\_\_

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

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

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

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

16.0 SIGNATURE PAGE.

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

**COUNTY OF MONTEREY**

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

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

By: \_\_\_\_\_  
Department Head (if applicable)

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

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

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

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

By:  \_\_\_\_\_  
Deputy County Counsel

Date: 8/9/18

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

By:  \_\_\_\_\_  
Auditor/Controller

Date: 8-9-18

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

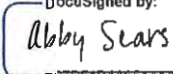
By: \_\_\_\_\_  
Risk Management

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

**CONTRACTOR**

OCHIN Inc.

Contractor's Business Name\*

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

Abby Sears CEO

Name and Title  
7/31/2018

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

By:  \_\_\_\_\_  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*

Sean Whiteley-Ross  
CFO

Name and Title

Date: 7/31/2018

County Board of Supervisors' Agreement Number: \_\_\_\_\_, approved on (date): \_\_\_\_\_

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

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

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

## **Exhibit A.1 Software Modules**

*Unless otherwise defined, capitalized terms in this exhibit have the meanings given on the Standard Agreement or the other exhibits. County is a member of the OCHIN collaborative and may be referred to in the Exhibits as "member".*

### **Practice Management Software**

After implementation of the practice management component of the System, County will have access to the following software modules:

- Resolute Professional Billing System
- Electronic Remittance Cadence Scheduling System
- Health Information Management – Chart Tracking
- Identity Embedded Master Person Index
- Clarity and Analyst Reporting Package
- Business Objects Enterprise Server (Version XI)
- InterSystems Cache\*
- KB Systems SQL
- ICD-10 Codes (Diagnostics Data)
- IMO-SMO-MED
- ADA Codes
- Prelude
- UB-4
- AMA
- Acure

\*County will pay an additional license access fee, in an amount specified between the Parties for each InterSystems Cache license in excess of those included in the Initial Payment.

### **EMR Software**

After implementation of the EMR component of the System (if County has purchased access to the EMR component as indicated in the pricing information included in Exhibit P), County will have access to the following software modules:

- EpicCare Ambulatory EMR
- Hyland OnBase Document Management Solution Software
- First Databank Medication Database
- One Pharmacy Interface with SureScripts
- IMO Personal Health Terminology
- ABN Software (CA, OR, WA, WI, OH only)
- MyChart
- MyChart Spanish
- Care Everywhere
- Haiku

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

### **Medical Records Software**

Release of Information (ROI)

### **Tapestry\***

### **Wisdom\***

### **Call Center\***

### **Nurse Triage \***

### **Visit Navigators**

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

### **Integrated Devices\***

MidMark – see Pricing P for chosen integrated devices

NOTE: Hardware is the responsibility of the County

**Welcome (Software for Patient Check In and Assessment used on Tablets)\***

NOTE: Purchasing of the devices is the responsibility of the County

**Interfaces**

Surescripts interface  
Social Security Exchange in California  
Immunization interface in California (CAIRS2)  
CareMessage  
Trizetto  
HIE for CCHC  
Lab Interface (chosen lab interface is reflected on Schedule P)  
Additional Interfaces are Reflected on Schedule P - Pricing

\*County will pay an additional license and implementation fee as indicated in Exhibit P as well as an ongoing maintenance fee in excess of those included in the Initial Payment.

## **Exhibit A.2**

### **System Terms and Conditions**

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

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

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

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

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

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

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

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

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

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

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.

**Networking and Telecommunications.** The WAN connection to County's primary local area network ("LAN") and all associated routers, equipment, telecommunications facilities, and cabling from the data center to the connection point. CONTRACTOR will establish technical standards and requirements for County to establish connectivity to the System WAN. County will be provided up to a single connection to the System WAN.. CONTRACTOR will contract with third parties to provide telecommunications facilities.

**Data Center.** CONTRACTOR has established a data center to house the central Technical Infrastructure. CONTRACTOR contracts with a third party to provide and maintain the data center.

**County Hardware Requirements.** County will be responsible for obtaining, installing, and maintaining the hardware for use of the System within County's LAN, up to the router or other point at which the System WAN connects to County's LAN. County will, at a minimum, obtain and maintain the hardware currently used to access the System.

**Personal Computers.** County will provide a number of personal computers sufficient for use of the System. County will be responsible for purchasing, installing, and implementing software maintained on such computers (other than software listed on Exhibit A.1), and upgrades of the software. County acknowledges that regular implementation of upgrades to such software is necessary for successful operation of the System.

**Other.** County is responsible for obtaining and maintaining accessories and peripheral devices for County's personal computers, including individual scanning accessories, faxes, biometric equipment, and printers. County is also responsible for the cost of (a) desktop equipment and workstations; (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 County's locations.

**Limited Access.** County will not make the System available to any third party except (a) Affiliates and Permitted Users or (b) as needed by consultants who are assisting County or an Affiliate with respect to its operations (including, but not limited to, information technology and telecommunications), and who are bound by appropriate confidentiality obligations that are no less protective than those imposed upon County under this agreement and an agreement of the type described in Section 21(k) of the Epic Agreement providing that such third party and its employees will not develop, design, or enhance any software product that has or is intended to have a similar purpose to or

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

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

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

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

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

#### **Initial Payment.**

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

annual billable visits in excess of purchased access volume at CONTRACTOR's then-standard rates.

#### **Service Additions and Adjustments.**

**County-Specific Items.** At County's request, CONTRACTOR may agree to procure or provide for County additional or customized goods or services or access related to the System, including customized workflows. County will pay CONTRACTOR 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 CONTRACTOR's then-standard rates.

**Service Adjustments.** Because CONTRACTOR's agreements with various vendors are subject to change without CONTRACTOR's approval, CONTRACTOR may cancel these agreements if vendors fail to offer terms acceptable to CONTRACTOR. If CONTRACTOR decides to cancel a vendor agreement, CONTRACTOR will provide notice and, if feasible, an alternate solution to County, but County may lose access to related software and services and may need to contract directly with the vendor if desired.

#### **Connectivity.**

**General.** County is responsible for procuring, maintaining, and paying for a connection from County's LAN to CONTRACTOR's hosting center. County may connect to CONTRACTOR's hosting center either through a CONTRACTOR managed, private, multiprotocol label switching service ("MPLS") or an internet service provider ("ISP"). CONTRACTOR highly recommends that County procure a MPLS connection. If County chooses to obtain an ISP connection, County understands and acknowledges that County may have reduced connectivity and may be assessed additional fees for production use of the internet service. County, and not CONTRACTOR, will be responsible for any connectivity issues.

#### **Connectivity Services Provided by CONTRACTOR.**

CONTRACTOR will provide County with an internet backup connection to the System for the price listed on Exhibit P. County will pay CONTRACTOR by the end of the following month for use of the Internet backup connection.

At County's request, CONTRACTOR will assist County with any connectivity issues at CONTRACTOR's then-current rates. CONTRACTOR will provide County with an estimate of the number of hours to resolve the issue, which estimate must be approved by County in writing before CONTRACTOR begins work. After the service is provided, CONTRACTOR will bill County based on actual hours expended.

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

## **Compliance.**

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

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

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

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

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

new roles or responsibilities, such as implementation coordination, coordination liaison, end user training, and direct user support (application and technical).

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

**Support Personnel.** County will designate sufficient personnel at County ("Contact Personnel") to provide support services to County's users on an ongoing basis. County must assign at least one of these Contact Personnel to each of the following areas: billing office operations support, County 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.

**CONTRACTOR Help Desk Contacts.** County will work to ensure that its employees consolidate questions prior to contacting the CONTRACTOR help desk.

**Security.** County will allocate resources within County's organization and clinics that are sufficient to assure the level of security maintenance required herein.

**Upgrade Support.** County will substantially assist in any upgrades and in readying County's organization for the transition to new releases, including any necessary planning, testing, or training. County will implement the upgrades and new releases within time frames specified by CONTRACTOR.

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

**Workgroup Participation.** County will designate personnel to serve as one member of each CONTRACTOR workgroup. The same person may serve as a member of more than one workgroup.

**Responsibility for County.** County represents that each facility is directly owned and operated by County or by an Affiliate of County as defined in A.2. At County's request, CONTRACTOR will send invoices for amounts payable under this agreement to one or more specific facility, but County will remain primarily responsible for payment and other obligations under this agreement. A breach of this agreement at or by any facility or personnel at or of any County will constitute a breach of this agreement by County.

**Data Collection and Reporting.** County will be required to furnish to CONTRACTOR, and CONTRACTOR may disclose, data for financial, operational, and clinical health outcome metrics for formative and summative review and reporting including, but not limited to, UDS reports for Federally-Qualified Health Centers (FQHCs) and equivalent information for FQHC look-alikes and other community health centers, accounting of cash and in-kind contributions as required in

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

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

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

## **Ownership.**

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

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

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

and CONTRACTOR agree to comply with the HIPAA compliance terms set forth in this agreement and the OHCA Terms.

**Funding Sources.** County 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.

#### **Warranties.**

**General.** CONTRACTOR warrants to County that the software modules described on Exhibit A.1 will be free from Substantive Program Errors to the extent those modules are so warranted by Epic in Section 8 of the Epic Agreement. As used herein, "Substantive Program Error" has the same meaning ascribed to that term in the Epic Agreement.

**Third Party Vendors.** As to any software module listed on Exhibit A.1 that is provided through a third party other than Epic, CONTRACTOR makes the same warranty to County that the third party makes to CONTRACTOR with respect to the module.

**Customized Code.** Any customized code that is added to or modifies the software modules listed on Exhibit A.1 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 Agreement.

**Notice, Cure, and Response Time.** Any claim under the warranty set forth herein 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 Agreement; provided, however, that (a) notice of any warranty claim under this agreement shall be made to CONTRACTOR rather than Epic, and (b) the Substantive Program Error may be remedied by either CONTRACTOR or Epic.

**Exclusive Remedy.** County's sole and exclusive remedy, apart from its indemnification rights pursuant to Section 8.01 of the Standard Agreement, for breach of any warranty provided herein shall be termination of this agreement with respect to the particular software module containing the Substantive Program Error and refund of any portion of County's Initial Payment attributable to that module.

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

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

**Responsibility for Use.**

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

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

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

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

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

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

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

not be affected. Items that remain unresolved after negotiation become elements of a bona fide dispute.

A bona fide dispute will be resolved exclusively through arbitration, except that either party may seek injunctive relief from a court of competent jurisdiction. The award rendered by the arbitrator will be final and binding, and judgment may be entered on the award in any court having 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 California law and arbitration will occur in California and be administered by JAMS or another arbitration service agreed upon in writing by the parties.

**LIMITATION OF CONTRACTOR'S LIABILITY.** EXCEPT AS PROVIDED IN THIS SECTION, CONTRACTOR WILL BE LIABLE TO COUNTY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CLAIMS UNDER THIS AGREEMENT ONLY TO THE EXTENT THAT CONTRACTOR'S INSURANCE CARRIER PROVIDES COVERAGE FOR SUCH CLAIMS. CONTRACTOR WILL PROVIDE CERTIFICATES OF INSURANCE EVIDENCING ITS THEN-CURRENT COVERAGE TO COUNTY UPON REQUEST. CONTRACTOR WILL NOT BE LIABLE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR LOST PROFITS OR REVENUES RESULTING FROM OR IN ANY WAY RELATED TO COUNTY'S USE OF THE SYSTEM, INCLUDING CLAIMS BASED ON THE NEGLIGENCE OF EPIC, CONTRACTOR, OR OTHER THIRD-PARTY VENDORS. CONTRACTOR WILL NOT BE RESPONSIBLE FOR ERRORS OR DAMAGES CAUSED BY OR RESULTING FROM INPUT ERRORS, CHANGES BY COUNTY TO ANY SOFTWARE PROVIDED BY CONTRACTOR, OR COMBINATIONS OF SOFTWARE PROVIDED BY CONTRACTOR WITH OTHER SOFTWARE. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO INDEMNIFICATION UNDER SECTION 8.01 OF THE STANDARD AGREEMENT.

#### **System and Data Security.**

**Disclosure of Patient Information.** CONTRACTOR will not disclose County's patient information except (a) to administer and manage the business of CONTRACTOR, including administration of the System, (b) to satisfy applicable legal requirements, (c) to comply with the terms of the Epic 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) to participate in a state-wide data warehouse in each state where a County is located, that will contain aggregated and de-identified patient data, (e) in accordance with A.6 (Organized Health Care Arrangement Terms), or (f) in accordance with Exhibit A.10 (Additional Uses and Disclosures). Further, all disclosures of

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

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

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

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

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

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

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.

**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.

**Taxes.** County is responsible for all taxes arising out of this agreement or County'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 CONTRACTOR, taxes based on CONTRACTOR's gross or net income, and taxes required to be paid with respect to CONTRACTOR's officers, employees, and agents engaged in the performance of this agreement (including unemployment insurance, social security, and payroll tax withholding). If CONTRACTOR is required to pay any such taxes or penalties or interest relating to items allocated to County in the preceding sentence, County will promptly pay to CONTRACTOR an amount equal to any such amounts actually paid or required to be collected or paid by CONTRACTOR. If County is exempt from paying applicable sales or use taxes, then County agrees to provide CONTRACTOR, upon CONTRACTOR's request, with a copy of County's tax exemption certificate or other evidence satisfactory to County demonstrating that County is exempt from state, county, city or other local sales or use taxes. County also agrees to notify CONTRACTOR in a timely manner of any change in County's sales or use tax status.

**Exhibit A.3  
SERVICES**

County utilizes services of CONTRACTOR as follows:

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

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

## **Exhibit A.4**

### **Technical Support Terms and Conditions**

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

- 1. General.** This exhibit describes the technical support that CONTRACTOR will provide to County in connection with County's use of the System. Additional support will be provided as agreed by CONTRACTOR.

**Charges.** The Per-Visit Access Fees paid by County cover normal support provided by or through CONTRACTOR, including the Technical Infrastructure support, implementation support, ongoing support, vendor management services, and standard training described below, County will be billed additional amounts for:

Any support services requested by County directly from Epic or provided directly by Epic to County unless the expenses for such services are covered by the warranties or Maintenance Program provided under the Epic Agreement.

Any direct costs assessed to CONTRACTOR by third parties related to implementation or support services requested by County that CONTRACTOR cannot provide through its own personnel.

Any additional training described below.

Significant assistance provided by CONTRACTOR help desk personnel outside normal help desk hours.

Travel expenses of CONTRACTOR incurred in connection with implementation support services, as described below.

**Technical Infrastructure Support.** CONTRACTOR will maintain and make reasonably available a team of trained personnel to provide support services to County and County'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.

**3.1. Business Continuity Requirements.** County will be responsible for adhering to and maintaining Business Continuity Access processes and procedures as communicated by CONTRACTOR reflecting Epic's current standards. Current processes and procedures will be reflected on Exhibit A.11.

**Implementation Support.** CONTRACTOR will provide implementation support services to facilitate conversion of County to the Epic platform. These services include:

Project planning, management, and coordination.

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

Application configuration.

Electronic table loads and updates.

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

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

Security setup within application and technical environment.

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

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

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

Monday through Friday

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

Saturday

On call
7:00 a.m. — 7:00 p.m.

(All times are Pacific Time)

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

**Response Times.** CONTRACTOR will make reasonable efforts to meet the response time expectations described herein provided that County has complied with the procedures and fulfilled its support obligations described herein this exhibit.

**Upgrades.** CONTRACTOR will make reasonable efforts to incorporate the most recent major version of the application environment software within 24 months of Epic's stabilized release of that version. CONTRACTOR will also conduct software testing for upgrades and new releases in conjunction with County's representatives before the release is put in productive use.

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

2. **Standard Training.** CONTRACTOR will provide training in the following areas ("Standard Training"): (a) patient registration; (b) scheduling; (c) billing; (d) claims processing; (e) reporting-database model; and (f) manager's reporting. Other training will be provided at County's facility or through online learning modules or webinars. Charges for Standard Training are included in the Per-Visit Access Fees. Training will be in a variety of forms including providing LMS (on-line, module) training, provided materials to read, in-person training, and remote, person-led training. A large component of training will be provided via the LMS for which requires the staff to self-manage their learning track and for which is required to be completed prior to in-person training.

**Additional Training.** If CONTRACTOR provides training other than the standard training described in Section 2 above, including customized workflow training, County will be charged at CONTRACTOR's then-current rates for the training (or at the applicable fee for any class in which such training is provided).

**Quality Improvement On Implementation.** CONTRACTOR will provide copies of existing standard recommended workflows and will review key workflows with the clinic's implementation team. These key workflows include basic office visit, lab, registration, scheduling, and billing.

**Additional Quality Improvement.** If CONTRACTOR provides additional quality improvement, it will be available at standard rates. Examples of additional activities could include additional workflow customization and customization of data analytics, and/or additional Quality Improvement services beyond what is described in paragraph 9 of this section.

**Travel Expenses.** County and CONTRACTOR agree that CONTRACTOR shall be reimbursed for travel expenses during this Agreement. CONTRACTOR shall receive compensation for travel expenses as per the County Travel Policy. A copy of the policy is available online at [www.co.monterey.ca.us/auditor/policies.htm](http://www.co.monterey.ca.us/auditor/policies.htm). To receive reimbursement,

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

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

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

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

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

## **Exhibit A.5**

### **HIPAA Compliance Terms**

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

- 1. Purpose.** The purpose of this exhibit ("Exhibit") is to set forth the terms and conditions of CONTRACTOR's uses and disclosures of County's "Protected Health Information," which includes "Limited Data Sets" (as defined in Section 2.1 of this Exhibit). It is the intent of CONTRACTOR and County that this Exhibit will meet the requirements of 45 CFR § 164.504(e) and 45 CFR § 164.514(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"), and all regulations issued under the Health Information Technology for Economic and Clinical Health Act ("HITECH") (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). "PHI" includes "Limited Data Sets," which means PHI that excludes the identifiers as defined by 45 C.F.R. 164.514(e). "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 County discloses any PHI to CONTRACTOR, or if CONTRACTOR creates or receives any PHI on behalf of County, CONTRACTOR will maintain the security and confidentiality of such PHI in CONTRACTOR's possession as is required by the HIPAA Regulations.
  - 2.3 Use and Disclosure.** CONTRACTOR may use and disclose PHI in a manner consistent with County's permitted uses and disclosures of PHI as a covered entity under HIPAA and CONTRACTOR's policies. CONTRACTOR shall not disclose PHI other than as permitted by this Exhibit, the Standard Agreement between County and CONTRACTOR ("Agreement"), or as otherwise permitted or required by law.

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

### **3. Data Use**

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

#### **4. Other Obligations.**

**4.1 Safeguards.** CONTRACTOR will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as permitted by this Exhibit. Where applicable, CONTRACTOR will comply with 45 C.F.R. § 164, Subpart C, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that CONTRACTOR creates, receives, maintains, or transmits on behalf of County.

**4.2.1 Reports.** CONTRACTOR will report to County any use or disclosure of PHI by CONTRACTOR or its Workforce not provided for by this Exhibit of which CONTRACTOR becomes aware, including breaches of unsecured PHI, within ten (10) calendar days after becoming aware of such Security Incident or non-permitted use or disclosure. Notwithstanding the foregoing, CONTRACTOR and County acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and County acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, use or disclosure of PHI. CONTRACTOR shall investigate each Security Incident or non-permitted use or disclosure of County's PHI that it discovers to determine whether such Security Incident or non-permitted use or disclosure constitutes a reportable breach of unsecured PHI and shall provide a summary of its investigation and risk assessment to County. CONTRACTOR shall document and retain records of its investigation of any suspected breach, including its reports to County under this Section.

**4.2.2 Breach of Unsecured PHI.** If CONTRACTOR or County determines that a reportable breach of unsecured PHI has occurred, CONTRACTOR shall provide a written report to County without unreasonable delay but no later than thirty (30) calendar days after discovery of the breach. To the extent that information is available to CONTRACTOR, CONTRACTOR'S written report to County shall be in accordance with 45 C.F.R. § 164.410(c). CONTRACTOR shall cooperate with County in meeting County's obligations under the HIPAA Rules with respect to such breach. County shall have sole control over the timing and method of providing notification of such breach to the affected individual(s), the Secretary and, if applicable, the media. CONTRACTOR shall reimburse County for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the breach.

**4.3 Agents and Subcontractors.** CONTRACTOR will ensure that any agents and subcontractors that create, maintain, or transmit PHI on behalf of

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

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

8. **Procedure upon Termination.** Upon termination of the Agreement, CONTRACTOR will, if feasible, return or destroy all PHI that CONTRACTOR maintains in any form, and will retain no copies of such PHI or, if the parties agree that return or destruction is not feasible, CONTRACTOR 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.
9. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to the Agreement or this Exhibit.
10. **Business Associate Status.** Nothing contained in the Agreement or this Exhibit causes CONTRACTOR to be a "covered entity" as defined in the HIPAA Regulations or otherwise requires CONTRACTOR to comply with the HIPAA Regulations as a covered entity.
11. **HITECH Compliance.** CONTRACTOR shall comply with the requirements of HITECH, codified at 42 U.S.C. §§ 17921-17954, which are applicable to business associates, and shall comply with all regulations issued by the Department of Health and Human Services to implement HITECH as of the date by which business associates are required to comply.
12. **Limited Data Sets.** In addition to the permitted uses set forth herein, County authorizes CONTRACTOR to create Limited Data Sets of County information for certain research activities consistent with applicable law ("Activities") which may require access to such Limited Data Sets. With County's written consent, CONTRACTOR may disclose Limited Data Sets to third party researchers, provided that CONTRACTOR 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.
13. **Compliance with Laws and Regulations.** Each party will at all times comply with all applicable laws and regulations including, without limitation, all governmental, Medicare, Medicaid, and whistleblower laws, rules, and regulations governing each party's performance hereunder. County and CONTRACTOR specifically acknowledge that County will provide services to beneficiaries of federal and state health care programs, including Medicare, and that CONTRACTOR and County have an obligation to comply with the requirements of such programs. Additionally, CONTRACTOR shall inform any employees in writing, in the predominant native language of the workforce that they are subject to whistleblower rights and remedies to the extent applicable under 41 USC 4712.

## **Exhibit A.6**

### **Organized Health Care Arrangement Terms**

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

#### **1. Purpose.**

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

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

#### **Obligations of County.**

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

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

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

development of privacy and security policies that may be approved from time to time by the OHCA Participants in consultation with CONTRACTOR.

**Inclusion of OHCA Terms in Notice.** As a condition of County's participation in the OHCA, County agrees to include the following terms within County's notice of privacy practices and to distribute such notices in accordance with the Privacy Rules:

*County is part of an organized health care arrangement including participants in CONTRACTOR. A current list of CONTRACTOR participants is available at [www.ochin.org](http://www.ochin.org) as a business associate of COUNTY. CONTRACTOR supplies information technology and related services to COUNTY and other CONTRACTOR participants. CONTRACTOR also engages in quality assessment and improvement activities on behalf of its participants. For example, CONTRACTOR coordinates clinical review activities on behalf of participating organizations to establish best practice standards and assess clinical benefits that may be derived from the use of electronic health record systems. CONTRACTOR also helps participants work collaboratively to improve the management of internal and external patient referrals. Your health information may be shared by COUNTY with other CONTRACTOR participants when necessary for health care operations purposes of the organized health care arrangement.*

**Termination.** County's participation in the OHCA described herein shall terminate automatically to the extent this agreement is terminated. Except as described below, County shall not be entitled to voluntarily withdraw from the OHCA described herein while maintaining services under the terms of this agreement.

**Indemnification.** County shall defend, indemnify, and hold CONTRACTOR and each OHCA Participant harmless from and against any actual or threatened legal or administrative action, claim, liability, penalty, fine, assessment, lawsuit, litigation, or other loss, expense, or damage, including without limitation any reasonable attorneys' fees and costs, that CONTRACTOR or any other OHCA Participant may incur directly or indirectly resulting from any negligent actions or omissions of County, its agents or subcontractors, based on County's failure to materially perform its obligations under this exhibit.

**Third Party Beneficiaries.** All OHCA Participants are third party beneficiaries of the obligations set forth in this exhibit, including but not limited to the contractual indemnity provisions set forth above.

## **Exhibit A.7**

### **Care Everywhere Module**

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

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

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

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

County consents to the uses of patient data described above.

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

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

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

- Comply with the requirements of section 5(i) of the attached Rules of the Road relating to reporting of violations. CONTRACTOR will provide audit reports of Care Everywhere violations as requested by County.

Prior to agreeing to or voting on amendments, changes or supplements to the Rules of the Road established by Epic as specified in Section 7 of Rules of the Road, CONTRACTOR shall consider such proposed amendments or changes at the CONTRACTOR Board level and thereby seek to obtain input from CONTRACTOR members regarding the appropriate response to Epic.

**E. County Responsibilities.** County will:

- Implement procedures, as reasonably requested by CONTRACTOR, to facilitate audit of County's personnel.
- Take reasonable steps to prevent misuse of Care Everywhere by County's personnel.
- Comply with the Epic Requirements, to the extent applicable to acts or omissions of County and its personnel as users of Care Everywhere.

**F. Termination.** CONTRACTOR may terminate County's access to and use of Care Everywhere upon termination of this agreement by CONTRACTOR or at any time if Care Everywhere is no longer available from Epic on the terms set forth in the Epic Agreement as of the date of this exhibit. If, however, Epic elects to impose fees on CONTRACTOR for use or maintenance of Care Everywhere and County and CONTRACTOR are unable to agree on an appropriate fee structure and amount, the termination of Care Everywhere will be pursuant to paragraph C above. County will terminate its access to and use of Care Everywhere upon termination of this agreement.

**G. Disclaimer of Warranties.** CONTRACTOR makes only those representation and warranties regarding components of the System that Epic makes to CONTRACTOR regarding those components. Therefore, CONTRACTOR provides Care Everywhere "AS IS" without any warranty, express or implied, and CONTRACTOR hereby disclaims any and all such warranties including without limitation warranties of merchantability, accuracy, fitness for a particular purpose and title, and any implied warranty against interference with County's enjoyment of the program property or against infringement.

**H. Indemnification.**

**1. Description of CONTRACTOR's Obligations to Epic.** Under the Epic Requirements, CONTRACTOR, Care Everywhere Members, and Epic are expected to create an Ombudsman Committee, which, along with Epic will help oversee compliance with the Epic Requirements, including without limitation, validating users of Care Everywhere, recommending modifications to the Rules of the Road, determining violations of the Rules of the Road, and establishing appropriate remedies for such violations (such as limiting or removing a Care Everywhere customer's access to Care Everywhere) (collectively the "Oversight Activities"). The Ombudsman Committee may include representatives from County's organization,

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

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

**Attachment A.7(1)**  
**Epic Rules of the Road for Care Everywhere**

Care Everywhere ("CE") is a tool that allows Epic customers to make patient data available to other Epic customers that also license CE ("CE Customers"). These Rules of the Road ("Rules") are meant to establish the framework for the exchange of patient information between CE Customers, including circumstances under which You may seek patient information from another CE Customer.

For purposes of these Rules, the CE Customer requesting patient information is the "Receiving Customer" and the CE Customer providing the patient information is the "Sending Customer".

1. You agree that patient information You obtain using CE will only be used for the treatment of patients. By making a request for a patient's information using CE, You warrant and represent to the Sending Customer that the patient information You are requesting will be used only for the treatment of that patient. You understand that You may not request patient information using CE for any other purpose, including without limitation, research, marketing, or fundraising purposes. For purposes of these Rules, "treatment" will have the meaning assigned to it under HIPAA (see 45 CFR 164.501), which is currently defined as follows: "Treatment means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination of management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another."
2. If a CE Customer requests a review of their patient records accessed by You using CE, You agree to fully cooperate with the review, including providing detailed information as to what information You accessed, who accessed it, and why it was accessed, and will provide the requested information within five (5) days of the request.
3. You agree to implement HIPAA compliant security and access measures with respect to providing access to CE functionality which will include, at a minimum:
  - a. training CE end-users regarding the appropriate (and inappropriate) use of CE
  - b. using individual logins and passwords for each user of the CE functionality; You will not create any shared or public logins or passwords used to access the CE functionality
  - c. using and monitoring the audit capabilities of CE
  - d. requiring that all patient information obtained using CE be treated as any of Your other clinical documentation/patient information
  - e. appointing one employee as Your Care Everywhere Coordinator who will act as Your liaison with other CE Customers and Epic regarding CE, and whose responsibilities will also include timely communication and deployment of information regarding CE within the liaison's organization.

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

- (iv) You will use disciplinary procedures with respect to inappropriate use of CE information in the same manner as You do for inappropriate use of Your own similar information.
- 6. You acknowledge and agree that any Epic customer using CE is a third party beneficiary of these Rules of the Road and shall have the right to enforce any violations of them in the same manner as if such Epic customer had a direct contract with You containing these Rules of the Road. Each CE Customer's rights with respect to a violation of the Rules of the Road are not limited by any remedies provided in the Rules of the Road. This provision may not be modified by the Ombudsman Committee.
- 7. These Rules of the Road are expected to be continually refined. Changes to the Rules of the Road may be proposed by Epic, or the Ombudsman Committee if one is created, from time to time and put to a vote of all the CE Customers. Epic, or the Ombudsman Committee, will inform the Care Everywhere Coordinator of each CE Customer of the results of the vote, and if Epic and a majority of the CE Customers approve a proposed rule (at an advisory committee, at UGM, or otherwise), then the Rules of the Road will be amended to include the proposed changes and will apply automatically to all CE Customers. Each Care Everywhere Coordinator will communicate the result and effect of the vote within the coordinator's organization. The updated Rules will be posted on Epic's user web Member for use of CE and generally will be effective forty-five (45) days after the date of posting unless the change, in Epic's determination, is meant to address an issue of immediate concern.

Capitalized terms used in this attachment without definition have the meanings given in the Epic Agreement.

## **Exhibit A.8**

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

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

#### **Overall Process**

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

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

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

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

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

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

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

- Use CONTRACTOR's electronic work order process appropriately and follow all written work order management policies and procedures provided to County.
- Assign the appropriate priority level to work order request(s) (*see Acknowledgement and Prioritization Expectations/Standards section below*)
- Ensure that work order requests are clear, concise, and include the 6 w's:
  - ❑ Who (user name, Epic ID, and role)
  - ❑ What (what happened and what were you expecting to happen?)
  - ❑ When (date/time)
  - ❑ Why (if known)
  - ❑ Where (clinic, workstation/printer ID, field, as appropriate; screen-print if needed for clarification or example)
  - ❑ Workaround (is there one, or is the problem causing a work stoppage?)
- Respond timely to CONTRACTOR's reasonable request for additional information or actions (e.g. requested information, testing, clarification, etc.). Failure to appropriately and timely respond to CONTRACTOR's reasonable requests (e.g. additional information, testing, clarification, etc.) may cause due dates to be revised.

#### **CONTRACTOR Responsibilities and Expectations**

- Provide 2<sup>nd</sup> level or 3<sup>rd</sup> level help desk/work order support via electronic work order management process and CONTRACTOR Help Desk phone.
- Maintain a centralized Help Desk phone during extended office hours.
- If necessary and with County's approval, modify the priority level assigned by County for County work orders to reflect the appropriate prioritization standard (as described below).
- Review all incoming work orders to ensure that critical and high priority work orders are handled within the below acknowledgement and initiation of action timeline expectations.
- Combine duplicate work orders into the original work order and close the second one with appropriate documentation.
- CONTRACTOR/County correspondence and communication regarding a work order will be documented in the work order management system.

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

#### **Acknowledgement and Prioritization Expectations/Standards**

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

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

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

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

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

**Epic Commitment to CONTRACTOR** — After being notified of the issue/problem by CONTRACTOR, acknowledgement of the problem within 1 hour and initiation of action immediately thereafter

Note: A critical problem should be phoned into CONTRACTOR immediately, followed by entry into the work order management system. Phone: (855) 778-9829

Examples:

- Epic System is unavailable, not available to any of your staff.
- Connectivity is down and not available at one or more County clinics.
- Overall system performance is substantially impaired

**Level 2 – High:** Problem impacts a component of normal processing—making that portion of Epic unusable—at one or more clinics.

**CONTRACTOR** – Reasonable efforts will be made to acknowledge the problem within 4 hours, initiate action within the same day, and resolution within 1 business day.

**Epic Commitment to CONTRACTOR** – After being notified of the issue/problem by CONTRACTOR, acknowledgement of the problem within 4 hours and initiation of action within the same day

Examples:

- Discovered Members could do self-pay posting across Member organizations
- Claims batch does not run

**Level 3 – Normal:** Problem is of routine nature and does not substantially impact the use of Epic at one or more clinics.

**CONTRACTOR** – Reasonable efforts will be made to acknowledge the problem within 1 business day and initiate action within 5 business days.

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

Examples:

- Routine adds/changes to system (e.g., new internal use code, fee schedule adds, address change, new chart station, new payor plan)
- Inquiries about how to use the System or potential new uses (e.g., a new flag)
- Requests for additional training

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

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

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

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

Examples:

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

**Exhibit A.9**  
**Third-Party Contracts**

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

License agreement with Gateway EDI (Trizetto) dated 3/7/2011 to provide electronic clearinghouse services.

CPU-to-CPU Interface Agreement with Quest Diagnostics Incorporated/LabCorp or Laboratory Services HUB Agreement with Quest Diagnostics Incorporated (relating to lab interface)

First Databank Standard License Agreement with First Databank, Inc. (relating to medication file)

Master Software License, Services and Support Agreement with Hyland Software, Inc., and related business associate agreement (relating to document management)

Prescriber Aggregator Master Agreement with SureScripts, LLC, and related Information Use and Disclosure Agreement (relating to pharmacy interface)

License Agreement by and between OCHIN, Inc., and Intelligent Medical Objects (relating to Personal Health Terminology product)

Services Agreement with Pentaho Corporation (relating to online reporting)

Software License and Services Agreement with 3M Company (relating to medical necessity dictionaries)

CareMessage

EPCS

AMA

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

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

**1. Background.**

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

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

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

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

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

3. **Disclosures to SSA.** County authorizes CONTRACTOR to use and disclose PHI pertaining to County's patients to the SSA for the purpose of confirming a patient's eligibility in the Program and for other uses directly related to the Program. County acknowledges that CONTRACTOR's use of disclosure of PHI for the foregoing purposes will be performed through the NHIN, and County specifically authorizes CONTRACTOR to participate in the NHIN for such purposes. CONTRACTOR will not use or disclose PHI pertaining to a patient to the SSA through the NHIN unless the patient has authorized use of the NHIN for communication with the SSA as evidenced by CONTRACTOR's receipt of SSA Form 827 Authorization signed by the patient. A signed SSA Form 827 is considered valid authorization whether transmitted electronically or by facsimile.
  
4. **Disclosures through Health Information Exchanges.** County authorizes CONTRACTOR to disclose PHI related to County's patients through HIEs as may be requested and directed by County as discussed herein. County authorizes CONTRACTOR to manage County's requests for, and disclosures of, PHI from and to the other participants in HIEs. County represents and warrants that all consents required under HIPAA for the transmission of PHI through an HIE shall have been obtained by County and that the transmissions and disclosures requested by County will be in furtherance of and in compliance with County's permitted uses and disclosures of PHI as a covered entity under HIPAA. County will indemnify, defend, and hold harmless CONTRACTOR and its officers, directors, employees, and agents from and against all Claims arising from any improper use or disclosure of PHI and incurred as a result of County's request or directive to use or disclose PHI through an HIE. This indemnification obligation will be in addition to all other indemnification obligations provided for in the Agreement.

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

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

### **Business Continuity Access Requirements**

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

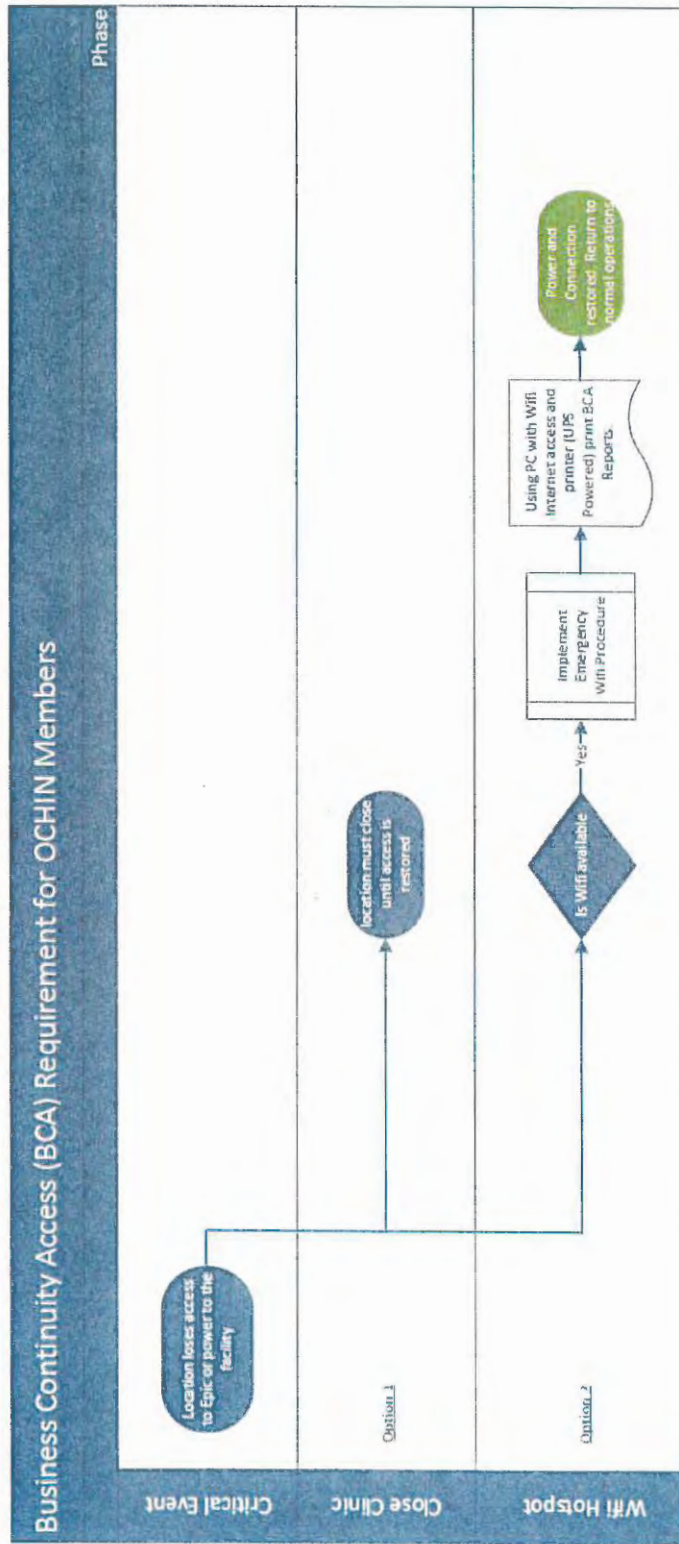
1. **Purpose.** The purpose of this exhibit ("Exhibit") is to identify County's obligations for responding to an emergency or other occurrence that damages or destroys County's access to patient information maintained using the System ("Access Failure"). It is the intent of CONTRACTOR and County that this Exhibit will meet Epic requirements regarding the access to patient data in the event of an Access Failure and will also meet Epic's Good Maintenance and Accreditation requirements.
2. **Business Continuity Access Requirements.** In the event of an Access Failure, and for so long as the Access Failure continues, County is responsible for maintaining and will maintain access to a physical copy of the County's scheduled appointments and all relevant patient clinical data for each patient on the schedule. The requirements of this Section 2 will not apply if County ceases clinical operations during the Access Failure.
3. **Business Continuity Plan.** In addition to the requirements of Section 2, County hereby adopts and implements the Business Continuity Plan as indicated by County below (please circle one of the two options below):

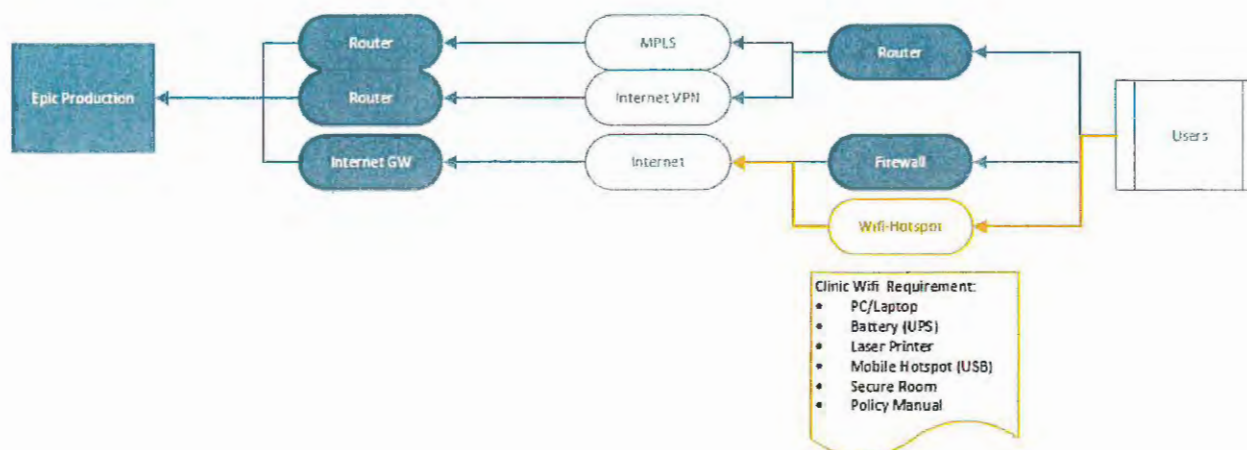
Option One: In the event of an Access Failure, County shall cease all clinical operations until access to Epic is restored

-Or-

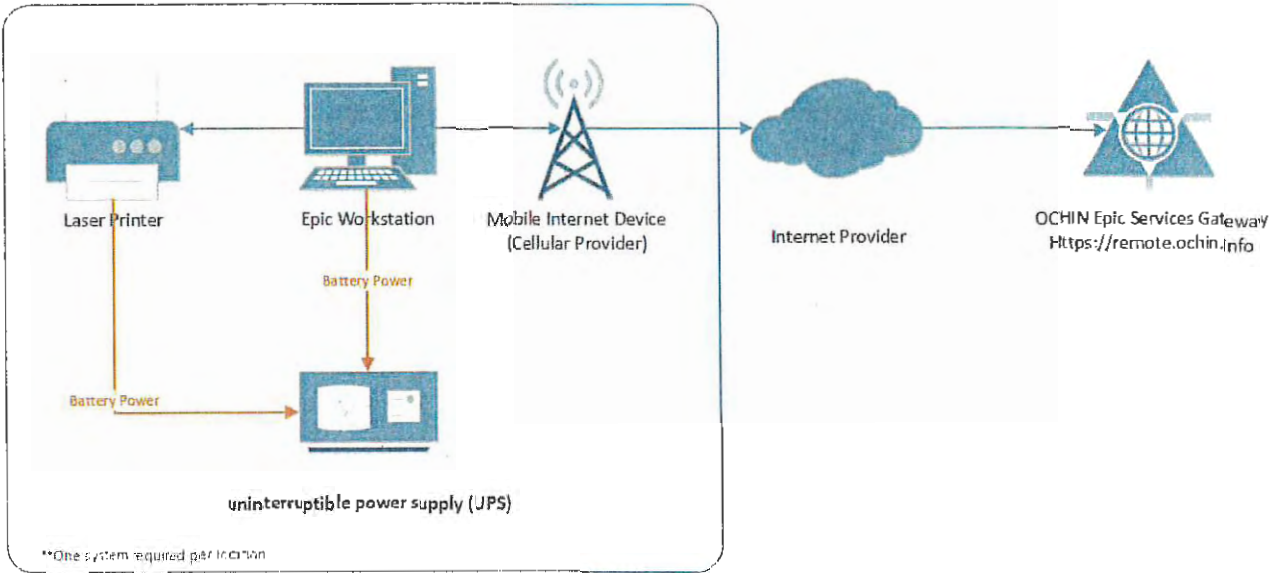
Option Two: County shall obtain and maintain a workstation and printer connected to an uninterruptable power supply (UPS) or a cellular service and Internet mobile access device, in accordance with and as more thoroughly described in the attached workflow and Wi-Fi hotspot diagram ("Attachment 1"). In the event of an Access Failure, County will use the workstation and printer or cellular service and Internet mobile access device to meet the requirements of Section 2.

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





TITLE  
OCHIN Wifi-Hotspot (BCA Requirement)



## **Exhibit B**

CONTRACTOR has created a system to facilitate the Electronic Prescribing of Controlled Substances ("EPCS") and County wishes to incorporate the EPCS process into its electronic health records system. As such, the Parties agree as follows:

1. County will provide its own smart phones capable of utilizing the EPCS software solution and will be solely responsible for the phone and replacement of the phone should it be lost or damaged. Further, County will ensure that any smart phone that utilizes the EPCS software will be password protected. In the event that smart phones are not available or desired County will have the option of purchasing physical fobs for providers to use to the same standard.
2. In order to utilize the EPCS process, County will need to ensure it has the following function in their facility:
  - a. An Enrollment Coordinator who completes the provider enrollment for the dual authentication license (this cannot be a Site Specialist);
  - b. An EPCS Administrator that approves the provider record changes in Epic (this must be a DEA Registered Provider);
  - c. A Security Officer that reviews the daily audit incident report (requires access to Business Objects or organizational process to deliver reports daily to the Security Officer);
  - d. Site Specialist that makes changes to the provider record;
  - e. County must provide role assignments to CONTRACTOR and approval for all future changes must come from administrator
3. County agrees to abide by Duo Security's license terms and termination information which is attached hereto. Pricing will be invoiced to County at the rate of \$50 per provider per year. County will be invoiced for the number of active providers at month end on its monthly invoice from CONTRACTOR for these charges.
4. All providers will be required to complete a personal identity proofing process to validate their credentials via the vendor CSP, which must be federally approved and meet NIST 800-63-1 Assurance Level 3. Providers will be required to complete this identity proofing process every 5 years per the DEA Rules for EPCS. Pricing will be invoiced to County at the rate of \$25 per provider for identity proofing. County will be invoiced for the number initiated identity proofings for month on its monthly invoice from CONTRACTOR for these charges.

## Service Terms and Conditions

### EFFECTIVE AS OF OCTOBER 30TH, 2017

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

#### 1. DEFINITIONS

- 1.1 "Applicable Law" means the Data Protection Laws and any other applicable laws, rules and regulations.
- 1.2 "Customer" means the customer that has signed up for the Services and agreed to the terms of this Agreement.
- 1.3 "Customer Data" means any information or data about Customer or Users (and its and their staff, customers or suppliers, as applicable) that is supplied to Duo Security by or on behalf of Customer or any User in connection with the Services, or which Duo Security is required to access, generate, process, store or transmit pursuant to this Agreement, including (without limitation) information about Customer's and Users' respective devices, computers and use of the Services. Customer Data shall not be deemed to include any Performance Data
- 1.4 "Customer Personal Data" means any Customer Data that is personal data (as defined under the applicable Data Protection Laws).
- 1.5 "Data Protection Laws" means all data protection and privacy laws, rules and regulations applicable to a party and binding on that party in the performance of its obligations under this Agreement, including, where applicable, EC Directive 2002/58/EC and (i) prior to 25 May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the Processing of Personal Data and on the free movement of such data; and (ii) on and after 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection Regulation), Welfare and Institutions Code sections 5328, et seq., 14100.2, and 10850, et seq; Title 45 Code of Federal Regulations section 205.50, and Title 42, CFR, section 431.300 et seq., 42 CFR Part 2, Health and Safety Code §120980, Civil Code 56.10, the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the "Privacy Rule"), and with the Security Standards, 45 C.F.R. Part

160 and Part 164, Subpart C as amended from time to time (the "Security Rule"), under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations ("HITECH"), the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 et seq. ("CMIA").

- 1.6 "Documentation" means guides, instructions, policies and reference materials provided to Customer by Duo Security in connection with the Services, including the documentation located at <https://www.duo.com/docs>, which Duo Security may amend from time to time.
- 1.7 "Duo Admin Panel" means the web portal currently accessible at <https://admin.cluosecurity.com>, which allows Customer's internally appointed administrator(s) of the Services to, among other options, enroll and activate Users, issue and manage SMS passcodes and bypass codes, and manage mobile devices (as applicable to the Services set forth on the applicable Order Form).
- 1.8 "Duo Mobile Software" means all Duo Security proprietary mobile applications used in providing the Services, and any updates, fixes or patches developed from time to time.
- 1.9 "Fees" means the applicable fees as set forth on the Order Form.
- 1.10 "Free Services" means those aspects of the Services that are free and do not require payment, such as beta features or functionality or, in the case of a free trial, the Services themselves.
- 1.11 "Hardware Tokens" means hardware security tokens purchased by Customer under an Order Form,
- 1.12 "Intellectual Property Rights" means all patents, registered designs, unregistered designs, design rights, utility models, semiconductor topography rights, database rights, copyright and other similar statutory rights, trade mark, service mark and any know how relating to algorithms, drawings, tests, reports and procedures, models, manuals, formulae, methods, processes and the like (including applications for any of the preceding rights) or any other intellectual or industrial property rights of whatever nature in each case in any part of the world and whether or not registered or registerable, for the full period and all extensions and renewals where applicable.
- 1.13 "Order Form(s)" means the invoice or other forms from Duo Security for the initial order for the Service, and any subsequent invoice or other forms from Duo Security (submitted in written form or online), specifying, among other things, the maximum number of Users, initial Term, purchase of any Hardware Tokens, Fees, Telephony Credits (if any), and such other charges and terms as agreed between the parties.

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

## 2. SERVICES FOR CUSTOMER; DUO SECURITY OBLIGATIONS

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

Section 2.3 in all material aspects. Customer shall have the right to terminate the Agreement pursuant to Section 10.2 without any penalty if (I) a material modification to the Services or the SLA is made which materially diminishes the functionality of the Services or materially diminishes the SLA, (ii) Duo Security has not obtained Customer's consent for such modifications, and (iii) Duo Security does not provide a remedy in the cure period stated in Section 10.2.

- 2.3 Duo Security will make the Services available and the Services will perform substantially in accordance with the description of the services found at <https://www.duo.com/pricing>. Notwithstanding the foregoing, Duo Security reserves the right to suspend Customer's (or any User's) access to the Services immediately (i) in the event that Customer breaches Section 4 or Section 7 of this Agreement, or breaches any other provision of this Agreement and fails to correct that breach within the applicable cure period; or (ii) as it deems reasonably necessary to respond to any actual or potential security or availability concern that may affect customers or Users.
- 2.4 Subject to full compliance with the terms and conditions of this Agreement, in the event that Customer earns 15 days of service credits, determined in accordance with the terms of the Service Level Agreement, in each of three consecutive months, Customer may terminate this Agreement and, as its sole and exclusive remedy, receive a refund of any pre-paid subscription Fees paid by Customer to Duo Security for Services not rendered as of the termination date. The SLA shall not apply with respect to Free Services and Duo Security is not obligated to provide support with respect to any Free Services,

### 3. CUSTOMER RESPONSIBILITIES

- 3.1 Customer may only use the Services in accordance with the Documentation and as explicitly set forth in this Agreement. Customer will cooperate with Duo Security in connection with the performance of this Agreement as may be necessary, which may include making available such personnel and information as may be reasonably required to provide the Services or support. Customer is solely responsible for determining whether the Services are sufficient for its purposes, including but not limited to, whether the Services satisfy Customer's legal and/or regulatory requirements.
- 3.2 Customer shall not provide any infringing, offensive, fraudulent or illegal content in connection with the Services, and Customer represents and warrants that any content It provides will not violate any Intellectual Property Rights of any third party. Duo Security reserves the right, in its sole discretion, to delete or disable any content submitted by Customer that may be infringing, offensive, fraudulent or illegal. To view Duo Security's complete copyright dispute policy and learn how to report potentially infringing content, please visit: <https://duo.com/legal/copyright>.

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

#### 4. RESTRICTIONS

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

#### 5. PAYMENT OF FEES

- 5.1 Customer will pay Duo Security the Fees plus all applicable sales, use and other purchase related taxes (or provide Duo Security with a valid certificate of exemption from the requirement of paying sales, use or other purchase related taxes) in accordance with the Payment Schedule and payment terms set forth on the Order Form. Except as otherwise indicated in the applicable Order Form, all fees and expenses shall be in U.S. dollars. If the method of payment is by credit card, Customer agrees to (i) keep Customer's credit card information updated and (ii) authorize charging Customer's credit card the Fees when due. Duo Security will not charge Users any fees for their use of the Services or Duo Mobile Software without Customer's authorization. Users' carriers or service providers may charge fees for data usage, messaging, phone calls or other services that are required for them to use the Services.
- 5.2 Customer's Order Form will indicate an initial allotment of Telephony Credits, if applicable. Customer may purchase additional Telephony Credits separately via the billing section of the Duo Admin Panel or by contacting a sales representative. U.S. and international rates for telephony can be found at [https://www.duo.com/docs/telephony\\_credits](https://www.duo.com/docs/telephony_credits).
- 5.3 If a Customer uses only Free Services, Duo Security will not charge such Customer any Fees for use of such Free Services or download, installation or use of the Software associated with Free Services. Such Customer may discontinue using the Free Services at any time, but must immediately remove any Software from its devices.
- 5.4 At any time during the Term, and unless otherwise agreed to in writing by the parties, any increase or overage in the maximum number of Users specified in the Order Form will be treated in accordance with this Section 5.4 (a "Subscription Upgrade"). The maximum number of Users shall be increased as follows:

For Subscription Upgrades (i) for Customers where the maximum number of Users on the Order Form is fewer than 500 Users, the maximum number of Users will be increased automatically in increments equal to 50 Users, (ii) for Customers where the maximum number of Users on the Order Form is 500 - 1000 Users, the maximum number of Users will be increased automatically in increments equal to 100 Users, and (iii) for Customers where the maximum number of Users on the Order Form is 1001 or greater, the maximum number of Users will be increased automatically in increments equal to 250 Users.

Duo Security shall invoice Customer for the increase in the maximum number of Users at the subscription rate and payment terms specified in the most recent Order Form, prorated for the remainder of the then applicable subscription Term. For any future subscription Term, the number of Users and applicable Fees will reflect any Subscription Upgrades.

## 6. CONFIDENTIALITY

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

Information and will not be subject to any confidentiality restrictions or obligations.

- 6.3 Each party agrees that, upon the written request of the Disclosing Party, the Receiving Party will promptly return to the Disclosing Party, or provide written certification of the destruction of, all Confidential Information of the Disclosing Party, including all Confidential Information contained in internal documents, without retaining any copy, extract or summary of any part thereof. Notwithstanding the foregoing, a Receiving Party may retain copies of Confidential Information solely to the extent necessary for purposes of such party's ordinary course internal document retention and backup requirements and procedures, provided that such Confidential Information shall remain subject to the terms and conditions of this Agreement for so long as it is retained.
- 6.4 Customer acknowledges that Duo Security does not wish to receive any Confidential Information from Customer that is not necessary for Duo Security to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, Duo Security may reasonably presume that any unrelated information received from Customer is not confidential or Confidential Information, unless such information is marked as "Confidential."

## 7. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP

Except as expressly set forth herein, Duo Security alone (and its licensors, where applicable) will retain all Intellectual Property Rights relating to the Services or the Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Services and/or the Software, which are hereby assigned to Duo Security. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. As between the parties, Duo Security owns all Performance Data. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services or Software, or any Intellectual Property Rights.

## 8. DATA PROTECTION

- 8.1 In this Section 8, the terms "personal data," "data processor," "data subject," "process and processing" and "data controller" shall be as defined in the applicable Data Protection Laws.
- 8.2 For the purposes of the Data Protection Laws, as between Customer and Duo Security, the parties agree that Customer shall at all times be the data controller and Duo Security shall be the data processor with respect to the processing of Customer Personal Data in connection with this Agreement.
- 8.3 Customer may enable integrations between the Services and certain of its Third Party Services (each, an "Integration"). By enabling an Integration between the Services and its Third Party Services, Customer is expressly instructing Duo Security to share the Customer Data necessary to facilitate the Integration.

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

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

stored, provided that such inspection: (i) shall occur on a mutually agreed upon date during Duo Security's regular business hours; (ii) does not interfere with any of Duo Security's business operations; and, (iii) does not, in Duo Security's reasonable discretion, create any risk to the confidentiality, integrity, or availability of any data stored or processed by Duo Security. Prior to any audit, Customer, and any appointed auditor, must enter into a nondisclosure and confidentiality agreement as may be required by Duo Security.

## 9. INDEMNIFICATION

For Customers enrolled in one of the editions of Services requiring purchase, Duo Security shall indemnify and hold Customer harmless from liability to third parties resulting from infringement by the Services of any patent or any copyright or misappropriation of any trade secret, provided Duo Security is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement, provided that settlements shall require prior approval by Customer, which shall not be unreasonably withheld. Duo Security will not be responsible for any settlement it does not approve. The foregoing obligations do not apply with respect to portions or components of the Services (i) not created by Duo Security, (ii) resulting in whole or in part from Customer specifications, (iii) that are modified after delivery by Duo Security, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of Services is not strictly in accordance with this Agreement and all related Documentation. If Duo Security receives information about an actual or alleged infringement or misappropriation claim that would be subject to indemnification rights set forth in this Section 9, Duo Security shall have the option, at Its expense, to (a) modify the Software to be non-infringing; or (b) obtain for Customer a license to continue using the Software. If Duo Security determines it is not commercially reasonable to perform either of the above options, then Duo Security may at its option elect to terminate the license for the Services and refund the unearned portion of any pre-paid subscription Fees, prorated on a monthly basis. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT, MISAPPROPRIATION AND/OR CLAIMS ALLEGING INFRINGEMENT OR MISAPPROPRIATION. Customer will indemnify Duo Security from all damages, costs, settlements, attorneys' fees and expenses related to any claim related to Customer's material breach of Section 3 "Customer Responsibilities," Section 4 "Restrictions," Section 7 "Intellectual Property Rights; Ownership" or Section 8 Data Protection." Duo Security's obligations under this Section 9 do not apply to Customer's use of Free Services.

## 10. TERM; TERMINATION

10.1 Subject to earlier termination as expressly provided for in this Agreement, the initial Term of this Agreement shall be for the Term specified in the Order Form, or in the event of multiple Order Forms, until the Term of all Order Forms has

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

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

- 10.5 The Customer's payments to Duo Security under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the sufficient to allow for the Customer's purchase of the indicated quantity of services, then the Customer may give written notice of this fact to Duo Security, and the obligations of the Parties under the Agreement shall terminate immediately, or on such date thereafter, as the Customer may specify in its notice, unless in the meanwhile the Parties enter into a written amendment modifying this Agreement.
- 10.6 The Customer may terminate this agreement for any reason by giving written notice of termination to Duo Security at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination.

## 11. WARRANTIES AND DISCLAIMER OF ADDITIONAL WARRANTIES

- 11.1 For Customers enrolled in one of the editions of Services requiring purchase, Duo Security represents and warrants that it will not knowingly include, in any Duo Security software released to Users and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as viruses, disabling devices, trojans, or time "4 bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or User data. If, at any time, Duo Security fails to comply with the warranty in this Section 11.1, Customer may promptly notify Duo. Security in writing of any such noncompliance, Duo Security will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable correction plan is not established during such period, Customer may terminate this Agreement and receive a refund of any pre-paid but unearned subscription Fees, prorated on a monthly basis, as its sole and exclusive remedy for such noncompliance. This provision does not apply to Customer's use of Free Services.
- 11.2 For Customers that have purchased Hardware Tokens as part of the Services, Duo Security warrants to Customer only that Hardware Tokens will be free of hidden defects in material and workmanship at the time of sale and for a period of six (6) months thereafter. This warranty is limited to replacement of defective Hardware Tokens. This Hardware Token warranty is Customer's exclusive remedy for defective Hardware Tokens. This provision does not apply to Customers who use only Free Services.
- 11.3 EXCEPT AS EXPLICITLY PROVIDED IN THIS SECTION 11, THE SERVICES AND DUO SECURITY CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. DUO SECURITY HEREBY DISCLAIMS FOR ITSELF AND ITS SUPPLIERS ALL

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

12. LIMITATION OF LIABILITY

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

13. GOVERNMENT MATTERS

- 13.1 Export. Notwithstanding anything else in this Agreement, Customer may not use, or provide to any person or export or re-export or allow the export or re-export of, the Services or any software or anything related thereto or any direct product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency authority, Each party represents that it is not named on any U.S. Government denied-party list. Customer and Users shall not access or use the Services in a U.S. embargoed country.
- 13.2 Anti-Corruption. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any Duo Security employee or agent in connection with this Agreement. If Customer learns of any violation of the above restriction, Customer will promptly notify Duo Security.
14. MISCELLANEOUS
- 14.1 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- 14.2 Assignment. This Agreement is not assignable, transferable or sublicensable by Customer except with Duo Security's prior written consent, which shall not be unreasonably withheld Duo Security may transfer and assign any of its rights and obligations under this Agreement. This Agreement shall be binding upon and shall -inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.
- 14.3 No Third Party Beneficiaries. Nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement. No entities other than Duo Security and Customer may terminate, rescind or agree to any modification, waiver or settlement with respect to this Agreement.
- 14.4 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. Duo Security may provide notice using the information provided in the most recent Order Form and Customer may provide notice using the contact information provided on <https://www.duo.com>.
- 14.5 Force Majeure. Any delay or failure in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay or failure is due to a labor

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

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

Contact Support

**support@duo.com**

Call Sales

**1.866.760.4247**

Email Sales

**Contact Sales**

## **EXHIBIT C**

### **OCHIN CareMessage Participation Agreement & Terms of Service**

The County (defined below) is a member of OCHIN Inc., an Oregon nonprofit corporation (“**OCHIN**”). Pursuant to CareMessage’s agreement with OCHIN (the “**CareMessage-OCHIN Agreement**”), the County may access and use CareMessage’s Service (defined below) through OCHIN’s electronic interface (the “**OCHIN Interface**”), pursuant to the terms of this Terms of Service (this “**Agreement**”) and, if applicable, the County’s agreement with OCHIN (the “**County-OCHIN Agreement**”). This CAREMESSAGE TERMS OF SERVICE (this “**Agreement**”) governs the use of the Service by the County and its Authorized Users (defined below), and constitutes a binding agreement between the County and CareMessage.

BY ACCESSING OR USING THE SERVICE, THE COUNTY AGREES TO BE BOUND BY THIS AGREEMENT. IF THE COUNTY DOES NOT AGREE TO BE BOUND BY THIS AGREEMENT, DO NOT ACCESS OR USE THE SERVICE.

#### **1. DEFINITIONS**

“**Acknowledgement Agreement**” means an agreement pursuant to which the County indicates its wish to use the Service and agrees to the terms of this Agreement.

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the County. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Authorized User**” means an employee, consultant, contractor, or agent of the County who is authorized by the County to use the Service and to whom the County (or CareMessage at the County’s request) has supplied a user identification and password.

“**County**” means the entity that executes an Acknowledgment Agreement, and such entity’s Affiliates.

“**County Information**” means any data or information transmitted, posted, or entered by the County or Authorized Users through, onto, or into the Service or transmitted, transferred or otherwise delivered to CareMessage for incorporation into or use with the Service.

“**Patient**” means any patient of the County with whom or to whom the County communicates or intends to communicate health appointment and/or health-related alerts via the Service.

“**Policy**” means any CareMessage policy regarding the Service made available by CareMessage. “**Site**” means the Internet site through which the Service is made available.

“**Service**” means CareMessage’s mobile health platform, including the ability to send and receive health-related text, email and/or voice messages, made available for the County’s use through the OCHIN Interface, and as more specifically set forth in Exhibit C-2 attached hereto and incorporated herein by this reference.

## 2. SERVICES

**2.1 Provision of Service.** Subject to the terms and conditions of this Agreement, CareMessage grants the County and its Authorized Users a non-exclusive, non-transferable, worldwide right during the Term (defined in Section 10) to access via the Internet and use the Service solely for the County's internal business purposes. The County will access and use the Service through the OCHIN Interface.

**2.2 County Responsibilities.** Only Authorized Users may access and use the Service. Each Authorized User will be assigned a unique user identification name and password (a "User ID") for access to and use of the Service. Rights of any Authorized User to use the Service may not be shared or used by more than one individual. CareMessage will not disclose User IDs to any third party without the prior written consent of the County, unless otherwise required by law. The County is responsible for ensuring the security and confidentiality of all User IDs. The County is responsible for Authorized Users' compliance with, and any Authorized User's breach of, this Agreement. Any transactions and all information submitted under a User ID will be deemed to have been performed or submitted by the Authorized User associated with that User ID. The County agrees to maintain a current list of User IDs authorized to access and use the Service and to provide CareMessage with such list in writing upon request.

The County is responsible for obtaining and maintaining any hardware, software and other equipment as may be necessary to connect to, access or otherwise use the Service via the Internet.

**2.3 Use Restrictions.** The County will not, and will not allow Authorized Users or other third parties to: (i) assign, distribute, share, sell, rent, transfer or otherwise make the Service, or any portion thereof, available to any third party, (ii) modify or make derivative works of the Service or any portion thereof, (iii) provide, or make available, any links, hypertext or otherwise (other than a "bookmark" from an Internet browser) to the Site or Service or "frame" or "mirror" any portions of Site on any server or wireless or Internet-based device, (iv) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or underlying structure, ideas or algorithms of the Service or any portion thereof, (v) access or use any part of the Service to build a competitive product or service (vi) seek to hack, break or otherwise circumvent any security mechanism on the Site or the Service or any host, network, or account related thereto or otherwise attempt to gain unauthorized access to the Site or the Service, (vii) use the Service in a manner that poses a security or service risk to CareMessage or to any client of CareMessage or that disrupts or threatens the Service or the software or systems used to host the Site or the Service (including, but not limited to, interfering with, intentionally overloading, or disrupting the integrity or performance of the Site or the Service, whether or not by using "bots," "spiders" or other automated system), (viii) use the Service, or transmit any information or material through the Service, for any unlawful purpose or in a way that violates, infringes, or misappropriates the rights of any third party (including, but not limited to, property rights or privacy rights), (ix) access the Service for purposes of monitoring its availability, performance or functionality or for any other benchmarking or competitive purposes, unless otherwise agreed in writing by CareMessage, or (x) otherwise use the Service in any manner that exceeds the scope of use permitted under this Agreement. The County will not, and will require that all Authorized

Users not, remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of the Site or Service.

The County agrees that it and Authorized Users will not use the Service in a manner, or transmit any information or material through the Service, that violates (i) CareMessage's standard published Policies then in effect or (ii) applicable local, state or federal laws or regulations, including, but not limited to, the Telephone Consumer Protection Act (47 U.S.C. § 227) ("TCPA"), the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"), and the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"),

The County agrees to use the Service solely to send and receive health and/or social-service appointment and/or other health and/or social service-related information to and from Patients and/or clients. Without limiting the other provisions of this Section 2.3, the County agrees that it and Authorized Users will not use or seek to use the Service to transmit any message, information, symbol or other communication that is infringing, threatening, defamatory, fraudulent, false, misleading, deceptive, likely to mislead or deceive, tortious, offensive or abusive, or of an indecent, obscene or menacing character, or that promotes, incites, or instructs in matters of crime, or for the purpose of causing annoyance, inconvenience or unnecessary alarm, distress or panic to any person. Further, the County and its Authorized Users will not use or seek to use the Service for the purpose of providing any warning or notification about a serious and imminent risk to the safety of persons or property (e.g., emergency services).

The County will immediately notify CareMessage of any unauthorized use of or suspected unauthorized use of the Service upon becoming aware of such unauthorized use or suspected unauthorized use. CareMessage may monitor the County's and Authorized Users' use of the Service, but shall have no obligation to do so. CareMessage may audit the messages sent through the Service.

CareMessage reserves the right to not send any message or immediately suspend access to the Service, or both, if it reasonably believes that the County's or an Authorized User's use of the Service is in violation of this Section 2.3. Suspension of the Service will not limit CareMessage's rights or remedies.

### **3. PROPRIETARY RIGHTS**

**3.1 Reservation of Rights.** CareMessage (and its licensors, where applicable) own all right, title and interest in and to the Service and all patent rights, copyrights, trademark rights and other intellectual property rights that are part of or otherwise associated with the Service (other than with respect to County Information), as well as any revisions, modifications, enhancements and derivative works of the Service together with the intellectual property rights therein. Except for the limited rights expressly granted to the County and Authorized Users by this Agreement, this Agreement does not transfer any proprietary right or interest in the Service from CareMessage (or any of its licensors) to the County, Authorized Users or anyone else. CareMessage retains all rights not expressly granted in this Agreement.

3.2 **Feedback.** CareMessage has not agreed, and does not agree, to treat as confidential any suggestion or idea for improving or otherwise modifying any of CareMessage's products or services that the County or Authorized Users provide to CareMessage ("**Feedback**"). Nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict CareMessage's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, and CareMessage may do each of the foregoing without compensation to or credit to the County or Authorized Users.

#### 4. **CLIENT INFORMATION**

4.1 **Access to County Information.** For CareMessage to provide the Service as contemplated by this Agreement, it will be necessary for the County to disclose to CareMessage, and enable CareMessage to have access to and use, County Information. By transmitting, posting or entering County Information through, onto, or into the Service or transmitting, transferring or otherwise delivering County Information to CareMessage, the County grants CareMessage a worldwide, royalty-free, irrevocable, and non-exclusive license to access and use such County Information to provide the Service and as otherwise contemplated by this Agreement. The County represents and warrants that it has the authority to grant CareMessage the rights set forth in the preceding sentence.

4.2 **Ownership of County Information.** As between CareMessage and the County, the County retains ownership of all County Information and, except for the limited rights granted to CareMessage by Section 4.1, this Agreement does not transfer any proprietary right or interest in County Information from the County to CareMessage. The County represents and warrants that it possesses all rights, consents and permissions necessary to use, input, disclose, transfer, and deliver County Information in connection with the Service. The County is solely responsible for County Information and represents and warrants that no County Information will: (i) infringe or violate any third party intellectual property rights, publicity rights, or privacy rights; or (ii) contain any viruses or programming routines that could damage or surreptitiously intercept or expropriate any system, data, or personal information.

4.3 **Use of County Information.** CareMessage will only use County Information to provide the Service and as otherwise contemplated by this Agreement. In providing the Service, CareMessage may share County Information with third party service providers who will have access to such County Information as needed to perform their functions, but may not use or disclose County Information for other purposes. In addition, CareMessage may, during and after the Term, (i) collect (but only during the Term) and analyze County Information relating to the use and performance of various aspects of the Service and related systems and technologies, (ii) use County Information to improve and enhance the Service and for other development, diagnostic and corrective purposes in connection with the services provided by CareMessage or utilize such data in aggregate or other de-identified form in connection with its internal business purposes.

4.4 **No Control over Information.** The County acknowledges that CareMessage exercises no control over, and will not have any liability for, the accuracy, content, or destination designated by the County or an Authorized User of any County Information. It is the County's sole responsibility to ensure that County Information, and the use thereof by the County and

Authorized Users, complies with all applicable laws and regulations and Patient instructions. If the County becomes aware that a Patient does not wish to continue to receive messages from the County, the County must take all necessary steps to ensure that the Patient does not receive any further messages from the County through the Service.

## 5. CONFIDENTIALITY

**5.1 Definition of Confidential Information.** “Confidential Information” means all information disclosed or otherwise made available by CareMessage or the County (when disclosing information, the “Disclosing Party”) to the other (when receiving information, the “Receiving Party”), whether verbally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of CareMessage includes, but is not limited to, its proprietary technology, computer programs, software, source and object codes, marketing plans, technology and technical information, product plans and designs, and business processes. Confidential Information of the County includes, but is not limited to, County Information, Patient records (including medical records and other health information) and any other data or information related to the business or other affairs of the County, an Authorized User, or Patient. However, Confidential Information does not include any information that the Receiving Party can show by competent evidence (i) is or becomes generally known to the public without breach of this Agreement, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party and not subject to a confidentiality obligation, (iii) was received from a third party authorized to make such disclosure without an obligation of confidentiality, or (iv) was independently developed by the Receiving Party without reference to or use of the Disclosing Party’s Confidential Information. Notwithstanding the foregoing, information that is Protected Health Information (“PHI”) shall not be deemed “Confidential Information” for purposes of this Agreement and instead shall be governed by the Business Associate Agreement attached hereto as Exhibit C-3.

**5.2 Protection of Confidential Information.** CareMessage and the County recognize that in connection with the County’s use of the Services, they each may obtain Confidential Information of the other. If CareMessage or the County obtains Confidential Information of the other, such Confidential Information will remain the property of the Disclosing Party, and the Receiving Party will (i) treat the Disclosing Party’s Confidential Information with at least the same degree of care that it uses to protect the confidentiality of its own similar information (but not less than reasonable care), (ii) only use the Disclosing Party’s Confidential Information in furtherance of the Receiving Party’s obligations under this Agreement, *provided, that* the Receiving Party may not translate or make derivative works of such Confidential Information without the Disclosing Party’s prior written consent, and (iii) except as otherwise authorized by the Disclosing Party in writing, not disclose the Disclosing Party’s Confidential Information except to those of its and its Affiliates’ employees, contractors and agents who need to know such information for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those in this Agreement. Neither CareMessage nor the County will disclose the terms of this Agreement to any third party other than its affiliates, legal counsel and accountants except with the other Party’s prior written consent or as required by public records laws.

5.3 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law if the Receiving Party gives the Disclosing Party commercially reasonable prior written notice of the compelled disclosure (if legally permitted) and reasonable assistance, at the Disclosing Party's request and cost, if the Disclosing Party wishes to contest the disclosure or seek confidential treatment thereof. Notwithstanding the foregoing, the County shall not be required to give notice to CareMessage before making disclosures required by public records laws.

6. **Subcontract of Work.** CareMessage may subcontract certain portions of the work to be performed by CareMessage under this Agreement to affiliates or other third parties (each, a "**Subcontractor**"). No arrangement with a Subcontractor will relieve CareMessage of any of its obligations under this Agreement, including, but not limited to, obligations regarding the protection of County's Confidential Information.

## 7. **WARRANTIES AND DISCLAIMERS**

7.1 Effective as of all times during the term hereof that the County communicates with Patients, the County represents and warrants that it has obtained all Patient consents and permissions necessary to send and receive all messages to and from each Patient, using the Service.

7.2 **Disclaimer.** NEITHER CAREMESSAGE NOR ITS LICENSORS MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICE OR THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NEITHER CAREMESSAGE NOR ITS LICENSORS MAKES ANY REPRESENTATIONS OR WARRANTIES REGARDING THE COMPREHENSIVENESS, CORRECTNESS, OR ACCURACY OF ANY INFORMATION PROVIDED THROUGH THE SERVICE OR THAT THE SERVICE WILL BE UNINTERRUPTED, COMPLETELY SECURE, ERROR FREE, FREE FROM VIRUSES OR HARMFUL COMPONENTS, FREE FROM DATA LOSS OR DAMAGE, OR THAT ANY ERRORS OR DEFECTS WILL BE CORRECTED. NEITHER CAREMESSAGE NOR ITS LICENSORS MAKE ANY REPRESENTATIONS OR WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE COUNTY'S USE OF THE SERVICE OR THAT TRANSMISSIONS WILL BE INSTANTANEOUS, ALL TECHNOLOGY, SOFTWARE, FUNCTIONS, CONTENT, IMAGES, MATERIALS, AND OTHER DATA OR INFORMATION PROVIDED BY CAREMESSAGE OR ITS LICENSORS ARE PROVIDED "AS-IS."

## 8. **INDEMNIFICATION**

8.1 **Indemnification by CareMessage.** CareMessage agrees to indemnify and hold the County and its respective directors, officers, employees and agents harmless from and against any and all losses, damages, liabilities, judgments, penalties, fines, costs, and expenses (including reasonable attorneys' fees) (collectively "**Damages**"), arising out of or in connection

with any third party claim that the Service, when used by the County or an Authorized User in accordance with, and without breach of, this Agreement, infringes a United States patent, copyright or trademark. If the Service is held, or believed by CareMessage, to so infringe, CareMessage may, at its option and expense, (i) replace the Service, without additional charge, with a functionally equivalent and non-infringing product; (ii) modify the Service to avoid the infringement in a functionally equivalent and non-infringing manner; or (iii) obtain a license for the County to continue use of the Service at no additional charge to the County. If CareMessage determines in its reasonable discretion to not pursue the remedies set forth in subclauses (i), (ii) or (iii) of this Section 8.1, CareMessage may terminate this Agreement.

**8.2 Indemnification by County.** Except to the extent CareMessage has an indemnification obligation under Section 8.1, the County agrees to indemnify and hold CareMessage and its directors, officers, employees and agents harmless from and against any and all Damages arising out of or in connection with any third party claim (i) that any material, information, process or data provided by the County to CareMessage pursuant to this Agreement infringes a United States patent, trademark or copyright, (ii) alleging any negligent act or omission of County that is related to County Information, or (iii) alleging any negligent act or omission of County to the extent it arises out of the County's or an Authorized User's (or a third party using an Authorized User's credentials) use of the Service, including, but not limited to, messages sent to or from Patients through the Service. The County's indemnification obligation under subclause (ii) of this Section 8.2 will not apply if the claim is a direct result of CareMessage's negligence or use of County Information other than as permitted by this Agreement.

**8.3 Indemnification Procedure.** For each of the indemnification obligations set forth in Section 8.1 and 8.2, (i) the indemnified party(ies) will give the indemnifying party (A) prompt written notice of such claims, provided that the failure or delay to notify the indemnifying party will not relieve the indemnifying party from any liability that it may have to an indemnified party under this Agreement so long as the failure or delay will not have materially prejudiced the defense of such claim; (B) reasonable assistance in defending the claim; and (C) sole authority to defend or settle such claim, and (ii) the indemnified party(ies) will not be required to consent to a judgment against it or enter into a settlement that is prejudicial to it. If an indemnifying party in Section 8.1 or 8.2 elects not to defend any such claim, the indemnified party(ies) will have the option, but not the duty, to reasonably settle or defend the claim at its cost and the indemnifying party will indemnify the indemnified party(ies) for such settlement or defense and any Damages finally awarded against the indemnified party(ies) attributable to such claim,

## **9. LIMITATION OF LIABILITY**

**9.1 Limitation of Liability.** EXCEPT AS PROVIDED IN THIS SECTION 9.1, IN NO EVENT WILL CAREMESSAGE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED ONE YEARS WORTH OF FEES RECEIVED BY CAREMESSAGE RELATING TO THE COUNTY'S SUBSCRIPTION TO THE SERVICER. THE LIMITATION ON LIABILITY SET FORTH IN THE PRECEDING SENTENCE WILL NOT APPLY (I) IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (II) IN REGARD TO SECTION 5 ("CONFIDENTIALITY") OR SECTION 8

("INDEMNIFICATION"), OR (III) IN REGARD TO THE BUSINESS ASSOCIATE AGREEMENT.

**9.2 Exclusion of Consequential and Related Damages.** EXCEPT IN REGARD TO SECTION 5 ("CONFIDENTIALITY") AND SECTION 8 ("INDEMNIFICATION"), IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, UNDER ANY THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THE DISCLAIMER IN THIS SECTION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

**9.3 Web Disruption.** An Authorized User's access to the Service may be subject to limitations, delays or other disruptions inherent to the use of the Internet. In no event will CareMessage be liable for any damages (whether in contract or in tort) attributable to the public web infrastructure or an Authorized User's inability to connect to the Internet.

**9.4 Telecommunication Provider Disruption.** The County understands that CareMessage is in part reliant on telecommunication carriers and other third party suppliers (collectively referred to as "**Telecommunication Providers**") to deliver messages to Patients, and any failure by a Telecommunication Provider to deliver a message subsequent to CareMessage's successful delivery of a message to the Telecommunication Provider is beyond the control of CareMessage. Telecommunication Providers are not Subcontractors of CareMessage and the County will not hold CareMessage liable, and CareMessage shall not be liable, in respect of any such failure.

## **10. TERM AND TERMINATION**

**(a) Term of Agreement.** The term of this Agreement will begin on the Effective Date of the Standard Agreement. Either party may terminate this Agreement (i) upon fifteen (15) days' written notice of material breach to the other party if such breach remains uncured at the expiration of such period or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Neither the expiration nor earlier termination of this Agreement shall release either party from any obligation, which has accrued as of the date of termination.

### **10.1 Termination.**

**10.1.1.1** CareMessage may terminate this Agreement upon written notice to the County if the County has materially breached this Agreement and the breach has not been substantially cured within thirty (30) days after the date of CareMessage's written notice (such thirty (30) day period shall not apply if the breach is not curable). Such written notice will describe in reasonable detail the breach and, if applicable, the steps CareMessage reasonably believes to be necessary to cure such breach.

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

(such thirty (30) day period shall not apply if the breach is not curable). Such written notice will describe in reasonable detail the breach and, if applicable, the steps the County reasonably believes to be necessary to cure such breach.

10.1.2 CareMessage may terminate this Agreement immediately (with no opportunity to cure) upon written notice if the County commences, or has commenced against it, bankruptcy proceedings in any jurisdiction and such proceedings are not dismissed within thirty (30) days, makes a general assignment for the benefit of its creditors, becomes insolvent, has a receiver appointed for it or its business, ceases operations or is liquidated or dissolved.

10.1.3 Upon termination or expiration of this Agreement for any reason, (i) except for Confidential Information of the County held by CareMessage in accordance with its document retention practices, each party will return to the other party or, if consented to in writing by the other party, certify the destruction of, all Confidential Information of the other party in its possession or control, and (ii) the rights granted pursuant to Section 2 will immediately terminate and CareMessage will cease to provide the County and Authorized Users access to and use of the Service,

10.1.4 Sections 3.2, 4.3, 5, 8, 9, and 11 of this Agreement will survive the termination or expiration of this Agreement.

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

10.1.6 This Agreement shall terminate if the County-OCHIN Agreement is terminated by County pursuant to Article 7.0 of the County-OCHIN Agreement.

11. **HIPAA COMPLIANCE.** In providing the Service, CareMessage is a "Business Associate" to the County, which is a "Covered Entity," for purposes of HIPAA, to the extent applicable, and the parties agree that they are bound by the terms of the Business Associate Agreement attached hereto as Exhibit C-3 and which is incorporated herein by reference,

## 12. **GENERAL PROVISIONS**

12.1 **Change in Service.** CareMessage has the right to change, modify, and otherwise convert the software, hardware and/or technology used to provide the Service, *provided, however,* that the basic functionality and quality of the Service will not be materially affected. CareMessage will provide OCHIN at least 48 hours' written notice of any changes, modifications, or conversions of the software, hardware and/or technology used to provide the Service.

12.2 **Export Control.** The County agrees that it will not, directly or indirectly, export or re-export, or knowingly permit the export or re-export of, any information, software or

technology underlying or related to the Service (including any documentation related thereto) or any technical information about the Service without fully complying with the export control laws of the United States.

**12.3 Relationship of the Parties.** CareMessage is an independent contractor of the County. This Agreement does not and shall not be deemed to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Neither party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other. This Agreement is non-exclusive and either party may contract with other parties for the procurement or sale of comparable services.

**12.4 Notices.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and may be given by personal delivery (including delivery by messenger or by overnight courier service), by certified mail, postage prepaid, return receipt requested, or by email to the recipient's address as follows:

If to OCHIN                      OCHIN  
1881 SW Naito Parkway  
Portland, OR 97201  
c/o Abby Sears, CEO  
searsa@ochin.org

If to CareMessage:      CareMessage  
332 Pine St, Unit 300  
San Francisco, CA 94104  
c/o Vineet Singal, CEO  
vsingal@caremessage.org

If to the County: To the County's address set forth in the Acknowledgement Agreement.

Either party may, by notice to the other, specify a different address or email for notice purposes. Notice will be deemed to have been received upon receipt or refusal of delivery by the intended recipient, as evidenced by the records of the messenger, delivery service or the U.S. Postal Service. For notices sent by email, notices will be deemed to have been received on the same business day as the mailing (if sent before 5 p.m. (San Francisco time) on a business day) or the business day following mailing (if sent after 5 p.m. (San Francisco time) on a business day).

**12.5 Waiver; Remedies.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**12.6 Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions of this Agreement will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid

provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

**12.7 Assignment.** The County may not assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of CareMessage (which consent will not be unreasonably withheld). Subject to the terms of this section, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns. Should OCHIN terminate its agreement with CareMessage, and CareMessage agrees to assignment of the OCHIN agreement to County, County agrees to pay for any costs incurred by OCHIN for keeping the interface between County and CareMessage functional.

**12.8 Governing Law.** This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules.

**12.9 Publicity.** If the County consents in writing, CareMessage may use the County's name and logo as a CareMessage customer on CareMessage's website, in marketing material (including, but not limited to, in email communications with prospective CareMessage customers), and during discussions with current or prospective clients and donors and industry analysts.

**12.10 Force Majeure.** Neither CareMessage nor the County shall be deemed to be in violation of this Agreement if prevented from performing its obligations for any reason beyond its control and that such party is unable to overcome through the exercise of commercially reasonable diligence (a "**Force Majeure**"), including, but not limited to, disruption of the Internet, acts of God, the elements, floods, strikes, labor difficulties, or laws, rules or regulations of the federal, state or local government, or any agency thereof; *provided, however*, that if any Force Majeure event occurs, the affected party will give prompt written notice to the other party and will make commercially reasonable efforts to minimize the impact of the event.

**Exhibits Contained in this Agreement:**

- Exhibit C-1 — Participation Agreement & Terms of Service Acknowledgement
- Exhibit C-2 — Service Features
- Exhibit C-3 — Existing County BAA with CareMessage

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

The **County** hereby acknowledges and agrees as follows:

1. This Terms of Service Acknowledgment is made in favor of CareMessage, a California nonprofit corporation ("**CareMessage**"),
2. The County is a member of OCHIN Inc., an Oregon nonprofit corporation ("**OCHIN**"),
3. The County wishes to access and use CareMessage's mobile health services (the "**Services**") through OCHIN's electronic interface.
4. The County has been provided a copy of CareMessage's Terms of Service (the "**Terms of Service**") regarding the Services.
5. The County understands and agrees that its access to and use of the Services is governed by, among other things, the Terms of Service and agrees to the Terms of Service. County and CareMessage acknowledge that by agreeing to the Terms of Service they are mutually terminating any other agreement between County and CareMessage.

**EXHIBIT C – 2**  
**SERVICE FEATURES**

The Service includes, but is not limited to, the following features:

1. Appointment reminders
2. Group outreach
3. Health education programs
4. Direct messaging
5. Secure cloud-based access

## EXHIBIT C-3

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement"), effective 9/18, 2015 ("Effective Date"), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department ("Covered Entity") and CareMessage ("Business Associate") (each a "Party" and collectively the "Parties").

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

The Parties agree as follows:

1. **DEFINITIONS**

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

2. **PERMITTED USES AND DISCLOSURES OF PHI**

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the

intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMLA;

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

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

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

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

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

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

### **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

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

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

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

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

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4. TERMS AND TERMINATION

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

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

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

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

#### 5. MISCELLANEOUS

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

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

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

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

If to Business Associate, to:

CareMessage  
360 Pine Street, Suite 600  
San Francisco, CA 94104  
Attn: Ben Perry, Manager of Finance and Administration  
Tel: (978) 604-3979  
Fax: \_\_\_\_\_

If to Covered Entity, to:

Monterey County Health Department  
1270 Natividad Road, Salinas CA 93906  
Attn: Ray Bullock, Director of Health  
Tel: (831) 755-4926  
Fax: (831) 755-4797

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

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

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

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

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

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

**CAREMESSAGE**

By: 

By: 

Print Name: Ray Bullock


Print Name: Vineet Singal

Print Title: Director of Health

Print Title: CEO

Date: 6-6-16

Date: 9/18/15

  
APPROVED AS TO FORM AND LEGALITY  
DEPUTY COUNTY COUNSEL  
COUNTY OF MONTEREY

# EXHIBIT P - PRICING SCHEDULE

## OCHIN Maintenance Costs (Annual)

County shall pay an amount not to exceed amount specified in Agreement for the performance of all things necessary for or incidental to the performance of work as set forth in Exhibit A. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

Epic Visits and Licenses	Cost	Units	Total (Annual)
<b>Epic Visits</b>	<b>Per Visit</b>	<b>Visits</b>	
Practice Management (PM)	\$ 2.32	190,158	\$ 441,167
Electronic Medical Record (EMR)	\$ 1.65	190,156	\$ 313,757
<b>Epic Visit SubTotal</b>			<b>\$ 754,924</b>

Product or Service	Cost	Units	Total
<b>Clarity Reporting Licenses</b>			
Designer License	\$264	7	\$ 1,848
Scheduler License	\$156	8	\$ 1,248
<b>Document Management Solutions</b>			
High Capacity Scanning License (includes 1 Index license)	\$249	12	\$ 2,988
Additional Indexing station license (1 needed per additional indexing station)	\$ 75	30	\$ 2,250
Front Desk Integrated Scanning License - (1 per Seat)	\$ 300	5	\$ 1,500
Concurrent viewing licenses (about 6 users per 25,000 visits)	\$ 83	0	\$ -
Scanned Material Storage Fee (based on grid - see contract)	\$ 3,000	1	\$ 3,000
<b>Rightfax</b>	\$ 0.10	0	\$ - .10 per page in/outbound
<b>Interface Maintenance</b>	\$7,800	1	\$ 7,800
<b>Replication Services</b>	\$8,640	1	\$ 8,640
<b>Reporting Services</b>	\$6,000	1	\$ 6,000
<b>Networking/Connectivity</b>	\$1,380	1	\$ 1,380
<b>OCHIN Billing Services (OBS)</b>	% of Collections	0	\$ - 5.5% of revenue received and .5% additional for coding support *see detail sheet- This would be a Maintenance cost only. This is optional but recommended. OCHIN will review with your organization
<b>Clearinghouse Maintenance (statement fee) - Trizetto</b>	Billed @ Actual		\$ - Billed at actual - \$.50 per patient statement 1 page and \$.09 for each additional page - mailed
<b>Clearinghouse Maintenance (provider fee) - Trizetto</b>	\$216	0	\$ - \$18 per provider/per month (\$216 annually)
<b>West/Televox Patient Messaging</b>	.15/message	0	\$ -
<b>CareMessage</b>	\$3,000	0	\$ - Additional Pass-through Maintenance to CareMessage based on # of patients. 0-10K Patients \$8,250 10-25K Patients \$20,300 25-50K Patients \$36,550 50-100K Patients \$65,000 100-200K Patients \$97,500
<b>CareMessage First Year and Pilot</b>	Not to Exceed \$68,000		
<b>OCHINLink</b>	\$12,000	1	\$ 12,000
<b>Dragon</b>	\$1,200	0	\$ - \$100/month/ provider

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

**CONTRACTORS BILLING PROCEDURES:**

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

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

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

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

