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To ensure access to high-quality, patient-centered, cost-effective health care to Los Angeles County residents through direct services at DHS facilities and through collaboration with community and university partners.

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May 20, 2014

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

18 May 20, 2014

SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

APPROVAL OF A TRI-PARTY AGREEMENT AMONG CARE MESSAGE, INC., CHARLES R. DREW UNIVERSITY OF MEDICINE AND SCIENCE AND THE COUNTY TO PROVIDE TEXT MESSAGING SERVICES (SUPERVISORIAL DISTRICT 2) (3 VOTES)

SUBJECT

Approval of a new tri-party Agreement among CareMessage, Inc., Charles R. Drew University of Medicine and Science and the County for the provision of text messaging services to certain patients at Martin Luther King, Jr. Multi-Ambulatory Care Center.

IT IS RECOMMENDED THAT THE BOARD:

Authorize the Director of Health Services (Director), or designee, to execute a Master Subscription Agreement with CareMessage, Inc. (CareMessage) and Charles R. Drew University of Medicine and Science (CDU), effective upon execution until otherwise terminated, for the provision of short message services (SMS) (also known as text message) to patients at no cost to the County.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommendation will allow the Director, or designee, to execute a Master Subscription Agreement, substantially similar to Exhibit I, with CareMessage and CDU to provide SMS to patients of Martin Luther King, Jr. Multi-Ambulatory Care Center (MLK MACC) enrolled in an obesity group. CareMessage offers a web-based text messaging platform designed to improve patient engagement, health literacy and disease self-management through patient relevant reminders and educational content. This will allow participants in an obesity program to pilot mobile technology as part of their care plan.

Implementation of Strategic Plan Goals

The recommended actions support Goal 1, Operational Effectiveness and Goal 3, Integrated Services Delivery of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

There is no direct cost to the County for this Agreement as the fees will be paid by CDU from grant funding it received. MLK MACC will provide the patient care in its obesity clinic at its regular fees. The research aspects of the obesity program, including SMS, are co-funded and fully offset by a pilot award from the UCLA Clinical and Translational Science Institute – Los Angeles County Department of Health Services Collaboration Grants. MLK MACC will not provide funding for the research study, including SMS.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Theodore Friedman, MD, Ph.D., a full-time endocrinologist at MLK MACC and a part-time researcher at CDU, started an obesity program in January 2013. A grant from UCLA Clinical and Translational Science Institute – Los Angeles County Department of Health Services allowed Dr. Friedman to expand the clinic via CDU and a determination was made that SMS or text messaging could play an integral role in the success of the clinic patients. Currently, the obesity program supports 20-30 patients per session and meets weekly.

The text messaging component will include sending patients in the obesity program reminders of upcoming appointments, assisting in diet and exercise goal-setting and providing survey/questionnaire feedback.

CareMessage will ensure Health Insurance Portability and Accountability Act compliant clinical texting by implementation of an encrypted text messaging format. Encrypted text messaging platforms safeguard Protected Health Information on a server within a virtual private network which only authorized healthcare professionals or other authorized staff can access.

Because the Agreement does not require a specific payment by the County, it does not include the standard County boilerplate provisions, except those required by ordinance or law. The Agreement has mutual indemnification provisions, which include requirements for the County to indemnify CareMessage against claims and damages based on the actions of the County. Any of the parties has the right to terminate the Master Subscription Agreement with 30 days prior written notice.

County Counsel has reviewed and approved the Master Subscription Agreement, Exhibit I, as to

form.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the recommended action will enable the Department of Health Services and CDU to implement a SMS tool to improve patient engagement, health literacy and disease self-management through patient relevant reminders and educational content to obesity program participants.

Respectfully submitted,

Mitchell H. Katz, M.D.

Director

adb

Enclosures

c: Chief Executive Office
County Counsel
Executive Office, Board of Supervisors

MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement is among **CareMessage**, a California 501(c)(3) non-profit tax exempt corporation with its principal place of business at CareMessage c/o 424 Clay Street, Lower Level, San Francisco, CA 94104 ("**CareMessage**") Charles R. Drew University of Medicine & Science , with its principal place of business at 1731 E. 120th St, Los Angeles, CA 90059 ("Drew"), and the County of Los Angeles, on behalf of Martin Luther King, Jr. Multi-Service Ambulatory Care Center ("MLK"), with its principal place of business at 1720 E. 120th St #3057, Los Angeles, CA 90059, (collectively the "**Clients**") (each a "**Party**" and collectively the "**Parties**"). This Agreement is effective as of the last date signed below (the "**Effective Date**").

BACKGROUND

WHEREAS , CareMessage is a non-profit entity that has created a platform to allow hospitals, clinic, and insurance providers to leverage short message service (SMS, also known as text messages) to create a low-cost and intelligent reminder and accountability platform to address the needs of medical patients; and

WHEREAS the Clients seek to use CareMessage's platform to reach such medical patients at MLK in an effort to improve the patients' health outcomes through greater compliance with treatment programs.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for good and valuable consideration the receipt and sufficiency of which is mutually acknowledged, CareMessage and Clients agree as follows:

1. DEFINITIONS

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

"**Agreement**" means this Master Subscription Agreement, any exhibits, schedules, or addenda, all Invoices, and all Policies applicable to those Service specified in an Invoice.

"**Authorized User**" means an employee, consultant, contractor, or agent who is authorized by Drew or MLK to use the Service exclusively for the benefit of Clients and to whom Clients (or CareMessage at Clients' request) has supplied a user identification and password.

"**Clients**" means Drew and its Affiliates, and MLK.

"**Client Information**" means any data or information transmitted or entered by Client or its Authorized Users into the Service.

"**County**" means the County of Los Angeles, a political subdivision of the State of California, which owns and operates Martin Luther King Jr. Multi-Service Ambulatory Care Center.

"**Invoice**" means a document specifying the Service to be provided under this Agreement and that is entered into between Clients and CareMessage. Invoices are incorporated into this Agreement by reference.

"**Patient**" means any patient of MLK with whom Clients or Clients' Affiliates communicates or intends to communicate health appointment and/or health-related information to via the Service.

"Patient Inputted Information" or "PII" means any data or information transmitted or entered directly by Patients into the Service.

"**Policy**" means any CareMessage policy regarding the Service, available at http://www.CareMessagecaremessage.org/terms or otherwise made available by CareMessage, including without limit the Terms of Use and Privacy Policy.

"**Renewal Term**" means any term in which CareMessage provides the Service to Clients following the Subscription Term.

"**Service**" means the mobile health platform as described in the Invoice.

"**Subscription Term**" means the term during which CareMessage will provide Clients with access to and use of the Service as specified in the Invoice.

2. SERVICES

2.1 Provision of Service. CareMessage will make the Service available to Clients pursuant to this Agreement during the Subscription Term specified in the Invoice for the Service. Clients agree that their purchases under this Agreement are neither contingent on the delivery of any future functionality or features, nor dependent on any oral or written public comments made by CareMessage regarding future functionality or features. In providing Services, CareMessage is responsible for complying with all applicable local, state or federal laws and regulations.

2.2 Clients Responsibilities. Each Client (i) is responsible for Authorized Users' compliance with, and any breach of, this Agreement, (ii) is responsible for the accuracy, and quality of Client Information which is supplied by Client or Clients' Affiliates, but is not responsible for the accuracy and quality of PII, and (iii) will prevent unauthorized use of the Service and notify CareMessage promptly of any unauthorized use. Clients further agree to use the Service in accordance with the most current version of all applicable Policies and to comply with all applicable local, state and federal laws and regulations.

2.3 Use Restrictions. Clients will not (a) sell, resell, rent or lease any portion of the Service, (b) use the Service to transmit any material in violation of any applicable laws, including the Telephone consumer Protection Act (47 U.S.C. § 227) ("**TCPA**") or the Health Insurance Portability and Accountability Act of 1996, as amended ("**HIPAA**"), or applicable state and federal regulations, (c) interfere with or disrupt the integrity or performance of the Service or third-party data contained in the Service, (d) attempt to gain unauthorized access to the Service, (e) exceed any established usage limits for the Service, or (f) access the Service using "bots" or "spiders" or any automated system that calls to the Service more frequently than may reasonably be performed by a human user using a standard web browser.

3. FEES AND PAYMENT

3.1 Fees. Drew will pay all fees specified in the Invoice. Except as otherwise specified in this Agreement, (i) payment obligations are non-cancelable and (ii) fees paid are non-refundable.

3.2 Invoicing and Payment. Unless otherwise stated in the relevant Invoice, CareMessage will invoice Drew on a monthly basis, with fees due net 15 days from the invoice date. Drew must provide complete and accurate billing and contact information to CareMessage and notify CareMessage of any changes.

3.3 Overdue Charges. If any invoiced amount is not received by CareMessage by the due date, then without limiting CareMessage's rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

3.4 Suspension of Service. If any charge owing by Drew is 30 days or more overdue, CareMessage may, without limiting its other rights and remedies, suspend Service until the overdue amounts and interest are paid in full if CareMessage has given Drew and MLK at least 10 days' prior notice in accordance with the "Notices" section that its account is overdue.

3.5 Taxes. CareMessage's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales and use, or withholding taxes, assessable by any jurisdiction (collectively, "**Taxes**"). Drew is responsible for paying all Taxes associated with its purchases under this Agreement except for any taxes on CareMessage's net income. If CareMessage has the legal obligation to pay or collect Taxes for which Drew is responsible under this section, Drewwill pay that amount when invoiced by CareMessage unless Drew provides CareMessage with a valid tax exemption certificate authorized by the appropriate taxing authority.

4. PROPRIETARY RIGHTS

4.1 Reservation of Rights. Other than as expressly set forth in this Agreement, no license or other rights in and to the Service are granted to Clients and all such licenses and rights are hereby expressly reserved.

4.2 License Grant. CareMessage grants Clients a worldwide, non-exclusive, non-transferable, non-sublicensable right to access and use the Service in accordance with the terms of this Agreement.

4.3 Feedback. Clients grant to CareMessage a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Service any suggestion, enhancement request, recommendation, correction or other feedback provided by Clients or Authorized Users relating to the operation of the Service.

5. CLIENT INFORMATION

5.1 Ownership of Client Information. As between CareMessage and the Clients, Clients retain all ownership of Client Information. Clients warrant that they have obtained all rights, consents and permissions necessary to use and input the Client Information in the Service and to grant the rights to CareMessage set forth in subsection 5.2 below. Clients are solely responsible for the Client Information and will not provide, post or transmit any Client Information or any other information, data or material to or through the Service that: (a) infringes or violates any intellectual property rights, publicity/privacy

rights, law or regulation; or (b) contains any viruses or programming routines intended to damage, or surreptitiously intercept or expropriate any system, data or personal information. Notwithstanding the previous sentence, Clients are not responsible in any way for PII.

5.2 **Access to Client Information.** By submitting, posting or entering Client Information on or through the Service, Clients give CareMessage a worldwide, royalty-free, and non-exclusive license to host, copy, transmit and display that Client Information for the purpose of enabling CareMessage to provide Clients with the Service, subject however, to any restrictions on such license imposed by law. Except for the limited rights granted by Clients under this Agreement, CareMessage acquires no right, title or interest from Clients or its licensors in or to Client Information.

5.3 **Use of Client Information.** Client hereby grants to CareMessage a non-exclusive, irrevocable, worldwide,, royalty-free right and license to aggregate, analyze, combine, and derive (hereinafter collectively "**Aggregate**") Client Information, and publish aggregations based in part on such Aggregate to third parties, provided that, when CareMessage does so outside the context of the Services for which Client provided the Client Information, CareMessage shall present the Client Information in a form that does not identify individual Patients or permit the tracing of individual data elements to individual Patients in accordance with the de-identification requirements in 42 C.F.R. Section 164.514.

5.4 **No Control over Information.** Client acknowledges that CareMessage exercises no control over or liability for the content of data or information submitted by Clients, and it is Clients' sole responsibility to ensure that the submission of such information complies with all applicable laws and regulations. All information submitted by an Authorized User will be deemed to have been submitted by Client.

6. CONFIDENTIALITY

6.1 **Definition of Confidential Information.** "**Confidential Information**" means all information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally 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 includes, but is not limited to CareMessage's marketing plans, technology and technical information, product plans and designs, and business processes. Confidential Information of Clients includes , but is not limited to protected health information, patient records, medical records, patient identifiable information, and any other data or information related to the business affairs of either Client. 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 any obligation owed by the Receiving Party to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

6.2 **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own similar information (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need that access 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. However, to the extent that any of the provisions of the Business Associate Addendum in Exhibit B are inconsistent with the terms of this section 6.2, the terms of the Business Associate Addendum shall prevail. Except as required by law, neither Party will disclose the terms of this Agreement to any third party other than its Affiliates, legal counsel and accountants without the other Party's prior written consent.

6.3 **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 prior written notice of the compelled disclosure (if legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

7. WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

7.1 **CareMessage Warranties.** CareMessage warrants that CareMessage has validly entered into this Agreement and has the legal power to do so. For any breach of a warranty in this Agreement, Client's exclusive remedies are those described in the "Termination for Cause," "Refund or Payment upon Termination" and "Indemnification by CareMessage" sections.

7.2 **Clients' Warranties.** Drew warrants that it has validly entered into this Agreement and has the legal power to do so. MLK warrants that it has validly entered into this Agreement and has the legal power to do so.

Clients represent and warrant that they will obtain all of the necessary consents to contact the Patients using the Service.

7.3 **Disclaimer.** CAREMESSAGE HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE SERVICE, ITS FEATURES OR FUNCTIONALITY IN ANY COMMUNICATION WITH THE CLIENT ARE FOR INFORMATION PURPOSES ONLY. CAREMESSAGE DOES NOT WARRANT THAT THE OPERATION OR OUTPUT OF THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR THAT THE CLIENTS USE OF THE SERVICE WILL GUARANTEE ANY SPECIFIC RESULT.**MUTUAL INDEMNIFICATION**

7.4 **Indemnification by CareMessage.** CareMessage will defend or at its option settle any claim, demand, suit or proceeding made or brought against either Client by a third party related to the actions of CareMessage, its officers, employees, agents or contractors in connection with the Service or CareMessage's use of Client Information or PII, including, but not limited to those alleging that the use of the Service in accordance with this Agreement infringes or misappropriates the intellectual property rights of that third party (a "**Claim Against Clients**"), and will pay any damages awarded as a result thereof or amounts agreed in settlement of a Claim Against Clients; provided that Clients (i) promptly gives CareMessage written notice of the Claim Against Clients, (ii) gives CareMessage sole control of the defense and settlement of the Claim Against Clients (except that CareMessage may not settle or defend any Claim Against Client unless it unconditionally releases each Client of all liability), and (iii) provides to CareMessage all reasonable assistance, at CareMessage's expense. If either Client notifies CareMessage of a Claim Against Clients, or if CareMessage reasonably believes that the Service may infringe or misappropriate a third party's rights, CareMessage may in its discretion and at no cost to Clients (a) modify the Service so that it no longer infringes or misappropriates, (b) obtain a license for Clients' continued use of the Service in accordance with this Agreement, or (c) terminate Clients' Invoice and refund to Drew any prepaid fees covering the remainder of the Subscription Term.

7.5 **Indemnification by Drew.** Drew will defend or at its option settle any claim, demand, suit or proceeding made or brought against CareMessage by a third party alleging that the use of the Service in accordance with this Agreement infringes or misappropriates the intellectual property rights of that third party (a "**Claim Against CareMessage**"), and will pay any damages awarded as a result thereof or amounts agreed in settlement of a Claim Against CareMessage; provided that CareMessage (i) promptly gives Drew written notice of the Claim Against CareMessage, (ii) gives Drew sole control of the defense and settlement of the Claim Against CareMessage (except that Drew may not settle or defend any Claim Against CareMessage unless it unconditionally releases CareMessage of all liability), and (iii) provides to Drew all reasonable assistance, at Drew's expense.

7.6 **Indemnification by MLK.** MLK will defend or at its option settle any claim, demand, suit or proceeding made or brought against CareMessage by a third party based on the actions of MLK, its officers, employees, agents or contractors in connection with the Service (a "**Claim Against CareMessage**"), and will pay any damages awarded as a result thereof or amounts agreed in settlement of a Claim Against CareMessage; provided that CareMessage (i) promptly gives MLK written notice of the Claim Against CareMessage, (ii) gives MLK sole control of the defense and settlement of the Claim Against CareMessage (except that MLK may not settle or defend any Claim Against CareMessage unless it unconditionally releases each CareMessage of all liability), and (iii) provides to MLK all reasonable assistance, at MLK's expense.

7.7 **Exclusive Remedy.** This "Mutual Indemnification" section states CareMessage's sole liability and the exclusive remedy for any claim of intellectual property rights infringement.

8. LIMITATION OF LIABILITY

8.1 **Limitation of Liability.** IN NO EVENT WILL ANY PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THREE MILLION DOLLARS ($3,000,000) EXCEPT TO THE EXTENT THAT THE ADDITIONAL LIABILITY IS COVERED BY THE INSURANCE REQUIRED UNDER SECTION 11 BELOW. THE LIMITATIONS DESCRIBED IN THIS SECTION WILL APPLY TO ANY THEORY OF LIABILITY, BUT WILL NOT LIMIT CLIENTS' PAYMENT OBLIGATIONS UNDER SECTION 3.

8.2 **Exclusion of Consequential and Related Damages.** EXCEPT AS PROVIDED FOR IN SECTION 7 ABOVE, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, UNDER ANY THEORY OF LIABILITY, AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THE DISCLAIMER IN THIS WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9. TERM AND TERMINATION

9.1 Term of Agreement. This Agreement commences on the Effective Date and continues until terminated under Section 9.3 below or any Party provides a notice of non-renewal of the Service.

9.2 Term of User Subscriptions. The Subscription Term for the Service is specified in the Invoice. Except as otherwise specified in an Invoice, the Subscription Term will automatically renew for additional periods equal to the expiring Subscription Term or one year (whichever is shorter), unless either Party gives the other notice of non-renewal at least 30 days before the end of the subscription term for that Service. The per-patient pricing during any Renewal Term will be the same as that during the immediately prior term unless CareMessage has given Drew written notice of a pricing increase at least 60 days before the end of that prior term, in which case the pricing increase will be effective upon and following the renewal.

9.3 Termination.

i. A Party may terminate this Agreement if either other Party has materially breached this Agreement and the breach remains uncured thirty (30) days after the date of the non-breaching Party's written notice to the breaching Party.

ii. Any Party may terminate this Agreement for convenience upon thirty (30) days written notice to the other Parties; provided that if Drew or MLK terminates for convenience, Drew must refund the difference between the discounted price it received, if any, and the non-discounted price it would have been charged by CareMessage during the period prior to termination. Termination will not relieve Drew of its obligation to pay any fees payable to CareMessage for the period prior to the effective date of termination.

iii. In addition to the forgoing bases for termination, CareMessage agrees that its failure to maintain compliance with the requirements set forth in subsection 12.15 Warranty of Adherence to County's Child Support Compliance Program, shall constitute default under this Agreement. Without limiting the rights and remedies available to MLK under any other provision of this Agreement, CareMessage's failure to cure such default within ninety (90) calendar days of written notice shall be grounds upon which MLK may terminate this Agreement and pursue debarment of CareMessage pursuant to County Code Chapter 2.202.

iv. CareMessage, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the CareMessage, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the CareMessage or any County Lobbyist or County Lobbying firm retained by it to comply fully with the County's Lobbyist Ordinance shall constitute a material breach of this Agreement, upon which MLK may, in its sole discretion, immediately terminate or suspend this Agreement.

9.4 Surviving Provisions. Sections 3, 4, 6, 7, 8, 9, 10.1, 11, 12 and Exhibit B of this Agreement will survive any termination of this Agreement.

10. HIPAA COMPLIANCE

10.1 CareMessage agrees to use or disclose any Client Information or PII that constitutes "protected health information" (as defined in the HIPAA,) solely in the manner and for the purposes set forth in this Agreement, except as otherwise required by law. Further, CareMessage agrees to comply with the terms of the Business Associate Addendum attached hereto as Exhibit B and incorporated herein by reference.

11. INSURANCE.

11.1 Without limiting CareMessage's indemnification of MLK, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, CareMessage shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Section 11 of this Agreement. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon CareMessage under this Agreement. MLK in no way warrants that the Required Insurance is sufficient to protect CareMessage for liabilities which may arise from or relate to this Agreement.

11.2 Evidence of Coverage and Notice to MLK.

i. Certificate(s) of insurance coverage (Certificate) satisfactory to MLK, and a copy of an Additional Insured endorsement confirming MLK and its Agents (defined below) has been given Insured status under CareMessage's General Liability policy, shall be delivered to MLK at the address shown below and provided prior to commencing services under this Agreement.

ii. Renewal Certificates shall be provided to MLK not less than 10 days prior to CareMessage's policy expiration dates. MLK reserves the right to obtain complete, certified copies of any required insurance policies at any time.

iii. Certificates shall identify all required insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name the entity identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand ($50,000.00) dollars, and list any MLK required endorsement forms.

iv. Neither MLK's failure to obtain, nor MLK's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by CareMessage, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of any of the requirements of this Section 11.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles Department of Health Service
Contracts and Grants
313 No. Figueroa Street, 6th Floor , Los Angeles, CA 90012
Attention: Insurance Monitor

v. CareMessage also shall promptly report to MLK any injury or property damage accident or incident, including any injury to a CareMessage employee occurring on County property, involving Services, and any loss, disappearance, destruction, misuse, or theft of County property. CareMessage also shall promptly notify MLK of any third party claim or suit filed against CareMessage or any of its Sub-Contractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against CareMessage and/or MLK.

11.3 Additional Insured Status and Scope of Coverage. The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under CareMessage's General Liability policy with respect to liability arising out of CareMessage's ongoing and completed operations performed on behalf of MLK. MLK and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of CareMessage's acts or omissions, whether such liability is attributable to CareMessage or to MLK. The full policy limits and scope of protection also shall apply to MLK and its Agents as an additional insured, even if they exceed the minimum Required Insurance specifications in this Agreement. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions in this Section 11.

11.4 Cancellation of Insurance. Except in the case of cancellation for non-payment of premium, CareMessage's insurance policies shall provide, and Certificates shall specify, that MLK shall receive not less than thirty (30) days advance written notice by mail of any cancellation of the Required Insurance. Ten (10) days prior notice may be given to MLK in event of cancellation for non-payment of premium.

11.5 Failure to Maintain Insurance. CareMessage's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of this Agreement, upon which Drew immediately may withhold payments due to CareMessage, and/or suspend or terminate this Agreement. Notwithstanding any other provision of this Agreement, MLK at its sole discretion, may obtain damages from CareMessage resulting from said breach.

11.6 Insurer Financial Ratings. Coverage shall be placed with insurers acceptable to MLK with A.M. Best ratings of not less than A:VII unless otherwise approved by MLK.

11.7 CareMessage's Insurance Shall Be Primary. CareMessage's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to CareMessage. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any coverage of CareMessage.

11.8 Waivers of Subrogation. To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Contract. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

11.9 Sub-Contractor Insurance Coverage Requirements. CareMessage shall include all Sub-Contractors as insureds under CareMessage's own policies, or shall provide MLK with each Sub-Contractor's separate evidence of insurance coverage. CareMessage shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name MLK and CareMessage as additional insureds on the Sub-Contractor's General Liability policy. CareMessage shall obtain MLK's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

11.10 Deductibles and Self-Insured Retentions (SIRs). CareMessage's policies shall not obligate MLK to pay any portion of any CareMessage's deductible or SIR. MLK retains the right to require CareMessage to reduce or eliminate policy deductibles and SIRs as respects claims under this Agreement, or to provide a bond guaranteeing CareMessage's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

11.11 Claims Made Coverage. If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. CareMessage understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

11.12 Application of Excess Liability Coverage. CareMessage may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

11.13 Separation of Insureds. All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

11.14 Alternative Risk Financing Programs. MLK reserves the right to review, and then approve, CareMessage's use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. MLK and its Agents shall be designated as an Additional Covered Party under any approved program.

11.15 MLK Review and Approval of Insurance Requirements. MLK reserves the right to review and adjust the Required Insurance provisions, conditioned upon MLK's determination of changes in risk exposures.

11.16 Insurance Coverage:

i. **Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming MLK and its Agents as an additional insured, with limits of not less than:

General Aggregate:	$2 million
Products/Completed Operations Aggregate:	$1 million
Personal and Advertising Injury:	$1 million
Each Occurrence:	$1 million

ii. **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than $1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of CareMessage's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

iii. **Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than $1 million per accident. If CareMessage is a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming MLK as the Alternate Employer, and the endorsement form shall be modified to provide that MLK will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to CareMessage's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

iv. **Privacy and Cyber Network Security Liability** insurance coverage with limits of three million dollars ($3,000,000) in the aggregate, providing protection against liability for privacy breaches resulting in the loss or disclosure of "protected health information" (as defined in the HIPAA).

12. GENERAL PROVISIONS

12.1 **Anti-Corruption.** Clients have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value, including anything that would qualify as "entertainment" as defined by the Los Angeles County Department of Heath Services Code of Conduct from an CareMessage employee or agent in connection with this Agreement. If Client learns of any violation of the restriction in this section, it will use reasonable efforts to promptly notify CareMessage's Legal Department at legalcompliance@CareMessage.org.

12.2 **Relationship of the Parties.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

12.3 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

12.4 **Notices.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (i) personal delivery, (ii) the second business day after mailing by certified or registered mail or courier service, (iii) the first business day after sending by confirmed facsimile, or (iv), except for notices of termination or an indemnifiable claim ("**Legal Notices**"), the first business day after sending by confirmed email. Notices to CareMessage will be addressed to the attention of [CareMessage c/o Rauxa 343 Sansome St, 16th floor, San Francisco, CA 94111]. Billing-related notices to Drew will be addressed to the relevant billing contact designated by Drew, and Legal Notices to Clients will be addressed to each Client at the address designated by such Client and be clearly identified as Legal Notices. All other notices to Client will be addressed to the relevant Service system administrator designated by Client.

12.5 **Waiver.** No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right.

12.6 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted to best accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

12.7 **Assignment.** Neither Clients nor CareMessage 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 the other Party (which consent will not to 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.

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 **Venue.** The state and federal courts located in Santa Clara, California will have exclusive jurisdiction over any dispute relating to this Agreement, and each Party consents to the exclusive jurisdiction and venue of those courts.

12.10 **Publicity.** CareMessage is free to publicly disclose its relationship with Client upon the Effective Date.

12.11 **Entire Agreement.** This Agreement is the entire agreement between CareMessage and Clients regarding the subject matter hereof and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is to be asserted. However, if there is a conflict or inconsistency among this Master Subscription Agreement, Invoice or Policy, the conflict or inconsistency will be resolved according to the following order of precedence: Master Agreement, Invoice, Policy.

12.12 **Counterparts.** This Agreement may be executed by facsimile and in counterparts.

12.13 **Jury Service.** CareMessage will complete the County of Los Angeles Contractor Employee Jury Service Program Application for Exception and Certification Form, which is Exhibit C to this Agreement. In the event that CareMessage enters into agreements, including amendments to this Agreement, under which it will receive $50,000 or more from MLK, it agrees to amend this Agreement to include the County of Los Angeles Contractor Employee Jury Service Program language.

12.14 **Contractor Debarment.** CareMessage is hereby notified that, in accordance with Chapter 2.202 of the County Code, if MLK acquires information concerning the performance of CareMessage on this or other contracts which indicates that CareMessage is not responsible, MLK may, in addition to other remedies provided in this Agreement, debar CareMessage from bidding or proposing on, or being awarded, and/or performing work on County of Los Angeles contracts for a specified

period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts CareMessage may have with the County.

i. Non-responsible Contractor. MLK may debar CareMessage if the Board of Supervisors finds, in its discretion, that the CareMessage has done any of the following: (1) violated a term of a contract with MLK or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on CareMessage's quality, fitness or capacity to perform a contract with MLK, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

ii. Contractor Hearing Board. If there is evidence that CareMessage may be subject to debarment, MLK will notify CareMessage in writing of the evidence which is the basis for the proposed debarment and will advise CareMessage of the scheduled date for a debarment hearing before the Contractor Hearing Board.

(a) The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. CareMessage and/or CareMessage's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether CareMessage should be debarred, and, if so, the appropriate length of time of the debarment. CareMessage and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors. (b) After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.(c) If CareMessage has been debarred for a period longer than five (5) years, that CareMessage may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. MLK may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that CareMessage has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of MLK. (d) The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) CareMessage has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.(e) The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall havethe right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

iii. CareMessage's Subcontractors. These terms shall also apply to Subcontractors of CareMessage.

12.15 Warranty of Adherence to County's Child Support Compliance Program. CareMessage acknowledges that MKL has established a goal of ensuring that all individuals who benefit financially from County through contracts are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

i. As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting CareMessage's duty under this Agreement to comply with all applicable provisions of law, CareMessage warrants that it is now in compliance and shall during the term of this Agreement maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

12.16 Nondiscrimination and Affirmative Action.

i. CareMessage certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

ii. CareMessage shall certify to, and comply with, the provisions of Exhibit D - EEO Certification.

iii. CareMessage shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

iv. CareMessage certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.

v. CareMessage certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.

vi. Upon three (3) days prior notice, CareMessage shall allow MLK representatives access to CareMessage's employment records during regular business hours to verify compliance with the provisions of this sub-section 12.16 when so requested by MLK.

vii. If MLK finds that any provisions of this sub-section 12.16 have been violated, such violation shall constitute a material breach of this Agreement upon which MLK may terminate or suspend this Agreement. While MLK reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that CareMessage has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by MLK that CareMessage has violated the anti-discrimination provisions of this Agreement.

viii. The Parties agree that in the event CareMessage violates any of the anti-discrimination provisions of this Agreement, MLK shall, at its sole option, be entitled to the sum of Five Hundred Dollars ($500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating terminate or suspending this Agreement.

CAREMESSAGE PATIENT EDUCATION, INC.	COUNTY OF LOS ANGELES
By: _____	By: _____
Print Name: Vineet Singal	Print Name: _____
Title: CEO	Title: _____
Date: _____	Date: _____

[Charles R. Drew University of Medicine and Science

By: _____

Print Name: Theodore C. Friedman, M.D. Ph.D.

Title: Principal Investigator

Date: _____

By: _____

Print Name: Perrilla Johnson-Woodard, MBA

Title: Director, Office of Sponsored Programs

Date: _____

Exhibit A

Invoice

CareMessage
424 Clay Street, Lower Level
San Francisco, CA 94104

Bill To:
Charles R. Drew University of Medicine

Date	Invoice No.	P.O. Number	Terms	Project
04/01/14	4		Consignment	

Item	Description	Quantity	Rate	Amount
Implementation	100% Discount		0.00	0.00
Monthly fee	April 2014 (Free trial)		0.00	0.00
Monthly fee	May 2014 (Free Trial)		0.00	0.00
Monthly fee	June 2014 Onwards		495.00	495.00
			Total	$495.00

caremessage™

Care.
Better.
Together.

CareMessage
424 Clay Street, Lower Level
San Francisco, CA 94104

Vineet Singal
Chief Executive Officer
Co–Founder
+1 650 215 3565
vsingal@caremessage.org

LA County Department of Health Services/Martin Luther King Ambulatory Care Center

ADDENDUM TO INVOICE

We look forward to providing the LA County DHS/Martin Luther King MACC with a client communication and management system that will allow the obesity management project to improve the quality of the program and increase patient outreach for its obese patient population.

PLAN TIMELINE

Workstream 0: Education Program and Outreach Creation

We propose spending a period of one month to create the educational programs necessary to support the functions of the projection. We will also determine an evaluation strategy for the project, and provide staff training on the use of the CareMessage platform.

Workstream 1: CareMessage Implementation

We propose a customized version of the CareMessage technology to solve multiple needs solving the following problems:

1. **Centralization of Patient Records:** Create a basic client communication management system that includes the relevant demographic and clinical information in order to *improve operational efficiency and patient outreach*. Patient profile can be customized to include fields relevant to each patient's status with the program.
2. **Reminder/Follow-up Automation:** Create the ability for program staff to automatically send pre-appointment instructions/reminders and post appointment follow-up. Specific features include: appointment management, event management, medication adherence messaging, pre

Care.
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San Francisco, CA 94104

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Co–Founder
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and post-appointment education, overall patient education etc. The system can also send multiple text message reminders set around a specific date of an event (i.e. one week, one day, and the morning of an appointment).

3. **Obesity Management:** Administrative staff can reach out to patients quickly and easily through evidence-based obesity management programs tailored to a variety of factors, including age, gender, and severity of condition. The CareMessage obesity health literacy, medication adherence and overall obesity management programs will be provided to the program and localized to meet the needs of the client population. Additionally, the CareMessage product team will help develop further obesity management programs based on related needs. Staff can also help enroll patients onto relevant obesity and disease management programs directly via client's mobile phones via the use of the 'self-enrollment' functionality.
4. **Data Collection:** Our interactive, engagement programs will automate general outreach, direct patient follow-up, patient satisfaction surveys etc.
5. **Cloud-based access.** We have developed the platform as a service. It does not require additional infrastructure and can be accessed from any device with an internet connection. This minimizes the barriers to adoption while simultaneously minimizing IT-associated support costs. Access can be given to an unlimited number of staff member accounts.
6. **Data and Analytics:** CareMessage will enable the program staff to automatically analyze and report relevant data when the system and associated programs are implemented. Our system will automatically generate reports and visualize data on an individual and population level.

Workstream 2: CareMessage Evaluation

1. **Evaluation of Client Outcomes:** Evaluate how the usage of CareMessage technology has helped improve outcomes.
2. **Evaluation of Staff Adoption:** Evaluate how the implementation of CareMessage has helped support staff outreach and improve staff efficiency.

BUSINESS ASSOCIATE AGREEMENT UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA")

County is a Covered Entity as defined by, and subject to the requirements and prohibitions of, the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and regulations promulgated thereunder, including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164 (collectively, the "HIPAA Rules").

Contractor performs or provides functions, activities or services to County that require Contractor in order to provide such functions, activities or services to create, access, receive, maintain, and/or transmit information that includes or that may include Protected Health Information, as defined by the HIPAA Rules. As such, Contractor is a Business Associate, as defined by the HIPAA Rules, and is therefore subject to those provisions of the HIPAA Rules that are applicable to Business Associates.

The HIPAA Rules require a written agreement ("Business Associate Agreement") between County and Contractor in order to mandate certain protections for the privacy and security of Protected Health Information, and these HIPAA Rules prohibit the disclosure to or use of Protected Health Information by Contractor if such an agreement is not in place.

This Business Associate Agreement and its provisions are intended to protect the privacy and provide for the security of Protected Health Information disclosed to or used by Contractor in compliance with the HIPAA Rules.

Therefore, the parties agree as follows:

1. DEFINITIONS

1.1 "Breach" has the same meaning as the term "breach" at 45 C.F.R. § 164.402.

1.2 "Business Associate" has the same meaning as the term "business associate" at 45 C.F.R. § 160.103. For the convenience of the parties, a "business associate" is a person or entity, other than a member of the workforce of covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to Protected Health Information. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of another business associate. And in reference to the party to this Business Associate Agreement "Business Associate" shall mean Contractor.

1.3 "Covered Entity" has the same meaning as the term "covered entity" at 45 C.F.R. § 160.103, and in reference to the party to this Business Associate Agreement, "Covered Entity" shall mean County.

1.4 "Data Aggregation" has the same meaning as the term "data aggregation" at 45 C.F.R. § 164.501.

1.5 "De-identification" refers to the de-identification standard at 45 C.F.R. § 164.514.

1.6 "Designated Record Set" has the same meaning as the term "designated record set" at 45 C.F.R. § 164.501.

1.7 "Disclose" and "Disclosure" mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its workforce. (See 45 C.F.R. § 160.103.)

1.8 "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff. (See 42 U.S. C. § 17921.)

1.9 "Electronic Media" has the same meaning as the term "electronic media" at 45 C.F.R. § 160.103. For the convenience of the parties, electronic media means (1) Electronic storage material on which data is or may be recorded electronically, including, for example, devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the Internet, extranet or intranet, leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media if the information being exchanged did not exist in electronic form immediately before the transmission.

1.10 "Electronic Protected Health Information" has the same meaning as the term "electronic protected health information" at 45 C.F.R. § 160.103, limited to Protected Health Information created or received by Business Associate from or on behalf of Covered Entity. For the convenience of the parties, Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media.

1.11 "Health Care Operations" has the same meaning as the term "health care operations" at 45 C.F.R. § 164.501.

1.12 "Individual" has the same meaning as the term "individual" at 45 C.F.R. § 160.103. For the convenience of the parties, Individual means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502 (g).

1.13 "Law Enforcement Official" has the same meaning as the term "law enforcement official" at 45 C.F.R. § 164.103.

1.14 "Minimum Necessary" refers to the minimum necessary standard at 45 C.F.R. § 162.502 (b).

1.15 "Protected Health Information" has the same meaning as the term "protected health information" at 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. For the convenience of the parties, Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity, and includes Protected Health Information that is made accessible to Business Associate by Covered Entity. "Protected Health Information" includes Electronic Protected Health Information.

1.16 "Required by Law" " has the same meaning as the term "required by law" at 45 C.F.R. § 164.103.

1.17 "Secretary" has the same meaning as the term "secretary" at 45 C.F.R. § 160.103

1.18 "Security Incident" has the same meaning as the term "security incident" at 45 C.F.R. § 164.304.

1.19 "Services" means, unless otherwise specified, those functions, activities, or services in the applicable underlying Agreement, Contract, Master Agreement, Work Order, or Purchase Order or other service arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

1.20 "Subcontractor" has the same meaning as the term "subcontractor" at 45 C.F.R. § 160.103.

1.21 "Unsecured Protected Health Information" has the same meaning as the term "unsecured protected health information" at 45 C.F.R. § 164.402.

1.22 "Use" or "Uses" means, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate's internal operations. (See 45 C.F.R § 164.103.)

1.23 Terms used, but not otherwise defined in this Business Associate Agreement, have the same meaning as those terms in the HIPAA Rules.

2. PERMITTED AND REQUIRED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

2.1 Business Associate may only Use and/or Disclose Protected Health Information as necessary to perform Services, and/or as necessary to comply with the obligations of this Business Associate Agreement.

2.2 Business Associate may Use Protected Health Information for de-identification of the information if de-identification of the information is required to provide Services.

2.3 Business Associate may Use or Disclose Protected Health Information as Required by Law.

2.4 Business Associate shall make Uses and Disclosures and requests for Protected Health Information consistent with the Covered Entity's applicable Minimum Necessary policies and procedures.

2.5 Business Associate may Use Protected Health Information as necessary for the proper management and administration of its business or to carry out its legal responsibilities.

2.6 Business Associate may Disclose Protected Health Information as necessary for the proper management and administration of its business or to carry out its legal responsibilities, provided the Disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed (i.e., the recipient) that it will be held confidentially and Used or further Disclosed only as Required by Law or for the purposes for which it was disclosed to the recipient and the recipient notifies Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.

2.7 Business Associate may provide Data Aggregation services relating to Covered Entity's Health Care Operations if such Data Aggregation services are necessary in order to provide Services.

3. PROHIBITED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

3.1 Business Associate shall not Use or Disclose Protected Health Information other than as permitted or required by this Business Associate Agreement or as Required by Law.

3.2 Business Associate shall not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth in Sections 2.5 and 2.6.

3.3 Business Associate shall not Use or Disclose Protected Health Information for de-identification of the information except as set forth in section 2.2.

4. OBLIGATIONS TO SAFEGUARD PROTECTED HEALTH INFORMATION

4.1 Business Associate shall implement, use, and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information other than as provided for by this Business Associate Agreement.

4.2 Business Associate shall comply with Subpart C of 45 C.F.R Part 164 with respect to Electronic Protected Health Information, to prevent the Use or Disclosure of such information other than as provided for by this Business Associate Agreement.

5. REPORTING NON-PERMITTED USES OR DISCLOSURES, SECURITY INCIDENTS, AND BREACHES OF UNSECURED PROTECTED HEALTH INFORMATION

5.1 Business Associate shall report to Covered Entity any Use or Disclosure of Protected Health Information not permitted by this Business Associate Agreement, any Security Incident, and/ or any Breach of Unsecured Protected Health Information as further described in Sections 5.1.1, 5.1.2, and 5.1.3.

5.1.1 Business Associate shall report to Covered Entity any Use or Disclosure of Protected Health Information by Business Associate, its employees, representatives, agents or Subcontractors not provided for by this Agreement of which Business Associate becomes aware.

5.1.2 Business Associate shall report to Covered Entity any Security Incident of which Business Associate becomes aware.

5.1.3 Business Associate shall report to Covered Entity any Breach by Business Associate, its employees, representatives, agents, workforce members, or Subcontractors of Unsecured Protected Health Information that is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach of Unsecured Protected Health Information if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate, including a Subcontractor, as determined in accordance with the federal common law of agency.

5.2 Except as provided in Section 5.3, for any reporting required by Section 5.1, Business Associate shall provide, to the extent available, all information required by, and within the times frames specified in, Sections 5.2.1 and 5.2.2.

5.2.1 Business Associate shall make an immediate telephonic report upon discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident or Breach of Unsecured Protected Health Information to **(562) 940-3335** that minimally includes:

(a) A brief description of what happened, including the date of the non-permitted Use or Disclosure, Security Incident, or Breach and the date of Discovery of the non-permitted Use or Disclosure, Security Incident, or Breach, if known;

(b) The number of Individuals whose Protected Health Information is involved;

(c) A description of the specific type of Protected Health Information involved in the non-permitted Use or Disclosure, Security Incident, or Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code or other types of information were involved);

(d) The name and contact information for a person highly knowledgeable of the facts and circumstances of the non-permitted Use or Disclosure of PHI, Security Incident, or Breach

5.2.2 Business Associate shall make a written report without unreasonable delay and in no event later than three (3) business days from the date of discovery by Business Associate of the non-permitted Use or Disclosure

of Protected Health Information, Security Incident, or Breach of Unsecured Protected Health Information and to the **Chief HIPAA Privacy Officer at: Chief HIPAA Privacy Officer, Kenneth Hahn Hall of Administration, 500 West Temple Street, Suite 525, Los Angeles, California 90012, HIPAA@auditor.lacounty.gov,** that includes, to the extent possible:

(a) A brief description of what happened, including the date of the non-permitted Use or Disclosure, Security Incident, or Breach and the date of Discovery of the non-permitted Use or Disclosure, Security Incident, or Breach, if known;

(b) The number of Individuals whose Protected Health Information is involved;

(c) A description of the specific type of Protected Health Information involved in the non-permitted Use or Disclosure, Security Incident, or Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code or other types of information were involved);

(d) The identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, Used, or Disclosed;

(e) Any other information necessary to conduct an assessment of whether notification to the Individual(s) under 45 C.F.R. § 164.404 is required;

(f) Any steps Business Associate believes that the Individual(s) could take to protect him or herself from potential harm from the non-permitted Use or Disclosure, Security Incident, or Breach;

(g) A brief description of what Business Associate is doing to investigate, to mitigate harm to the Individual(s), and to protect against any further similar occurrences; and

(h) The name and contact information for a person highly knowledgeable of the facts and circumstances of the non-permitted Use or Disclosure of PHI, Security Incident, or Breach.

5.2.3 If Business Associate is not able to provide the information specified in Section 5.2.1 or 5.2.2 at the time of the required report, Business Associate shall provide such information promptly thereafter as such information becomes available.

5.3 Business Associate may delay the notification required by Section 5.1.3, if a law enforcement official states to Business Associate that notification would impede a criminal investigation or cause damage to national security.

5.3.1 If the law enforcement official's statement is in writing and specifies the time for which a delay is required, Business Associate shall delay its reporting and/or notification obligation(s) for the time period specified by the official.

5.3.2 If the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay its reporting and/or notification obligation(s) temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in Section 5.3.1 is submitted during that time.

6. WRITTEN ASSURANCES OF SUBCONTRACTORS

6.1 In accordance with 45 C.F.R. § 164.502 (e)(1)(ii) and § 164.308 (b)(2), if applicable, Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate is made aware of its status as a Business Associate with respect to such information and that Subcontractor agrees in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.

6.2 Business Associate shall take reasonable steps to cure any material breach or violation by Subcontractor of the agreement required by Section 6.1.

6.3 If the steps required by Section 6.2 do not cure the breach or end the violation, Contractor shall terminate, if feasible, any arrangement with Subcontractor by which Subcontractor creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate.

6.4 If neither cure nor termination as set forth in Sections 6.2 and 6.3 is feasible, Business Associate shall immediately notify County.

6.5 Without limiting the requirements of Section 6.1, the agreement required by Section 6.1 (Subcontractor Business Associate Agreement) shall require Subcontractor to contemporaneously notify Covered Entity in the event of a Breach of Unsecured Protected Health Information.

6.6 Without limiting the requirements of Section 6.1, agreement required by Section 6.1 (Subcontractor Business Associate Agreement) shall include a provision requiring Subcontractor to destroy, or in the alternative to return

to Business Associate, any Protected Health Information created, received, maintained, or transmitted by Subcontractor on behalf of Business Associate so as to enable Business Associate to comply with the provisions of Section 18.4.

6.7 Business Associate shall provide to Covered Entity, at Covered Entity's request, a copy of any and all Subcontractor Business Associate Agreements required by Section 6.1.

6.8 Sections 6.1 and 6.7 are not intended by the parties to limit in any way the scope of Business Associate's obligations related to Subcontracts or Subcontracting in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

7. ACCESS TO PROTECTED HEALTH INFORMATION

7.1 To the extent Covered Entity determines that Protected Health Information is maintained by Business Associate or its agents or Subcontractors in a Designated Record Set, Business Associate shall, within two (2) business days after receipt of a request from Covered Entity, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and shall provide such Individuals(s) or other person(s) designated by Covered Entity with a copy the specified Protected Health Information, in order for Covered Entity to meet the requirements of 45 C.F.R. § 164.524.

7.2 If any Individual requests access to Protected Health Information directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within two (2) days of the receipt of the request. Whether access shall be provided or denied shall be determined by Covered Entity.

7.3 To the extent that Business Associate maintains Protected Health Information that is subject to access as set forth above in one or more Designated Record Sets electronically and if the Individual requests an electronic copy of such information, Business Associate shall provide the Individual with access to the Protected Health Information in the electronic form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by Covered Entity and the Individual.

8. AMENDMENT OF PROTECTED HEALTH INFORMATION

8.1 To the extent Covered Entity determines that any Protected Health Information is maintained by Business Associate or its agents or Subcontractors in a Designated Record Set, Business Associate shall, within ten (10) business days after receipt of a written request from Covered Entity, make any amendments to such Protected Health Information that are requested by Covered Entity, in order for Covered Entity to meet the requirements of 45 C.F.R. § 164.526.

8.2 If any Individual requests an amendment to Protected Health Information directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the receipt of the request. Whether an amendment shall be granted or denied shall be determined by Covered Entity.

9. ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION

9.1 Business Associate shall maintain an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or Subcontractors, as is determined by Covered Entity to be necessary in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

9.1.1 Any accounting of disclosures provided by Business Associate under Section 9.1 shall include:

(a) The date of the Disclosure;

(b) The name, and address if known, of the entity or person who received the Protected Health Information;

(c) A brief description of the Protected Health Information Disclosed; and

(d) A brief statement of the purpose of the Disclosure.

9.1.2 For each Disclosure that could require an accounting under Section 9.1, Business Associate shall document the information specified in Section 9.1.1, and shall maintain the information for six (6) years from the date of the Disclosure.

9.2 Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of a written request from Covered Entity,

information collected in accordance with Section 9.1.1 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528

9.3 If any Individual requests an accounting of disclosures directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the receipt of the request, and shall provide the requested accounting of disclosures to the Individual(s) within 30 days. The information provided in the accounting shall be in accordance with 45 C.F.R. § 164.528.

10. COMPLIANCE WITH APPLICABLE HIPAA RULES

10.1 To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity's performance of such obligation(s).

10.2 Business Associate shall comply with all HIPAA Rules applicable to Business Associate in the performance of Services.

11. AVAILABILITY OF RECORDS

11.1 Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations.

11.2 Unless prohibited by the Secretary, Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.

12. MITIGATION OF HARMFUL EFFECTS

12.1 Business Associate shall mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement that is known to Business Associate.

13. BREACH NOTIFICATION TO INDIVIDUALS

13.1 Business Associate shall, to the extent Covered Entity determines that there has been a Breach of Unsecured Protected Health Information by

Business Associate, its employees, representatives, agents or Subcontractors, provide breach notification to the Individual in a manner that permits Covered Entity to comply with its obligations under 45 C.F.R. § 164.404.

13.1.1 Business Associate shall notify, subject to the review and approval of Covered Entity, each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, Used, or Disclosed as a result of any such Breach.

13.1.2 The notification provided by Business Associate shall be written in plain language, shall be subject to review and approval by Covered Entity, and shall include, to the extent possible:

(a) A brief description of what happened, including the date of the Breach and the date of the Discovery of the Breach, if known;

(b) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(c) Any steps the Individual should take to protect him or herself from potential harm resulting from the Breach;

(d) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to Individual(s), and to protect against any further Breaches; and

(e) Contact procedures for Individual(s) to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

13.2 Covered Entity, in its sole discretion, may elect to provide the notification required by Section 13.1 and/or to establish the contact procedures described in Section 13.1.2.

13.3 Business Associate shall reimburse Covered Entity any and all costs incurred by Covered Entity, in complying with Subpart D of 45 C.F.R. Part 164, including but not limited to costs of notification, internet posting, or media publication, as a result of Business Associate's Breach of Unsecured Protected Health Information; Covered Entity shall not be responsible for any costs incurred by Business Associate in providing the notification required by 13.1 or in establishing the contact procedures required by Section 13.1.2.

14. INDEMNIFICATION

14.1 Business Associate shall indemnify, defend, and hold harmless Covered Entity, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, expenses (including attorney and expert witness fees), and penalties and/or fines (including regulatory penalties and/or fines), arising from or connected with Business Associate's acts and/or omissions arising from and/or relating to this Business Associate Agreement, including, but not limited to, compliance and/or enforcement actions and/or activities, whether formal or informal, by the Secretary or by the Attorney General of the State of California.

14.2 Section 14.1 is not intended by the parties to limit in any way the scope of Business Associate's obligations related to Insurance and/or Indemnification in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

15. OBLIGATIONS OF COVERED ENTITY

15.1 Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the Use or Disclosure of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own Uses and Disclosures accordingly.

15.2 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except to the extent that Business Associate may Use or Disclose Protected Health Information as provided in Sections 2.3, 2.5, and 2.6.

16. TERM

16.1 Unless sooner terminated as set forth in Section 17, the term of this Business Associate Agreement shall be the same as the term of the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other service arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

16.2 Notwithstanding Section 16.1, Business Associate's obligations under Sections 11, 14, and 18 shall survive the termination or expiration of this Business Associate Agreement.

17. TERMINATION FOR CAUSE

17.1 In addition to and notwithstanding the termination provisions set forth in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, if either party determines that the other party has violated a material term of this Business Associate Agreement, and the breaching party has not cured the breach or ended the violation within the time specified by the non-breaching party, which shall be reasonable given the nature of the breach and/or violation, the non-breaching party may terminate this Business Associate Agreement.

17.2 In addition to and notwithstanding the termination provisions set forth in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, if either party determines that the other party has violated a material term of this Business Associate Agreement, and cure is not feasible, the non-breaching party may terminate this Business Associate Agreement immediately.

18. DISPOSITION OF PROTECTED HEALTH INFORMATION UPON TERMINATION OR EXPIRATION

18.1 Except as provided in Section 18.3, upon termination for any reason or expiration of this Business Associate Agreement, Business Associate shall return or, if agreed to by Covered entity, shall destroy as provided for in Section 18.2, all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that Business Associate, including any Subcontractor, still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.

18.2 Destruction for purposes of Section 18.2 and Section 6.6 shall mean that media on which the Protected Health Information is stored or recorded has been destroyed and/or electronic media have been cleared, purged, or destroyed in accordance with the use of a technology or methodology specified by the Secretary in guidance for rendering Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals.

18.3 Notwithstanding Section 18.1, in the event that return or destruction of Protected Health Information is not feasible or Business Associate determines that any such Protected Health Information is necessary for Business Associate to continue its proper management and administration

or to carry out its legal responsibilities, Business Associate may retain that Protected Health Information for which destruction or return is infeasible or that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities and shall return or destroy all other Protected Health Information.

18.3.1 Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information, including continuing to use appropriate safeguards and continuing to comply with Subpart C of 45 C.F.R Part 164 with respect to Electronic Protected Health Information, to prevent the Use or Disclosure of such information other than as provided for in Sections 2.5 and 2.6 for so long as such Protected Health Information is retained, and Business Associate shall not Use or Disclose such Protected Health Information other than for the purposes for which such Protected Health Information was retained.

18.3.2 Business Associate shall return or, if agreed to by Covered entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for Business Associate's proper management and administration or to carry out its legal responsibilities.

18.4 Business Associate shall ensure that all Protected Health Information created, maintained, or received by Subcontractors is returned or, if agreed to by Covered entity, destroyed as provided for in Section 18.2.

19. AUDIT, INSPECTION, AND EXAMINATION

19.1 Covered Entity reserves the right to conduct a reasonable inspection of the facilities, systems, information systems, books, records, agreements, and policies and procedures relating to the Use or Disclosure of Protected Health Information for the purpose determining whether Business Associate is in compliance with the terms of this Business Associate Agreement and any non-compliance may be a basis for termination of this Business Associate Agreement and the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, as provided for in section 17.

19.2 Covered Entity and Business Associate shall mutually agree in advance upon the scope, timing, and location of any such inspection.

19.3 At Business Associate's request, and to the extent permitted by law, Covered Entity shall execute a nondisclosure agreement, upon terms and conditions mutually agreed to by the parties.

19.4 That Covered Entity inspects, fails to inspect, or has the right to inspect as provided for in Section 19.1 does not relieve Business Associate of its responsibility to comply with this Business Associate Agreement and/or the HIPAA Rules or impose on Covered Entity any responsibility for Business Associate's compliance with any applicable HIPAA Rules.

19.5 Covered Entity's failure to detect, its detection but failure to notify Business Associate, or its detection but failure to require remediation by Business Associate of an unsatisfactory practice by Business Associate, shall not constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under this Business Associate Agreement or the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

19.6 Section 19.1 is not intended by the parties to limit in any way the scope of Business Associate's obligations related to Inspection and/or Audit and/or similar review in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

20. MISCELLANEOUS PROVISIONS

20.1 Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with the terms and conditions of this Business Associate Agreement will be adequate or satisfactory to meet the business needs or legal obligations of Business Associate.

20.2 HIPAA Requirements. The Parties agree that the provisions under HIPAA Rules that are required by law to be incorporated into this Amendment are hereby incorporated into this Agreement.

20.3 No Third Party Beneficiaries. Nothing in this Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

20.4 Construction. In the event that a provision of this Business Associate Agreement is contrary to a provision of the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, the provision of this Business Associate Agreement shall control. Otherwise, this Business Associate Agreement shall be construed under, and in accordance with, the terms of the applicable underlying Agreement, Contract, Master Agreement, Work

Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

20.5 Regulatory References. A reference in this Business Associate Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

20.6 Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA Rules.

20.7 Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the HIPAA Rules and any other privacy laws governing Protected Health Information.