

**NAPA COUNTY AGREEMENT NO. 230147B  
PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT (the "Agreement")** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and, **CREDIBLE BEHAVIORAL HEALTH, INC. dba QUALIFACTS SYSTEMS, LLC.**, hereinafter referred to as "CONTRACTOR." COUNTY and CONTRACTOR may be referred to below collectively as "Parties" and individually as "Party."

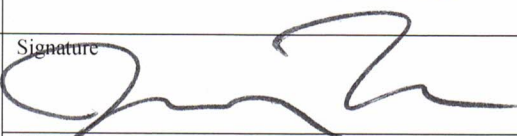

**RECITALS**

**WHEREAS**, COUNTY wishes to obtain specialized services for the procurement and implementation of a comprehensive Electronic Health Record System for documentation and billing of Behavioral Health services; and CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein.

**TERMS**

**NOW, THEREFORE**, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the Terms and Conditions and their own Exhibits, which together are attached hereto and incorporated by this reference as though set forth in full herein. The Section numbers of any portion of this Agreement may at times be referred to either as "Sections" or "Paragraphs" interchangeably.

**IN WITNESS WHEREOF**, this Agreement was executed by the Parties hereto as of the date first above written.

<b>NAPA COUNTY</b> , a political subdivision of the State of California	<b>CONTRACTOR</b>
By _____ <b>RYAN GREGORY, Chair of the Board of Supervisors</b>	Signature 
ATTEST: NEHA HOSKINS, Clerk of the Board	JEREMY LANDA, Chief Financial Officer
By: _____	
DATE APPROVED BY THE BOARD: _____	Signature
Processed by: _____ Deputy	Printed Name of Person Signing, and Title, if applicable

Maximum Amount of this Agreement: \$1,510,891.00
Term Expires: September 30, 2027
Automatic renewal of term is modified.

APPROVED AS TO FORM BY NAPA COUNTY COUNSEL
By: <u>John L. Myers (e-sign)</u> 9/7/22 PL No. 79083

## **TERMS AND CONDITIONS OF NAPA COUNTY AGREEMENT NO. 230147B**

### **SECTION 1. Contract Administration**

For purposes of this Agreement, the following shall apply:

- 1.1 “Department” shall mean: Health and Human Services
- 1.2 “Director” shall mean the person elected or appointed to the chief management position of the Department.
- 1.3 “Contract Administrator” shall be: Contracts Analyst or such other person as designated by the Department Director. The address for COUNTY’s Contract Administrator shall be: 2751 Napa Valley Corporate Drive, Building B, 2<sup>nd</sup> Floor, Napa, CA 94559.
- 1.4 The Program Manager for COUNTY shall be: Casey Rockwood, Deputy Director of HHSA - Admin Services
- 1.5 The Contract Contact Person for CONTRACTOR shall be: Jeremy Landa, Chief Financial Officer, 315 Deaderick Street, Suite 2300, Nashville, Tennessee 37238
- 1.6 CONTRACTOR is a ☐ sole proprietor ☐ partnership ☒ corporation ☐ public agency ☐ other (specify) .
- 1.7 The source of funding for this Agreement shall be: Health & Human Services Mental Health - Mental Health Services Act
- 1.8 In entering into this Agreement, CONTRACTOR acknowledges and agrees to abide by the applicable terms of the following COUNTY-entity agreements, and as they may, amended from time to time: Department of Health Care Services Mental Health and SUDS Agreements

These agreements are on file with the Napa County Clerk of the Board of Supervisors and may be accessed at <https://www.countyofnapa.org/DocumentCenter/> under “Departments/Health and Human Services/Administration/Contracts and Administration Documents” (See also Section 2, Paragraphs 2.15(b)(2) and 2.35)

### **SECTION 2. General Terms and Conditions.**

Attached hereto and incorporated by this reference as Exhibit C is “SECTION 2. General Terms and Conditions – Version 12”, which shall be referred to herein as the “General Terms and Conditions” and which shall apply to this Agreement unless otherwise specifically limited or excluded by more specific provisions.

Due to changes in the laws, future versions of General Terms and Conditions shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR, effective within such time period as is designated in Paragraph 2.10 (Other Termination) plus 15 days or as mandated by local, state or federal laws or regulations, whichever date is sooner.

### **SECTION 3. Specific Terms and Conditions.**

The following Specific Terms and Conditions provide additional terms and conditions or modify the General Terms and Conditions of this Agreement. A Specific Term and Condition shall control if a conflict exists with a General Term and Condition.

3.1 The following Specific Terms and Conditions apply when CONTRACTOR's obligations under this Agreement involve the following as designated by an "X":

- ☐ (a) Contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (General Terms and Conditions Paragraph 2.8(b) applies).
- ☐ (b) Construction or pre-construction related services (General Terms and Conditions Paragraph 2.19(e) applies).
- ☐ (c) Work on or the supplying of any software systems or equipment containing or suspected of containing clocks or embedded chips functioning as or dependent upon the use of clocks or calendars (General Terms and Conditions Paragraph 2.29 applies).
- ☐ (d) Services covered by a Federal Health Care Program (General Terms and Conditions Paragraph 2.31 applies).
- ☐ (e) Services covered by a State Medi-Cal Specialty Mental Health Program (General Terms and Conditions Paragraph 2.32 applies).
- ☒ (f) Mental Health Activities (General Terms and Conditions Paragraph 2.33 applies).
- ☒ (g) Services involving the receipt, use or disclosure of protected health information:  
A  
determination has been made by COUNTY's Privacy Officer that CONTRACTOR shall not provide services under this Agreement as a Business Associate to COUNTY. General Terms and Conditions Paragraph 2.34(b) does not apply to this Agreement.
- ☐ (h) Services provided under COUNTY's Managed Care Provider Program, which shall be subject to all the terms and conditions set forth in the Napa County Mental Health Managed Care Provider Manual, herein incorporated by reference and on file with the Clerk of the Napa County Board of Supervisors.
- ☐ (i) Services as a provider for which CONTRACTOR has submitted a "Provider Application," which CONTRACTOR warrants that the information contained in said application is accurate and understands that any inaccuracies may be grounds for termination of this Agreement by COUNTY. CONTRACTOR authorizes COUNTY to consult with third parties, including but not limited, to the National Practitioner Data Bank or other applicable licensing boards.
- ☒ (j) Services involving the use or disclosure of personally identifiable information that are performed as a subcontractor under COUNTY's contract with another entity when that contract requires COUNTY to include its applicable terms in COUNTY's subcontracts. (General Terms and Conditions Paragraph 2.35 applies.)

[ ] (k) Services determined by the Department Director to be covered by Department's Code of Ethics. (General Terms and Conditions Paragraph 2.38 applies.) CONTRACTOR understands that, by entering into this Agreement, CONTRACTOR acknowledges that CONTRACTOR has received, read, and understands the Code of Ethics, and agrees to abide by the terms therein as applicable to CONTRACTOR's activities under this Agreement. Department shall provide CONTRACTOR with copies of Department's Code of Ethics prior to the execution of the Agreement. CONTRACTOR further understands that on an annual basis CONTRACTOR shall provide written certification to Department that CONTRACTOR has received, read, understands, and will abide by Department's Code of Ethics.

[X] (l) Services have been determined by the Department Director, or may be determined at a later date, that CONTRACTOR is a subrecipient or pass-through entity and is therefore required to meet all of the requirements found in 2 C.F.R. § 200.331. (General Terms and Conditions 2.40 applies.) COUNTY shall notify CONTRACTOR in accordance with General Terms and Conditions Paragraph 2.13 (Notices), of any change in designation as a subrecipient, and any subsequent increase to the amount of Federal funding CONTRACTOR shall receive under the terms of this Agreement. CONTRACTOR shall be bound thereby upon receipt of notice.

### 3.2 Source Funding.

(a) Change in Source Funding. Paragraph 1.7 may be unilaterally modified by COUNTY upon written notice to CONTRACTOR who shall be bound thereby immediately upon receipt. The Department Director is delegated the authority to modify Paragraph 1.7 and provide such written notice, but may exercise such authority only after consultation with, and concurrence of, the Napa County Counsel and the Napa County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Napa County Board of Supervisors to modify Paragraph 1.7.

(b) Amendment to Source Funding Agreement. If Paragraph 1.7 identifies a funding source agreement, then any amendment to the funding source agreement shall be automatically incorporated and made a part of this Agreement, effective in accordance with the amended funding source agreement. As a subcontractor of COUNTY, CONTRACTOR shall be bound by the applicable terms of the funding source agreement, and any amendments thereto.

3.3 Statement of Economic Interests. By authorizing its Chair to execute this Agreement on its behalf, COUNTY's Board of Supervisors hereby determines in writing on behalf of COUNTY that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with the disclosure obligations set forth in Paragraph 2.23(b).

3.4 General Terms and Conditions 2.1(b)-Automatic Renewal is modified to read in full as follows:

The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, for a maximum of **five** additional fiscal years (the final renewal period concludes on **September 30, 2027**), under the same terms and conditions, unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Termination for Convenience) or 2.23 (a) (Covenant of No Undisclosed Conflict). The obligations of the Parties under Paragraphs 2.7 (Insurance) and 2.8 (Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to

such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes) and 2.21 (Access to Records/Retention).

3.5 COUNTY delegates its authority to the Director of the Health and Human Services Agency to approve future amendments to Exhibits A and B, attached to this Agreement, provided that any such amendment does not materially alter the nature of the services to be provided or increase the maximum compensation available under this Agreement.

#### **SECTION 4. Incorporated Documents.**

The following documents are incorporated herein by this reference and attached hereto and labeled as the following Exhibit letters:

Exhibit A: Service Order Form/Scope of Work (attached)

Exhibit B: Compensation and Expense Reimbursement (attached)

Exhibit C: "Section 2, General Terms and Conditions, Version 12" (attached)

Exhibit D: Napa County Travel Policy (attached)

Exhibit E: Business Associate Agreement (attached)

Exhibit F: Software License and Master Services Agreement (MSA) (attached)

**EXHIBIT A**  
**SERVICE ORDER FORM/SCOPE OF WORK**

This Service Order Form is made as of the Effective Date set forth above between Credible Behavioral Health, Inc. ("Vendor"), a Delaware corporation having its principal place of business at 315 Deaderick Street, Suite 2300, Nashville, Tennessee 37238, and the Customer identified above. This Service Order Form is made pursuant to, and is governed by, the terms of the Software License and Master Services Agreement between Vendor and Customer (the "Master Agreement"). Defined terms used but not defined in this Service Order Form are as defined in the Master Agreement.

1. **Software and Services** – Under this Service Order Form, Vendor shall provide the following products and services in order to develop a Master Configuration for Customer, and Customer shall pay the following fees to Vendor for such products and services on the payment dates set forth below.
  - (a) Monthly Recurring Charges for Vendor's Core Software. Monthly charges for the Software set forth in Item No. 1 below will begin on the Billing Commencement Date defined as the earlier of the actual completion of Customer training or the scheduled date for completion of Customer training that is set forth in the Project Plan (as adjusted for any delays not caused by Customer). The first month's core Software fees will be pro-rated based on the date of the month on which the earlier of the preceding event occurs.
  - (b) Monthly Recurring Charges for Add-On Products. Upon the Go-Live Date all Add On Products will be charged for full month. Upon commencement of a Renewal Term, the Sales Price for all Add-On Products shall be automatically adjusted to Vendor's then-current prices for such Add-On Products. Notwithstanding anything to the contrary in the Master Agreement and this Service Order Form, the provision of Add-On Products is at all times subject to Vendors' contractual relationships with the corresponding company.
  - (c) Product Innovation, Implementation Services and Other Non-Recurring Charges. Payment terms and charges for Product Innovation, Implementation Services and Other Non-Recurring Charges are as set forth below.
  - (d) Maximum Fees. The maximum total fees to be paid by Customer to Vendor for products and services during the Initial Term of the Master Agreement and any automatic Renewal Term(s) shall be as set forth in the Master Agreement and this Service Order Form; provided, however, that the maximum total fees to be paid by Customer for the Initial Term and any Renewal Term(s) may increase as mutually agreed upon by Vendor and Customer in any (i) Service Change Form(s) and/or (ii) Statement(s) of Work. The estimated total fees for the Initial Term are set forth in Exhibit A.

**MONTHLY RECURRING CHARGES FOR CORE SOFTWARE AND ADD-ON PRODUCTS**

#	Product	Term Start Date	Term End Date	Unit	Quantity	Sales Price	Total Price
1.	Credible Core Software - Named	October 1, 2022	September 30, 2027	Per Named User*	230	\$43.00	\$9,890.00
<b>Add-On Products:</b>							
2.	Business Intelligence (BI) Advanced Reporting	October 1, 2022	September 30, 2027	Per Block Of 5 Users	2	\$750.00	\$1,500.00
3.	Connect Module Support	October 1, 2022	September 30, 2027	Per Connection	1	\$299.00	\$299.00
4.	Credible - EPCS	October 1, 2022	September 30, 2027	Per Prescriber	12	\$40.00	\$480.00
5.	Credible - eRx	October 1, 2022	September 30, 2027	Per Prescriber	12	\$69.00	\$828.00
6.	Credible - PDMP	October 1, 2022	September 30, 2027	Per Customer	1	\$0.00	\$0.00
7.	DSM-5 Classifications	October 1, 2022	September 30, 2027	Per User	133	\$1.25	\$166.25
8.	eLabs	October 1, 2022	September 30, 2027	Per Named User	12	\$30.00	\$360.00
9.	Enhanced Client Engagement	October 1, 2022	September 30, 2027	Per Message	1,000	\$0.17	\$170.00
10.	Inpatient Residential Module	October 1, 2022	September 30, 2027	Per (Block) Beds (Block 1-50)	1	\$700.00	\$700.00
11.	Managed Care	October 1, 2022	September 30, 2027	Per Covered Lives in Napa County	1	\$6,000.00	\$6,000.00

12.	Mobile	October 1, 2022	September 30, 2027	Per Customer	1	\$800.00	\$800.00
13.	Real Time Eligibility	October 1, 2022	September 30, 2027	Per Transaction	1000	\$0.12	\$120.00
14.	State Reporting - California	October 1, 2022	September 30, 2027	California State Reporting Supported Functionality	1	\$300.00	\$300.00
15.	Storage	October 1, 2022	September 30, 2027	Per 50 GB's of Storage	4	\$100.00	\$400.00
<b>Total Monthly Charges:</b>							<b>\$22,013.25</b>

#### **ADDITIONAL MONTHLY RECURRING CHARGES – PRODUCT INNOVATION**

<b>Programs</b>	<b>Detail</b>	<b>Start Date of Product Innovation Increases</b>	<b>Increase Amount</b>
Product Innovation Allocation – Vendor's Core Software Users	Item 5(f) of the <b>Software License and Master Services Agreement</b>	At month 18 from the Term Start Date and each year annually thereafter	3.50 % of Vendor's Core Software Users Monthly Per User fees set forth in Item No. 1, above.

Quantities included herein are contractual minimums regardless of actual usage. If actual usage exceeds contracted amounts in a given month, Customer will be invoiced for the actual peak number of Users/Prescribers for that month, provided, however that Vendor's Core Software actual users that exceed contracted user counts in a given month will be invoiced at 105% of current sales price.



**IMPLEMENTATION SERVICES**

<b>Detail</b>	<b>Option</b>	<b>Total Implementation Fee*</b>	<b>Terms</b>	<b>Description</b>
16.	Implementation Services Fees	\$63,250.00	Due Upon Effective Date	Go Live Date To Be Established In Project Plan

## OTHER NON-RECURRING CHARGES

Detail	Service	Invoice Date	Quantity	Sales Price	Fee
17.	Business Intelligence (BI) Advanced Reporting - Setup Fee	Upon Effective Date	1.00	\$20,000.00	\$20,000.00
18.	Credible - EPCS - Setup Fee	Upon Effective Date	1.00	\$1,000.00	\$1,000.00
19.	Credible - eRx - Setup Fee	Upon Effective Date	1.00	\$2,500.00	\$2,500.00
20.	Credible - PDMP - Setup Fee	Upon Effective Date	1.00	\$1,750.00	\$1,750.00
21.	eLabs - Setup Fee	Upon Effective Date	1.00	\$2,500.00	\$2,500.00
22.	Enhanced Client Engagement - Setup Fee	Upon Effective Date	1.00	\$2,500.00	\$2,500.00
23.	Inpatient/Residential Module - Setup Fee	Upon Effective Date	1.00	\$20,000.00	\$20,000.00
24.	Managed Care - Setup Fee	Upon Effective Date	1.00	\$100,000.00	\$100,000.00
25.	Mobile - Setup Fee	Upon Effective Date	1.00	\$5,000.00	\$5,000.00
26.	Real Time Eligibility - Setup Fee	Upon Effective Date	1.00	\$500.00	\$500.00
27.	State Reporting - Setup Fee	Upon Effective Date	1.00	\$15,000.00	\$15,000.00
	<b>Subtotal Non-Recurring Charges</b>	<b>Upon Effective Date</b>			<b>\$170,750.00</b>
	<b>Subtotal Implementation Services</b>	<b>See Terms Above</b>			<b>\$63,250.00</b>
	<b>Grand Total Implementation Services and Non-Recurring Charges</b>	<b>See Relevant Option Above</b>			<b>\$234,000.00</b>
28.	Travel Expenses	As Incurred (travel expenses not included in implementation fee listed above)			<b>Actual but not to exceed \$20,000.00</b>

## PRODUCT DESCRIPTIONS

1. **Credible Core Software Named** – Core Software is the web-based Behavioral Health enterprise management application, hosted and maintained by Vendor for the Customer. Customer is responsible for managing Active and Inactive Named Users on a monthly basis. Part-Time Users must be declared as such by Customer in the employee profile for that Named User. “Part-Time User” means a Named User who works less than 15 hours per week and only accesses the Software a few times during a shift. Should Customer purchase

any module and/or feature requiring unique Named User counts (e.g. eLabs, Credible ePA, Credible eRx, Wiley Treatment Planners, etc.), Customer assumes all responsibility for managing its Named User counts. Five test Named Users are excluded from Customer Named User counts. Test Named Users must provide their full names. Customer is responsible to leverage the employee tracking capability in the data dictionary to properly document full-time, part-time, read-only, and test Named Users. In addition, Customer recognizes Vendor's need to create test Named Users in Customer's domain. Customer will not be billed for Test Named Users created by Vendor. Named User fees are billed based on the number of peak Named Users with active login credentials during the applicable month. Part-Time Users are treated as 50% Named Users for billing purposes. For purposes of this Service Order Form, Vendor's normal business hours are 8:30 AM – 8:00 PM Eastern time. "Customer Training" means Train the Trainer and will be further documented in the Project Plan.

Also included is the **Advanced Security Module** – Vendor is committed to leveraging modern tools and techniques to keep Agency's data protected. In addition to utilizing high end secure data centers and best of breed equipment, Vendor has ongoing efforts and initiatives to include leading edge security technologies in our core offering.

1. User Verification - This security measure restricts Vendor access to verified users. Verification uses the employee's email address and mobile phone number to send a verification link and code. When entering the verification code, the user can opt to 'remember browser'; this will store the verification locally in a cookie. This verification cookie is browser- and device-specific.
  2. IP Whitelisting – This security measure enables Agency to have IP addresses and ranges added to a whitelist of approved addresses. After this, users will only be able to access Vendor if they are logging in from one of the listed addresses. For example, if a Partner's policy is that users should only log in from the Partner's network, the whitelist would contain the Partner's IP address(es). On a user-by-user basis, Agency can allow for specific users to be opted-out of the whitelisting, allowing them to access Vendor from any network.
2. **Business Intelligence (BI) Advanced Reporting** - BI provides Customer with a fully configurable reporting tool with the ability to create custom reports, dashboards, and graphical reporting functionality. With BI, the entire Customer can be viewed at a glance and all Customer data may be compiled from various sources into customized dashboards. In addition, Customer will have the flexibility to format Customer information. Conditional forms and formatting make it easy to draw attention to what is important. Customer will have the capability to analyze data at rapid speed. Vendor's instinctive reporting capability allows for in-depth analysis with no barriers.
- Prior to activation of the BI module, Vendor requires a minimum of one (1) Customer staff to be trained through the Admin level on BI. There are trainings held at a minimum quarterly, attended by multiple Customers, and occur virtually.
  - BI Training fees for one individual is included in the BI Module one-time fee.

- BI is purchased as a block of 5 users. Usage will be monitored on a monthly basis. If Customer exceeds purchased block of users then Customer will be required to purchase another block of users with a Service Change Form Amendment.
- Invoicing for BI will begin upon completion of Customer's (1) staff members training. For avoidance of doubt, invoicing will begin the earlier of completion of one (1) member training or from the Term Start Date of the Service Change Form or the 30 days from the initial system Go-Live date.

Notwithstanding anything to the contrary in this order form, monthly invoicing for this product will begin upon the date that is the earlier of (i) the actual go live date provided by Customer for this product, (ii) 30 days following the Term Start Date in this order form for this product or (iii) 30 days after the initial Go-Live Date for the Software.

3. **Connect Module** - Connect Module provides the EDI/HIE interface for data sharing:

- Provides secure, time specific, data specific information transfer utilizing industry standards and automated technical protocols.
- Sending of HL7 v.2.5 ADT (registration and update events) and XML CCD<sup>o</sup>/C-CDA messages containing standard Credible data fields.
- Secure transmission via VPN outbound and SFTP inbound.
- Filtering of messages based on client Release of Information/Consent, as well as Program Type or Visit Type. Meaningful Use Stage 3 compliant CCDs. Invoicing for each Connect connection will begin at GoLive of connection.

4. **Credible - EPCS** – DEA certified EPCS provides for all of the functionality and capabilities of Credible's eRx Module, as well as real-time prescribing of controlled dangerous substances. Additional fees apply for state-specific functionality.

Due to regulatory requirements, EPCS Module requires two-factor authentication for Prescribers in order to electronically prescribe controlled and dangerous substances.

- The first level of authentication is completed through an on-line Identity verification process. This requires a hard token for ID Proofing. With the purchase of EPCS, a hard token that has a unique identifier is provided. An additional fee applies for additional replacement hard tokens. This hard token can be registered to an individual Prescriber at the end of a successful Identity verification process. The Prescriber does not have to wait until the Agency is in receipt of the hard token to proceed with prescribing.
- Prescribers can complete the second level of authentication through the use of a soft token made available via smartphone app (iOS and Android) or a hard token.
- Replacement of hard tokens used for dual factor authentication is charged additional at the rate of \$40.00 and will appear on monthly invoiced as required.

Customer adds Prescribers through a support ticket and is also required to submit a ticket for the removal of a Prescriber. Failure to submit a ticket for removal of Prescriber will result in continued monthly charges of Prescriber. A Prescriber is not pro-rated and can take up to

two invoicing cycles for usage to be removed. In addition to the support ticket for removal, Customer is also required to deactivate the Prescriber in Credible.

Customer is also required to clean up the Prescriber medications within the module. There is a \$500 fee assessed if Customer requires the assistance of Vendor.

Notwithstanding anything to the contrary in this order form, monthly invoicing for this product will begin upon the date that is the earlier of (i) the actual go live date provided by Customer for this product, (ii) 60 days following the Term Start Date in this order form for this product or (iii) 60 days after the initial Go-Live Date for the Software.

5. **Credible - eRx** – Credible eRx provides electronic prescription capability. Fully integrated into Vendor's software, Credible eRx allows Agency's licensed Prescribers to electronically document all prescriptions while providing paper or electronic scripts. Credible eRx is Surescripts<sup>®</sup> certified; and provides for:

- Fully integrated drug database,
- Reduced medication errors utilizing Tallman Lettering,
- Monographs, Contraindications, Drug/Drug interactions, Drug/Allergy interactions,
- Generic equivalents, recommended dosage, and Prescriber favorites,
- Electronic submission to pharmacies, and
- Prescription Eligibility. In addition to the above, Enhanced Credible eRx Services include:
  - X12N 005010X92A1 Eligibility transactions (270/271),
  - Prescription History (RXHREQ/RXHRES), and
  - NCPDP Formulary and Benefit Load version 1.0.

**Identity Proofing:** In accordance with Surescripts requirements, Vendor implements additional policy and software controls on the e-prescribing process. This process is called Identity Proofing – This process is critical to verify that all Prescribers are who they claim to be and are authorized by law to access and use the type of information for which access is granted (e.g., for e-prescribing). Identity Proofing is completed in accordance to the National Institute of Standards and Technology (NIST) Level of Assurance (LOA) 3 outlined in the NIST 800-63 (v2) standard.

**Clinic Locations:** Clinic locations within Credible's eRx control both the assignment of Prescribers to locations from which prescriptions may be transmitted, and (if applicable) the association of "X" DEA numbers for clinics where the Prescriber may perform Medication Assisted Treatment. For each clinic location assigned to a Prescriber, that Prescriber can be given rights to create "New" prescriptions, accept "Refill" requests from pharmacies, send "Cancel" messages to pharmacies upon discontinuance, etc. Each clinic location assigned to a Prescriber will be automatically registered with Surescripts, and a unique Surescripts Provider Identifier (SPI) number will be provided for each assignment. The address and phone number of the location selected on the Rx Finalize page will be printed on the prescription, as well as sent to the pharmacy electronically.

## Disclaimer

- Information presented through Credible eRx with regard to formularies, eligibility, and medication history is data provided and transmitted by various Pharmacy Benefit Management (PBM) entities. Vendor cannot assure the accuracy of this data.
- Agency is responsible for obtaining Release of Information for each client prior to activating the “PBM Medication History” functionality.
- Agency is responsible for deactivating Credible eRx user rights.

Customer adds Prescribers through a support ticket and is also required to submit a ticket for the removal of a Prescriber. Failure to submit a ticket for removal of Prescriber will result in continued monthly charges of Prescriber. A Prescriber is not pro-rated and can take up to two invoicing cycles for usage to be removed. In addition to the support ticket for removal, Customer is also required to deactivate the Prescriber in Credible.

Customer is also required to clean up the Prescriber medications within the module. There is a \$500 fee assessed if Customer requires the assistance of Vendor.

Notwithstanding anything to the contrary in this order form, monthly invoicing for this product will begin upon the date that is the earlier of (i) the actual go live date provided by Customer for this product, (ii) 60 days following the Term Start Date in this order form for this product or (iii) 60 days after the initial Go-Live Date for the Software.

6. **Credible - PDMP** - Prescription drug monitoring program (leverages Bamboo, formally Appriss) to allow prescribers to be able to see controlled use substances a patient is taking. Customer will have direct relationship with Third Party vendor.

7. **DSM-5 Classifications** – The DSM-5 is a classification of mental disorders developed by the American Psychological Association (“APA”) and used by psychiatrists, psychologists, and clinicians to identify symptoms and related diagnostic criteria, as well as match the identified related disorder to an ICD code.

DSM-5 descriptions are supported by both ICD-9 and ICD-10 codes. The DSM-5 utilizes Codes and Disorder Names only.

A DSM-5 “User” is defined as any active employee with the ability to add a diagnosis, update a diagnosis, or add a diagnosis form.

Vendor strongly recommends that Agency review and update their current user settings accordingly to avoid paying for unnecessary users.

If Agency’s payers require DSM-5 classifications, an additional DSM-5 licensing agreement shall be executed by Agency prior to activation.

8. **eLabs** - With eLabs, Agency personnel may electronically order lab tests, print lab test orders, and electronically receive the results. In December 2018, Vendor updated the eLabs Module to include the following additional functionality:

- Facilitates the rapid, secure, web-based exchange of lab test results;

- Uses Logical Observation Identifiers Names and Codes (LOINC) as provided and one-to-one mapping without the need for maintaining exact lab test names;
- Provides the ability to bundle tests together in frequently ordered groups;
- Enables a physician to schedule recurring labs;
- Allows providers the ability to display their most frequent lab orders;
- Integrates Lab Orders with Physician's Orders;
- Reduces communication errors;
- Provides error validation for improved processing;
- Provides the ability to send and receive lab orders via Fax or Direct Messaging;
- Provides the ability to add eLabs orders to Standing Order Sets;
- Enables the receipt of electronic Lab Results from Change Healthcare, including embedded PDF Lab results;
- Allows for the import of HL7<sup>0</sup> Lab Results;
- Provides the ability to print labels and send requests to in-house labs;
- Provides multiple reports for ease of management and oversight;
- Provides physicians/clinicians with 24/7 access; and
- Provides the ability to save Lab Order sets and create recurring labs for ongoing ease of use. Additionally, Vendor is providing Agency with the option to purchase eLabs for manual entry. Agency will be responsible for all costs associated with manual eLabs.

#### Disclaimer

- eLabs is limited to labs that are willing to participate.
- Delays by Agency or Agency's lab may result in the delay of implementation of this module and are out of Vendor's control.
- Agency is responsible for deactivating eLabs user rights.
- Vendor also allows for the manual upload of labs into the eLabs module. Invoicing will begin for eLabs upon GoLive of the product. If for any reason through no fault of Customer, Change Healthcare elabs is not available to work with Customer or Customer's lab, eLabs will be removed from the applicable Service Order Form or Service Change Form and an email will be sent to Customer as confirmation of eLab removal.

Customer adds user/provider through a support ticket and is also required to submit a ticket for the removal of a user/provider. Failure to submit a ticket for removal of user/provider will result in continued monthly charges of user/provider. A user/provider is not pro-rated and can take up to two invoicing cycles for usage to be removed.

#### 9. **Enhanced Client Engagement** - Enhanced Client Engagement module allows Customer to securely communicate via messaging with clients. Agency will receive the following benefits:

- Reduced no-shows and/or last-minute cancellations
- Client phone validation - validating a client's phone number prior to messaging

- Automated appointment reminders delivered via phone, text (SMS) and/or email
- Automated custom No-Show messaging
- On-Demand custom messaging allowing Agency to send a single broadcast to a group of clients on a daily schedule
- On-Demand inclement weather/appointment cancellations
- Multi-lingual support - Provide delivery of messages in multiple languages. Languages supported and available in the initial setup per request: English, Spanish, Arabic, Chinese (Cantonese & Mandarin), Farsi, French, Greek, Hmong \*\* Male Voice Talent Only, Italian, Korean, Polish, Portuguese, Russian, Tagalog, Vietnamese. Any additional languages needed for purchase will require an additional fee and Statement of Work. Upon activation of the ECE module the legacy Texting Services will be disabled.

Notwithstanding anything to the contrary in this order form, monthly invoicing for this product will begin upon the date that is the earlier of (i) the actual go live date provided by Customer for this product, (ii) 30 days following the Term Start Date in this order form for this product or (iii) 30 days after the initial Go-Live Date for the Software.

10. **Inpatient Residential Module** - Vendor provides a real-time fully-integrated and configurable interface specific to Inpatient/Residential Clinical, Billing, and Management needs.

Utilizing the Inpatient/Residential Module, Customers benefit from:

- Simplified bed management with facility floor view and drag and drop capability;
- Census reporting;
- Role-based, actionable census;
- Critical notifications;
- Shift management;
- Task log;
- Duty log to track client to-do items;
- Incorporation of client warnings, allergies, eMAR, and Physician's Orders;
- Ability to access and update vital client information from one location;
- Enhanced Orders and Standing Orders;
- Safety checks;
- Utilization, capacity, and other necessary clinical, billing, and management tools. Inpatient Residential Module is purchased per block of beds. Usage will be monitored on a monthly basis. Upon three consecutive months of usage being over the purchased block, Customer will be required to do a Service Change Form and contract for the next block of beds.

Invoicing begins upon GoLive of product.

11. **Managed Care** - The Managed Care application is a suite of modules designed to meet the needs of managed care organizations operating in range of business and financial structures and delegated responsibilities. The product integrates modules and features into a single seamless user interface which enables teams to be more efficient and productive. These



efficiencies will allow your organization to manage fees and internal administrative expenses. In addition, the product provides a set of analytical and profitability reports with drill-down and drill-up capabilities. The modules incorporate automation in the form of workflow and auto-adjudication features.

Listed below are the modules and integrated features included in Managed Care and will be provided in a phased approach and coordinated with client readiness:

- Authorization / Referral Processing
  - Auto-Adjudication
  - Workflow
- Customer Service
- Case Management
  - Inpatient Management
  - Outpatient Management
  - Optional Care Guidelines API
- Credentialing
- Clinical Alerts
- Claims Processing
  - Auto-Adjudication
  - Workflow
  - Provider Dispute Resolution (PDR)
- Capitation & Payment Processing
- EDI Capabilities
  - Eligibility file mapping and import
  - Capitation Revenue Import and Reconciliation
  - HIPAA 5010 standard file formats
  - 270 / 271 Eligibility Inquiry / Response
  - 278 Health Care Services Review
  - 837 In & Outbound (Professional & Institutional Claims / Encounters)
  - 834 Member Benefit Enrollment
  - 835 Remittance Advice
  - Custom File Formats
    - ACH / Electronic Funds Transfer (EFT)
- Fax Server integration
- Comprehensive internal and Health Plan Reporting (timeliness, paid claims, ER utilization, denials, etc.)
- OCR engine integration
- Letter Generation (UM & Claims)
- Document Attachment
- Analytics
  - Profitability Reporting
  - Claims & Authorization – with drill-up and drill-down capabilities
  - Stop loss

- IBNR
- Portals – Governance Selectable Dashboards
  - Internal Staff
  - Providers
  - Health Plan
  - Members
- Mobile device access. All modules and features of Managed Care have been designed to help staff work with greater automation and efficiency, resulting in significant cost savings for the organization and increased user satisfaction.

12. **Mobile** - Mobile allows for secure, HIPAA compliant data to be captured on iPad, iPhone, Android enabled devices, netbooks, laptops, and/or tablet PCs in a connected or disconnected mode, with the exception of Android smartphones.

Mobile Module is a suite of applications, including native Android, iOS, and Windows Disconnected Application.

Mobile Module is an easy-to-use solution providing Customer- and manager level data, industry news feeds, and if applicable, Agency's Business Intelligence data.

Vendor trains Customer staff for end user support, including loading, configuring, and troubleshooting Mobile on multiple devices.

Training materials for the Module are provided in Credible Knowledge Base.

All Customer required hardware is purchased directly by the Customer. Vendor provides specific listing of Vendor supported hardware for utilization with the Mobile application – A current and updated list of supported devices is available on request or from the Credible Knowledge Base.

Disclaimer

Should Customer utilize Third-Party Software, in particular security software, on their Mobile Device, there is a possibility that this may interfere with Mobile resulting in degraded performance and connectivity issues – Vendor will provide best efforts for any issues arising from Third-Party Software.

Should Customer utilize non-Vendor recommended mobile hardware, there is a possibility this hardware will not work with Mobile. Vendor will not guarantee any other hardware beyond what is currently on Mobile Recommended Hardware list nor will any code changes be made to support non-Vendor recommended mobile hardware.

Training of Customer support staff completed concurrent with other Vendor on-site or on-line training.

13. **Real Time Eligibility** – Real-Time Eligibility (RTE) allows for the convenience of validating eligibility at the time the client's insurance information is collected by the Customer. In real-time, Customer staff will submit an eligibility request through Vendor's established relationship with Change Healthcare (CHC). RTE supports over 2,000 payers across the United States enabling quick eligibility results for the majority of payers.

Agencies utilizing RTE experience faster intake and check in processes and increased revenue.

RTE functionality will require Customer to maintain configuration based on (CHC) Payer Code list, located at <https://www.capario.com/resource-center/payer-list>.

Change Healthcare may require Customer to complete an additional Medicaid/Medicare enrollment form depending on the state and or payer requirements.

RTE Transactions are defined as electronic eligibility (270) requests submitted to the payer and result in one of the following transaction types:

- Successful Transactions: Eligibility request to the payer (270) where a response is returned from the payer (271).
- Unsuccessful Transactions: Eligibility request to payer (270) is sent without a returned response (271), either due to system error or connection issues. These transactions are not included in the transaction count.

Notwithstanding anything to the contrary in this order form, monthly invoicing for this product will begin upon the date that is the earlier of (i) the actual go live date provided by Customer for this product, (ii) 90 days following the Term Start Date in this order form for this product or (iii) 90 days after the initial Go-Live Date for the Software.

#### **14. California State Reporting --**

- FAST - PSC (Pediatric Symptom Checklist) - the export creates a monthly batch file that records the data from the Functional Assessment Screening tool. This data is submitted to the State of California's Health and Human Services Agency - Department of Health Care Services - Performance Outcome System.
- FAST - CANS (Child and Adolescent Needs and Strengths) - the export creates a monthly batch file that records the data from the Functional Assessment Screening tool (which is uses the CANS California 50 item form). This data is submitted to the State of California's Health and Human Services Agency - Department of Health Care Services - Performance Outcome System.
- CALOMS (California Outcomes Measurement System) - the export create a monthly batch file that gets submitted to the California Department of Healthcare Services, Department of Alcohol and Drug Programs (ADP) which contains treatment data that effectively manage and improve the provision of treatment services provided to clients at the state, county and provider levels.
- ASAM LOC (American Society of Addiction Medicine - Level of Care) - Monthly comprehensive batch file that is submitted monthly but contains data from all reporting periods - this data is submitted to the State.
- CSI (Client and Service Information)- this data is submitted via a batch file to California's Department of Health Care Services - The CSI system collects data pertaining to clients of mental health services for MHMCPs. All persons served in

treatment programs must be reported to the CSI system. This includes both Medi-Cal and non-Medi-Cal clients, and persons served by the private practitioners that were formerly in the Fee-For-Service (FFS) system. The CSI system contains the information to meet state and federal reporting requirements for client based information regarding persons served by MHMCPs. MHMCPs send a CSI submission file to DHCS monthly and are required to submit data no later than 60 days after the end of the month in which the services were provided.

- HCAI (Healthcare access and information) - Inpatient Discharge - semi-annual file that is submitted to the State of California HCAI department on Hospital Discharge Data, which is based on the hospital's license, the reporting requirement covers every patient discharge from a bed appearing on the hospital's license (this does not include Federal or Department of Veteran Affairs hospitals)
  - FSP (Full Services Partnership) -batch file that is submitted to the DCR (Data Collection Reporting) system - the file contains Partner (Client) data and 3 different types of Partner Assessments - PAF (Partnership Assessment Form), KET (Key Event Tracking) and Quarterly Assessment (3M) for 4 age groups (which make up a total of 12 different forms) for data collection. Note – this last report is not needed by Kings View at go-live and will not be started by our team until after 10/1.
15. **Storage** – Storage is to be stored within the system for attachments; this includes documents that are scanned and attached to records. Video and audio files may not be attached without a separate contract addendum.
- (a) Storage Space – Customer will be billed \$100 per month for up to 50GB of storage space upon utilization of storage module. Each additional increment of 50GB will be billed at \$100 per month.
- Note:** Customer is responsible for provisioning the module so that only the properly authorized users have access and management of the content within the scanned documents.
16. **Implementation Services Fee** – Upon execution of this Agreement, Implementation fees are due in accordance with contract terms. Vendor and Customer will schedule a series of calls to kick-off the implementation: the CEO Goals Call, Project Intro Call and Path to Go-Live Call. During the Path to Go-Live Call, Vendor will review the Project Plan which will set forth the requirements, processes and timeline for the Partner's implementation of the Software. The Project Plan will document the major items which are required for production-level use and must be delivered within the prescribed number of days from the Effective Date of this Agreement. The Project Plan will detail Vendor's and Customer's specific responsibilities, milestones and timelines which must be met in order to achieve the Go-Live date established in the Project Plan. Therefore, Vendor's project plan and timeline holds both Vendor and Customer accountable to meet milestones and deliverables on time. Any delay by Customer in accomplishing these items will likely result in a corresponding delay in the Go-Live date and additional fees may apply.

The following items are included in the base Implementation Services:

Vendor's Implementation is divided into four (4) phases: Data Gathering, Configuration, Testing & Training, and Post Go-Live Support to provide Agency with a proven, structured, sequential approach to implementing software. Each phase begins with an overview and review of the activities to be completed during the phase, as well as outlining the expected time commitment needed by Customer Staff. Upon conclusion of each phase Customer and Vendor will sign-off on the Milestone acknowledging the activities for the corresponding phase are complete. To ensure success, the implementation phases are sequential. The project does not progress to the next phase until the preceding phase is complete and Agency has agreed via signed Milestone.

Standard Data Conversion: Customer will provide data in Vendor's standard data conversion template. Should Customer request imports for tables not outlined below, additional fees may apply. Vendor provides for the import of numerous data points:

- Client Demographic Information –Data imported into the Client Profile, Client Extended, or Episode screens;
- Client Insurance;
- Client Authorizations;
- Client's Program and Team Assignments;
- Employee Demographic Information -Data imported into the Employee profile and credentials screens;
- Client Employee Relationships;
- Employee Program and Team Assignments;
- External Providers;
- Diagnosis;
- Client Balances;
- Liability;
- Medications - Imported medications will interact with Credible eRx when the medication FDB ID (First Data Bank Medication Identification Number) is included in the imported data. If the FBD ID is not available, imported medications will present in Credible as Third-Party prescribed medications for historic reference without the ability to interact with eRx. For these medications to be fully integrated with allergies, contraindications, and the drug/drug interactions, they must be directly input into the software.
- Allergies - Imported allergies will interact with Credible eRx when the allergy FDB ID (First Data Bank Allergy Concept Identification Number) is included in the imported data.
- If the FBD ID is not available, imported allergies will present in Credible as Third-Party allergies for historic reference without the ability to interact with eRx. For these allergies to be fully integrated with medications, contraindications, and the drug/drug software interactions, they must be directly input into the software.

Description of tasks included in this project: The total fees for Configuration and Implementation Services associated with this Project are for the timeframe defined in the Project Plan. This Implementation Service includes up to 60 days of support after the first

program/agency unit goes live. Additional days of implementation support will be subject to a new Statement of Work. Included in the Implementation Services are the following:

- Project Management
- System Configuration – utilizing Vendor’s best practice approach for clinical and billing
- Credible Tour and End-User Training
- Data Conversion and Validation Post Go-Live Support- up to 45 days after the first program/agency unit goes live. Post Go-Live support shall be provided by the Vendor implementation team.

To set Customer up for success and a smooth Go-Live experience, Vendor restricts Customer’s access to the Billing Matrix, Payer Matrix, Visit Types and Security Matrix, Data Dictionary, Partner Config, Form building and other high level rights until Agency has a minimum of two (2) superusers achieve certification (offered virtually on a recurring basis at a minimal cost). Billing and Certification courses are offered virtually on a recurring basis. Certification process will begin forty-five (45) days following Agency’s Go-Live and not more than 90 days post Go-Live. If Customer does not complete certification within 90 days post Go-Live then a 10% surcharge of Core Named Users will be applied to each monthly invoice until such time Customer completes certification. Should Agency experience more than one (1) billing or configuration issues a quarter, even with certified personnel, Vendor reserves the right to resume restricted access to the software until Customer staff completes additional testing and training.

- During a “lock-down”, Customer may submit a Change Order Request to have Vendor complete any configuration changes. Lock-down does not impact Customer’s ability to utilize the software, it limits Customer’s ability to change configuration.
- The submission of Change Order Requests allows for transparency among both Vendor and Customer project teams and ensures changes are applied systemically to limit risk of errors and delays, as well as maintain the scope of the project.

Configuration and Implementation for the following modules and features are included:

- Client & Employee data management
- Security Matrix
- Scheduling
- Home Page
- Form Builder
- Reports Security Matrix
- Standard Reporting - Module configuration only, report writing is not included
- Advanced Search Reporting and Custom Ad Hoc Reporting - Module configuration only, report writing is not included
- Notifications, Triggers, and Messaging
- Client Portal
- State Reporting (if applicable)

17. **Business Intelligence (BI) Advanced Reporting - Setup Fee** – One-Time setup fee for BI Advanced Reporting. Once certification is complete Vendor will turn on functionality of module. For avoidance of doubt, this setup fee is nonrefundable if Vendor has begun any setup related to the product.
18. **Credible - EPCS - Setup Fee** - One-Time fee for the setup of EPCS, controlled substance prescribing functionality. Setup for module includes Vendor sending Customer Prescriber setup instructions. Once Vendor receives the information requested from Customer, Vendor reaches out to third party vendor to begin the setup process of Prescribers. Vendor works with Customer to ensure setup is complete. For avoidance of doubt, this setup fee is nonrefundable if Vendor has begun any setup related to the product.
19. **Credible - eRx - Setup Fee** - One-Time setup fee for eRx. Setup for module includes Vendor sending Customer Prescriber setup instructions. Once Vendor receives the information requested from Customer, Vendor reaches out to third party vendor to begin the setup process of Prescribers. Vendor works with Customer to ensure setup is complete. For avoidance of doubt, this setup fee is nonrefundable if Vendor has begun any setup related to the product.
20. **Credible - PDMP - Setup Fee** - One-Time setup fee for the PDMP functionality. Customer applies for state funding and credentials to access PDMP data via third party vendor. Setup for module includes Vendor enabling the functionality for the module once the credentials are received from the third party vendor, Vendor sets up a call with Customer to review the workflow process. For avoidance of doubt, this setup fee is nonrefundable if Vendor has begun any setup related to the product.
21. **eLabs - Setup Fee** - One-Time fee for the setup of eLabs. Setup for module includes Vendor enabling the functionality for the module and sending Customer the Partner Channel Form for Customer to use in the completion of setup with third party vendor by establishing the relationship with the lab directly. For avoidance of doubt, this setup fee is nonrefundable if Vendor has begun any setup related to the product.
22. **Enhanced Client Engagement** - One time setup fee for Enhanced Client Engagement Module. Setup for module includes Vendor enabling the functionality for the module, beginning the project for setup with third party vendor, and trains the Customer on functionality with the process steps to utilize the module. For avoidance of doubt, this setup fee is nonrefundable if Vendor has begun any setup related to the product.
23. **Inpatient/Residential Module- Setup Fee** – One-Time setup fee for Inpatient/Residential Module. For avoidance of doubt, this setup fee is nonrefundable if Vendor has begun any setup related to the product.
24. **Managed Care - Setup Fee** – One-Time setup fee for Managed Care Module. For avoidance of doubt, this setup fee is nonrefundable if Vendor has begun any setup related to the product.

25. **Mobile** - One-Time setup fee for the Mobile Module. Setup for module includes Vendor enabling the functionality for the module. For avoidance of doubt, this setup fee is nonrefundable if Vendor has begun any setup related to the product.
26. **Real Time Eligibility - Setup Fee** - One-Time setup fee for Real Time Eligibility module. Setup for module includes Vendor enabling the functionality for the module and sending Customer any additional configuration requirements or training material for Customer to complete the setup with Change Healthcare. For avoidance of doubt, this setup fee is nonrefundable if Vendor has begun any setup related to the product.
27. **State Reporting Setup Fee** – One-time setup fee per Customer Contract for the State Reporting Module. Vendor is committed to compliance with Customer’s state reporting needs. Vendor will use best efforts to interface with state officials to fully understand requirements and timelines. Customer agrees to communicate to Vendor any state changes immediately upon receipt via the support ticket process.
1. During implementation, Customer understands all required state reports must be relayed to Vendor during the Planning Phase of Implementation. -The one-time set up fee includes the configuration, implementation, and post go live support to assist the Customer in going-live with the State Report. The monthly subscription fee includes state required updates and ongoing support to ensure optimal use of the report(s).
  2. For ongoing state reporting development for existing reports, Vendor will not charge hourly professional services or software development fees as long as Customer subscribes to this product.
  3. The State Reporting product covers changes/modifications to the existing reporting types explicitly stated in the product description (“Covered Reports”). Any changes or modifications to the state reporting requirements as it relates to the Covered Reports will be performed by Vendor at no incremental charge to the Customer. If the state mandates a new report not explicitly included in the Covered Reports, Vendor will evaluate, at its sole discretion, whether the report will be developed and added to the covered reports. If deemed worthy of inclusion, Vendor requires up to 365 days from when provided the specifications to deliver the report to production.
    - Customer will provide a specific contact for state reporting issues and commit to a three (3) business day turnaround when working with Vendor to address state reporting needs. Within four (4) weeks of the scheduled GoLive date, the expected turnaround time will be one (1) business day.
    - Customer will be responsible for maintaining configuration of Customer’s domain to support the Vendor developed state report following GoLive.
    - Customer will provide test data and prior successful state reporting submissions for testing and validation purposes, where applicable.
    - Customer will notify Vendor within five (5) business days of Vendor turning over the state report of any changes to the report provided Customer provides supporting state documentation for the changes. Vendor will address any changes with the report so long as they are in alignment with state documentation.



- Enhancement requests will be reviewed and considered based on Vendor's roadmap, bandwidth, and scope. Additional fees apply.
- 4. Following implementation, should Customer now require additional state reports, Customer understands it will be Customer's responsibility to update Customer's Domain to comply with the state report.
- 5. For clarity, State Reporting includes batch data submissions per published and readily obtainable state specifications.
- 6. Customer is responsible for submitting production data to state entity within forty-five (45) days of the report GoLive.

Vendor specifically excludes upfront and ongoing changes for payer specific, county specific, grant specific, and HIE specific reporting and integration needs. Should Customer not be able to leverage Vendor's current reporting capabilities to meet their needs, Customer may contract for Vendor's Reporting Services.

**EXHIBIT B**  
**COMPENSATION AND EXPENSE REIMBURSEMENT**

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Credible Budgetary Pricing Proposal			5 Year Total Contract Value Summary				
Item	Timing	Year 1 (months 1-12)	Year 2 (months 13-24)	Year 3 (months 25-36)	Year 4 (months 37-48)	Year 5 (months 49-60)	Total Value
<b>ONE-TIME FEES</b>							
Credible Implementation Fee	Payable on contract execution	\$ 63,250	\$ -	\$ -	\$ -	\$ -	\$ 63,250
Business Intelligence (BI) Advanced Reporting - Setup Fee	Payable on contract execution	20,000	-	-	-	-	20,000
Connect Module - Statement of Work	Payable on contract execution	9,000	-	-	-	-	9,000
Credible eRx - Setup Fee	Payable on contract execution	2,500	-	-	-	-	2,500
Credible eRx - EPCS - Setup Fee	Payable on contract execution	1,000	-	-	-	-	1,000
Credible eRx - PDMP - Setup Fee	Payable on contract execution	1,750	-	-	-	-	1,750
elabs - Setup Fee	Payable on contract execution	2,500	-	-	-	-	2,500
Enhanced Client Engagement Module - Setup Fee	Payable on contract execution	2,500	-	-	-	-	2,500
Inpatient Residential Module - Setup Fee	Payable on contract execution	20,000	-	-	-	-	20,000
Managed Care - Setup Fee	Payable on contract execution	100,000	-	-	-	-	100,000
Mobile - Setup Fee	Payable on contract execution	5,000	-	-	-	-	5,000
Real Time Eligibility - Setup Fee	Payable on contract execution	500	-	-	-	-	500
State Reporting - Credible Platform - Setup Fee	Payable on contract execution	15,000	-	-	-	-	15,000
<b>MONTHLY RECURRING FEES</b>							
	Credible Rate/User	\$43.00	\$44.51	\$46.06	\$47.67	\$49.34	
Credible Core Software - Named User Fees	Payable monthly upon End User Training	\$ 79,120	\$ 121,103	\$ 125,342	\$ 129,729	\$ 134,269	\$ 589,562
Business Intelligence (BI) Advanced Reporting	Payable monthly upon Go-Live	10,500	18,000	18,000	18,000	18,000	82,500
Connect Module	Payable monthly upon Go-Live	2,093	3,588	3,588	3,588	3,588	16,445
Credible - eRx	Payable monthly upon Go-Live	5,796	9,936	9,936	9,936	9,936	45,540
Credible - EPCS	Payable monthly upon Go-Live	3,360	5,760	5,760	5,760	5,760	26,400
Credible - PDMP	Payable monthly upon Go-Live	-	-	-	-	-	-
DSM-5 Classifications	Payable monthly upon Go-Live	1,164	1,995	1,995	1,995	1,995	9,144
elabs	Payable monthly upon Go-Live	2,520	4,320	4,320	4,320	4,320	19,800
Enhanced Client Engagement	Payable monthly upon Go-Live	1,190	2,040	2,040	2,040	2,040	9,350
Inpatient Residential Module	Payable monthly upon Go-Live	4,900	8,400	8,400	8,400	8,400	38,500
Managed Care	Payable monthly upon Go-Live	42,000	72,000	72,000	72,000	72,000	330,000
Mobile	Payable monthly upon Go-Live	5,600	9,600	9,600	9,600	9,600	44,000
Real Time Eligibility	Payable monthly upon Go-Live	2,310	3,960	3,960	3,960	3,960	18,150
State Reporting -Credible Platform	Payable monthly upon Go-Live	2,100	3,600	3,600	3,600	3,600	16,500
Storage	Payable monthly upon Go-Live	2,800	4,800	4,800	4,800	4,800	22,000
<b>TOTALS</b>		<b>\$ 408,453</b>	<b>\$ 269,102</b>	<b>\$ 273,341</b>	<b>\$ 277,728</b>	<b>\$ 282,268</b>	<b>\$ 1,510,891</b>
							<b>One Time Fee Discount 50%</b>
							<b>Recurring Fees Discount 40%</b>
<b>Notes:</b>							
1. All one-time fees are due upon contract execution							
2. Credible user fees begin when Train the Trainer starts (approximately one month before Go-Live, estimated at month 5 in pricing); all other fees begin upon Go-Live (estimated at month 6 for pricing)							
3. Implementation is estimated at 6 months with a one month gap between contract execution date and implementation kickoff							
4. Product Innovation Fee Increase - 3.5% on Core Software - begins month 18 and is assessed annually thereafter							
5. All fees for items that are priced by user are subject to change as user counts change							
6. This analysis is for your information only; actual invoicing dates and the exact fee amounts may vary							

## **EXHIBIT C**

### **SECTION 2. GENERAL TERMS AND CONDITIONS --VERSION 12**

#### **2.1 Term of the Agreement.**

(a) Term. The initial term of this Agreement shall commence on the Term Start Date set forth in the Service Order Form attached as Exhibit "A" (the "SOF") and shall expire on the Term End Date set forth in the SOF unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause) or 2.23(a) (Covenant of No Undisclosed Conflict) of this Exhibit C.

(b) Automatic Renewal. The term of this Agreement shall be automatically renewed as set forth in Section 6.(a) of the Software License and Master Services Agreement attached as Exhibit "F" (the "MSA"), unless either party gives the other party written notice of intention not to renew no less than ninety (90) days prior to the expiration of the then current term. COUNTY authorizes the Department Director to determine whether this Agreement shall not be renewed and to provide the written notice of the intention to not renew on behalf of COUNTY.

(c) Obligations Extending Beyond Term. The obligations of the Parties under Paragraphs 2.7 (Insurance) and 2.8 (Hold Harmless/Defense/Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes), 2.21 (Access to Records/Retention), 2.31 (Compliance with Federal Health Care Program Requirements), 2.32 (Compliance with State Medi-Cal Specialty Mental Health Services Requirements), and 2.33 (Compliance with Mental Health Activities Requirements). To the extent the paragraphs referenced in this Paragraph 2.1 may be modified by Specific Terms and Conditions contained in SECTION 3 of this Agreement, the modifications shall also continue after the expiration date or early termination.

**2.2 Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in the Service Order Form attached as Exhibit "A", and as amended through any Service Change Form(s) mutually agreed upon in writing by COUNTY and CONTRACTOR during the initial term or any renewal term(s).

#### **2.3 Compensation.**

(a) Compensation/Maximum. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates and/or in the amount(s) set forth in the Service Order Form, and as it may be amended through any Service Change Form(s) mutually agreed upon in writing by COUNTY and CONTRACTOR. The maximum payment for the initial term of this Agreement, unless otherwise mutually agreed upon by COUNTY and CONTRACTOR in writing, shall be that maximum amount set forth on Exhibit "B"; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

(b) Advance Funding.

1. Use of Funds. To the extent this Agreement may permit advance funding of services and expenses, use of funds delineated in this Agreement is limited to the term of performance unless otherwise modified in accordance with Paragraph 2.17 (Amendment/Modification). COUNTY may at its discretion recapture funds obligated under the authority of this Agreement if expenditure plans are not being met.

2. Reversion of Funds. If funds awarded to CONTRACTOR have not been expended in accordance with this Agreement and COUNTY has determined after consultation with CONTRACTOR that funds will not be spent in a timely manner, such funds will revert to COUNTY for that reason and to the extent permitted by and in a manner consistent with federal and state law, regulations, and policies.

(c) Availability of Funds. It is mutually understood that, for the benefit of both Parties, this Agreement may have been written before ascertaining the availability of congressional and/or state legislative appropriation of funds in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made. If funding of this Agreement is dependent upon the availability of congressional and legislative appropriation of funds, then:

1. This Agreement shall be deemed automatically terminated if the Congress and and/or the State Legislature do not appropriate funds needed for this Agreement;

2. At COUNTY's discretion, this Agreement may be deemed automatically terminated or this Agreement may be modified or amended in accordance with Paragraph 2.17 (Amendment/Modifications), if the Congress and/or State Legislature do not appropriate sufficient funds needed for this Agreement; and

3. This Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or State Legislature, or any statute enacted by the Congress or State Legislature, that may in any manner affect the provisions, terms, or funding of this Agreement.

(d) COUNTY may withhold any compensation due CONTRACTOR as an offset for any revenues lost arising from an act or omission in billing or documentation practices by CONTRACTOR. CONTRACTOR shall make COUNTY whole for any such lost revenues.

## 2.4 **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Where expense reimbursement is sought, the invoice shall describe the nature and cost of the expense, the task(s) if any to which the expense was related, and the date incurred. CONTRACTOR shall submit invoices not more often than monthly to the Contract Administrator. After review and approval as to form and content, the invoice shall be submitted to the Napa County Auditor no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Contract Administrator upon request during the term of this Agreement in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

**2.5 Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the Parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

**2.6 Specific Performance.** It is agreed that CONTRACTOR, including the agents, employees and authorized subcontractors of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

**2.7. Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 2.7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the Health and Human Services Agency prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 2.7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 2.7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 2.7.

(f) Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve CONTRACTOR, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

## **2.8 Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees or volunteers or other contractors or their subcontractors. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either Party to



disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Obligations Relating to Criminal Background Checks.

1. If CONTRACTOR's obligations under this Agreement involve contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (hereafter in this paragraph referred to as "third persons"), then CONTRACTOR shall investigate by all lawful means, including but not limited to obtaining information from official government sources as the result of taking fingerprints, the criminal background of each and all of its officers, agents, employees, interns, and volunteers, however denominated (hereafter, "employees"), who will have direct personal contact with, or provide direct personal services to, third persons in the performance of this contract. Depending upon the information acquired by its investigation, CONTRACTOR shall not allow any of its employees to have personal contact with, or provide direct personal services to, third persons where it may reasonably be concluded as a result of its investigation that an employee should not have such contact or provide such service. Nothing herein requires CONTRACTOR to investigate the criminal background of an employee who is currently licensed by the State of California and whose license requires a criminal background investigation.

2. Notwithstanding anything to the contrary in (a) or (c), CONTRACTOR shall defend and indemnify COUNTY and its officers, agents and employees from any and all claims, actions, settlements or judgments of whatever kind which may arise from the failure of CONTRACTOR to conduct the criminal background investigation described in this subparagraph (b) or from the failure of CONTRACTOR after the investigation to reasonably disallow an employee from having such personal contact or providing such direct personal service.

(c) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

## **2.9 Termination for Cause.**

(a) If either Party shall fail to fulfill in a timely and proper manner that Party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (45) days of receipt of written notice from the other Party describing the nature of the breach, the non-defaulting Party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days written notice to the defaulting Party in the manner set forth in Paragraph 2.13 (Notices).

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department

Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

**2.10 Other Termination.** Omitted.

**2.11. Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration or termination of this Agreement, if and to the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY (“County data”), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in the form of a .bak file that contains the COUNTY’s complete data set and shall subsequently purge County data from CONTRACTOR’s systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(b) Upon expiration or termination of this Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a “work made for hire” for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof.

(c) Notwithstanding the provisions set forth in subparagraph (b ) above, if the services involve development or improvement of previously patented inventions or previously copyrighted software, upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product.

(d) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

**2.12 No Waiver.** The waiver by either Party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

## 2.13 Notices.

(a) In General. Except as set forth in subparagraph (b) below with respect to notice of automatically adopted provisions, all notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this subparagraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier. Any mailed notice, demand, request, consent, approval or communication that COUNTY desires to give to CONTRACTOR shall be addressed to CONTRACTOR's Contract Contact Person at the mailing address set forth in SECTION 1 of this Agreement. Any mailed notice, demand, request, consent, approval or communication that CONTRACTOR desires to give to COUNTY shall be addressed to COUNTY's Contract Administrator at the mailing address set forth in SECTION 1 of this Agreement. Either Party may change its address by notifying the other Party of the change of address.

(b) Provisions Adopted Automatically. COUNTY reserves the right to provide not less than thirty (30) days' prior written notice to CONTRACTOR via facsimile of COUNTY policies which automatically become part of this Agreement upon approval by the Napa County Board of Supervisors. Notice delivered by facsimile shall be deemed to have been received on the date a successful delivery confirmation report is generated.

(c) Waiver of Notice by CONTRACTOR. If receipt of notice is refused by CONTRACTOR or if notice is undeliverable due to CONTRACTOR's failure to provide a change of address, notice shall be deemed waived and COUNTY may proceed as though notice were accomplished.

**2.14 Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. Future versions of the following policies shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR pursuant to Paragraph 2.13. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment."

(c) Drug and Alcohol Policy.

(d) Napa County Information Technology Use and Security Policy. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

## 2.15 Confidentiality.

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to or created by CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive or create, if any, in trust and confidence, except with the prior written approval of COUNTY, as expressed through the Department Director. Upon cancellation or expiration of this Agreement, to the extent permitted by law, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY. For avoidance of doubt, this provision is in addition to the COUNTY and CONTRACTOR'S mutual confidentiality obligations set for in Section 7 of the MSA.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR agrees to adhere to the applicable terms regarding the privacy and security of Protected Information as set forth in the COUNTY-entity agreements identified in Paragraph 1.8 of Section 1 of this Agreement (Contract Administration). CONTRACTOR shall also observe and comply with those requirements set forth in "Addendum For Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

(3) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 2.15.

(4) CONTRACTOR agrees to notify COUNTY, by and through the Napa County Privacy Officer, at 2751 Napa Valley Corporate Dr. Suite B, Napa, CA 94559, or 707.253-4715, immediately in the following instances:

- (A) Upon the discovery of a breach of PHI/PII/other Protected Information in electronic or other media;
- (B) Upon the discovery that PHI/PII/other Protected Information was, or is reasonably believed to have been accessed or acquired by an unauthorized person;
- (C) Upon the discovery of a suspected security incident that involves PHI/PII/other Protected Information; or
- (D) Upon the discovery of any breach, security incident, intrusion, or unauthorized access, use, or disclosure of PHI/PII/other Protected Information.

(5) Subject to the limitations of liability set forth in Section 9 of the MSA, CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of PHI/PII/other Protected Information, or its unauthorized access to or disclosure of PHI/PII/other Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) To the extent CONTRACTOR creates, is provided, or has access to applications and records concerning any individual made or kept by COUNTY in connection with public social services (records) as defined in California Welfare & Institutions Code Section 10850, CONTRACTOR shall maintain the confidentiality of such records in accordance with Section 10850, except as otherwise permitted by COUNTY and as necessary for purposes of providing services under this Agreement.

(d) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Secure Data Disposal: When requested by the COUNTY, CONTRACTOR shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to COUNTY.

Subject to the limitations of liability set forth in Section 9 of the MSA, CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

(e) HHS Contractor Security Requirements. Whenever CONTRACTOR utilizes their own equipment to perform work under this Agreement, CONTRACTOR warrants that they have reviewed "HHS Contractor Security Requirements" and can adhere to the minimum standards at all time. A copy of "HHS Contractor Security Requirements" which is

incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

**2.16 No Assignments or Subcontracts.**

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld, provided, however, that Contractor may assign this Agreement in connection with a sale of all or substantially all of its equity or assets. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Department Director.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

**2.17 Amendment/Modification.**

(a) Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both Parties. In particular, only COUNTY, by the Department Director (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed \$10,000), or by COUNTY's Purchasing Agent (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed the maximum aggregate amount for Purchasing Agent contracts as specified by Napa County Code section 2.36.040 (G)) or by COUNTY's Board of Supervisors (in all other instances), in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by "Exhibit A." Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

(b) Notwithstanding anything to the contrary in (a), this Agreement may be unilaterally modified by COUNTY upon not less than thirty (30) days' prior written notice to CONTRACTOR under the following circumstances:

1. There is a decrease in state or federal funding needed for this Agreement;
2. There is a no-cost extension of the end date of the Agreement as authorized by a state or federal funding source; or
3. There is a change in state/federal law or regulation requiring a change in a provision of this Agreement.

(c) The Department Director is delegated the authority to modify this Agreement in accordance with subparagraph (b), but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to modify this Agreement under subparagraph (b).

## 2.18 **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either Party to submit to mediation or arbitration any dispute arising under this Agreement.

2.19 **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. **CONTRACTOR acknowledges its independent duty to be and to remain informed of all changes in such laws without reliance on COUNTY to provide notice of such changes.** Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS, use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the

State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Federal Grant Source. Notwithstanding anything to the contrary in this Agreement, if the funds for this Agreement are derived from a grant from a federal agency, pursuant to 29 CFR 97.36(i)(8) and (9), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the federal granting agency with respect to any discovery or invention which arises or is developed pursuant to this Agreement, and pertaining to any copyrights or rights in data created or otherwise developed when engaging in activities of CONTRACTOR under this Agreement. The requirements and regulations imposed by the federal granting agency are set forth in the original grant agreement specified in Section 1 of the Agreement and are incorporated by reference herein. The original grant agreement is on file with the Clerk of the Board of Supervisors.

(d) Prevailing Wages. If the services to be provided relate to construction or pre-construction-related services, including but not limited to testing, surveying, and inspection, then this Agreement includes the following provisions:

(1) Affected work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Agreement on or after January 1, 2002 relating to construction design, testing, surveying and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing wages rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(3) Payroll records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear



on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or his designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is \$30,000 or more.

(e) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 2.19 in all such subcontracts as obligations of the subcontractor.

(f) Notwithstanding any other provisions of this contract, CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement.

**2.20 Taxes.** CONTRACTOR agrees to file all applicable federal and state tax returns or applicable withholding documents and to pay all applicable taxes or to make all required withholdings on amounts paid pursuant to this Agreement, and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

**2.21 Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records, excluding clinical documentation which is governed by the Business Associate Agreement entered into by COUNTY and CONTRACTOR, for at least ten (10) years after COUNTY makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later.

**2.22 Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement. The Parties further warrant that the signatories to this Agreement are authorized to execute this

Agreement on behalf of their respective Parties and that any action necessary to bind each such Party has been taken by that Party prior to entering into this Agreement.

**2.23 Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The Parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement. The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors terminate this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder “assuming office”, “annual”, and “leaving office” Statements of Economic Interest as a “consultant”, as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless COUNTY, through a person authorized to execute this Agreement on behalf of COUNTY, or the Department Director, has determined in writing that CONTRACTOR, although holding a “designated” position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under COUNTY’s Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

**2.24 Non-Solicitation of Employees.** Each Party agrees not to solicit for employment the employees of the other Party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of twelve (12) months after termination of this Agreement except with the written permission of the other Party, except that nothing in this Paragraph shall preclude either Party from publishing or otherwise distributing applications and information regarding that Party’s job openings where such publication or distribution is directed to the general public.

**2.25 Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the Parties do not intend to create such rights.

2.26 **Attorney's Fees.** In the event that either Party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing Party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

2.27 **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

2.28 **Entirety of Contract.** This Agreement, including documents incorporated by reference and not attached hereto, constitutes the entire agreement between the Parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

2.29. **Other Terms and Conditions [Reserved.]**

2.30 **Acknowledgment of Funds; Compliance with Government Code Section 7550.**

(a) **In General.** Because the monies provided by COUNTY are funded by taxpayer dollars, it is important that the public know the individuals and organizations that are receiving funds from COUNTY under this Agreement. Therefore, CONTRACTOR shall acknowledge funding received under this Agreement in statements or printed materials relating thereto. All printed materials shall contain the following information in a type size and style appropriate to the materials: "Made possible by funding provided by the County of Napa."

(b) **Compliance With Government Code Section 7550.** In addition, if the Scope of Work includes preparation of a document or written report and the total cost of the work is more than \$5,000, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report as required by Government Code section 7550. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

2.31 **Compliance with Federal Health Care Program Requirements.** If CONTRACTOR will be performing services under this Agreement that are covered by a Federal Health Care Program, then:

(a) CONTRACTOR shall observe and comply with all applicable Federal Health Care Program Requirements, including but not limited to those requirements set forth in "Addendum For Contracts Involving Federal Health Care Programs—Revision of March 22, 2021." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and is online at:

[www.countyofnapa.org](http://www.countyofnapa.org).

(b) CONTRACTOR shall attend and/or provide Compliance Trainings as required by the Department Director unless otherwise deemed exempt by the Department Director or designee thereof.

(c) CONTRACTOR shall make COUNTY whole for any revenues lost arising from an act or omission in billing practices by CONTRACTOR.

(d) CONTRACTOR warrants that no one providing services is an Excluded Individual as such term is defined for Federal Health Care Programs.

(e) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contractors Involving Federal Health Care Programs". Said penalties and fines that may be assessed are as follows: civil monetary penalties of \$11,000 per item or service; treble damages for the submission of claims for reimbursement from an excluded health care provider.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the Addenda in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR agrees to abide by COUNTY'S policies entitled "Whistleblower Protections", "The False Claims Act (Federal & State Statutes) & Other Administrative Remedies & Statutes", "Federal Anti-Kickback Prohibitions" and "Physicians Referrals – The Stark Law". The policies are on file with the Clerk of the Napa County Board of Supervisors and the Department and are also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

(i) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

### **2.32 Compliance with State Medi-Cal Specialty Mental Health Services Requirements.**

If CONTRACTOR, under this Agreement, is required to and performs services that are covered by a State Medi-Cal Specialty Mental Health Services Program, then:

(a) CONTRACTOR shall observe and comply with all applicable State Medi-Cal Specialty Mental Health Services Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Medi-Cal Specialty Mental Health Services--

Revision No. 1” for services performed on or after July 1, 2014. The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

(b) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator, or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(c) CONTRACTOR is subject to any audits of its services or claims conducted by the Department, the California State Department of Health Care Services or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(d) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, disallowances for payment or lost revenues identified and discovered by COUNTY that are attributable to CONTRACTOR’s actions when performing its obligations under this Agreement, such as insufficient documentation by CONTRACTOR of Medical Necessity or billing errors by CONTRACTOR that preclude COUNTY from claiming the Federal Financial Participation share of Medi-Cal or State General Funds.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR’s failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the applicable Addendum in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR’S breach of its specific performance of the services provided pursuant to this Agreement.

**2.33 Compliance with Mental Health Activities Requirements.** If CONTRACTOR, under this Agreement, is required to perform mental health activities, then:

(a) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(b) CONTRACTOR shall be subject to any audits of its services or claims conducted by Department, California State Department of Health Care Services or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(c) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, lost revenues as identified and discovered by the COUNTY that are attributable to CONTRACTOR's performance under this Agreement such as CONTRACTOR's insufficient documentation of services as required by the Agreement.

(d) RESERVED

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable requirements.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party; CONTRACTOR shall include the provisions of this Paragraph in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

**2.34 Compliance with Federal Health Insurance Portability and Accountability Act of 1996.** If CONTRACTOR shall perform services under this Agreement involving the receipt, use, or disclosure of protected health information, then:

(a) Federal and other applicable law. CONTRACTOR shall observe and comply with all applicable requirements of the Federal Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder by the U.S. Department of Health and Human Services (collectively referred to as "HIPAA"), and other applicable laws.

(b) HIPAA Business Associate Agreement. If applicable, CONTRACTOR shall comply with the terms and conditions of the HIPAA Business Associate Agreement previously entered into with COUNTY, which is incorporated by reference herein and on file with the Clerk of the Board of Supervisors.

(c) Use or Disclosure of Protected Health Information. CONTRACTOR may use or disclose protected health information for the purpose of performing functions, activities for or on behalf of COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate HIPAA, if done by COUNTY, or the provisions of any applicable HIPAA Business Associate Agreement.

(d) Subcontractors. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall require compliance with all applicable HIPAA provisions, other applicable law, and any applicable HIPAA Business Associate Agreement(s) in such subcontracts as obligations of the subcontractor.

**2.35 Compliance With COUNTY's Obligations Under Contracts With Other Entities.** If CONTRACTOR under this Agreement shall perform services as a subcontractor under COUNTY's contract(s) with other entities, including, but not limited to State and Federal Agencies, and such services involve the use or disclosure of personally identifiable information, then:

(a) CONTRACTOR shall observe and comply with all applicable terms of COUNTY's contract(s) with other entities, including, but not limited to, those requirements set forth in "Addendum For Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

(b) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities".

(c) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the "Addendum for Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" in all such subcontracts as obligations of the subcontractor.

## **2.36 RESERVED**

## **2.37 Licensure Status.**

(a) License in Good Standing. If CONTRACTOR is providing services under this Agreement as a state-licensed professional, CONTRACTOR shall ensure that CONTRACTOR's professional license is in good standing with all applicable licensing boards. CONTRACTOR understands COUNTY may terminate the Agreement if CONTRACTOR fails to maintain a current professional license in good standing. For purposes of this Agreement, "license in good standing" means there is no suspension, revocation or probation for any reason (including the

failure to pay licensing fees), nor any restriction upon the provisions of the license: including, but not limited to, restrictions placed by a licensing agency upon CONTRACTOR's license pursuant to any consent or settlement agreement or to an administrative decision of the licensing agency.

(b) Expiration of License. In the event that CONTRACTOR's professional license is not renewed on or before its expiration, CONTRACTOR shall neither provide nor be reimbursed for services pursuant to this Agreement commencing the day after license expiration and until CONTRACTOR's professional license is renewed. For purposes of this Agreement, renewal date is the date the licensing board issues a renewed license, and it is irrelevant whether the licensing board subsequently recognizes any lapse in licensure.

**2.38 Code of Ethics.** CONTRACTOR understands that Napa County Health and Human Services (HHSA) has adopted a Code of Ethics. If the Department Director determines that the HHSA Code of Ethics applies to CONTRACTOR's activities under this Agreement, CONTRACTOR shall read, understand, and abide by the Code of Ethics, and CONTRACTOR shall on an annual basis provide written certification to HHSA that CONTRACTOR has received, read, understands, and will abide by HHSA's Code of Ethics. The Code of Ethics may be found online at [www.countyofnapa.org](http://www.countyofnapa.org) or may be obtained from HHSA upon written request.

**2.39 Electronic Billing System.** CONTRACTOR understands that Napa County Health and Human Services (HHSA) operates an electronic billing system program, which seeks reimbursement from the State of California for the delivery of alcohol, drug abuse and mental health services. If CONTRACTOR provides any services related to alcohol, drug abuse or mental health services under the terms of CONTRACTOR's Agreement, CONTRACTOR agrees, upon request of the Director of HHSA or the Director's designee, to implement the COUNTY's sponsored electronic health record system as part of CONTRACTOR's requirement for the delivery of these services.

**2.40 Audit Report Requirements.** If COUNTY has determined that CONTRACTOR is a "subrecipient" (also known as a "pass-through entity") as defined in 2 C.F.R. § 200 et. seq., CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. § 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement. CONTRACTOR shall observe and comply with all applicable Audit Report Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Federal Awards." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: [www.countyofnapa.org](http://www.countyofnapa.org).



**EXHIBIT D**  
**NAPA COUNTY TRAVEL POLICY**

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## **I. GENERAL PROVISIONS**

This Policy contains the purposes and manner under which employee travel and work-related meals will be authorized and reimbursed by the County of Napa (County). It establishes reimbursement schedules under which County employees will receive no more than reasonable and necessary reimbursement for travel expenses while avoiding the necessity for employees to utilize personal funds to partially cover the cost of travel. This Policy also provides for specified travel reimbursement of individuals appointed to serve on commissions, committees and boards established by formal action of the Board of Supervisors (see Section XI.A), volunteers, interns, job applicants and other specified individuals.

County business is defined as work-related services performed by a County employee on behalf of the County. Travel by an employee for work-related purposes is subject to the approval procedures set forth in this Policy, regardless of whether the County is paying for the employee's travel or the employee or their department may be receiving full or partial reimbursement for their claim from another agency or a third party. The County will only reimburse employees for the business-purpose portion of their travel. If an employee stays over beyond the work-related event for personal reasons, then the excess costs (meals, lodging, etc.) are to be paid by the employee.

Allowable purposes for travel include travel for attendance at: 1) continuing education/training programs, 2) conventions/conferences and 3) business travel that is required as a necessary part of County employment. The requirements and limitations for each kind of travel are further described in the sections below.

This Policy covers requirements and procedures specifically for out-of-county travel and in-county travel as well as requirements and procedures that apply to both. Any exceptions to this Policy must be approved by the Auditor-Controller and, when required – such as in the case of out-of-state travel – by the County Executive Officer. Further, any expense that does not fall within this Policy shall be approved by the Board of Supervisors, in a public meeting, before the expense is incurred.

Except as otherwise provided by contract, ordinance or statute, the policies and procedures specified herein shall supersede any and all travel policies and procedures previously adopted and shall be deemed to govern in the case of any apparent conflict with similar policies and procedures. The County reserves the right to amend this Policy whenever it is appropriate to conform to local, state and federal laws, rules and regulations.

The Division Heads of Human Resources and Information Technology Services and the Executive Director of LAFCO are considered Department Heads for the intent and purposes of this Policy.

Employees are expected to maximize local training opportunities, conference videocasts and training videocasts, thereby minimizing the need for travel.

- A. **Pre-Approval:** For any allowable travel, including any travel involving an overnight stay, an employee shall have prior written approval from their Department Head, or designee, with the exception of any travel that is a regular, ongoing part of an employee's duties. Department Heads are not required to obtain pre-approval unless otherwise provided in this Policy (see Section VIII for policies on out-of-state and out-of-country business travel). The following areas in the State of Nevada shall be considered within the state for purposes of this Policy: Lake Tahoe, Reno, Las Vegas, and immediate surrounding vicinities to these localities.
- B. **Reimbursement:** Reimbursement of travel expenses will be made pursuant to Section IV and through submission of a claim as set forth in Section XII. Registration fees, books and supplies required in connection with attendance at conventions, conferences, official meetings, training programs and seminars are reimbursable. When possible, registration should be made and paid for prior to travel through the normal expense claim system (see Section XII for more information). Reimbursable registration fees may include meals, special dinners, and banquets but shall not include social and recreational activities.

## II. ESTABLISHING RESIDENCE AND HEADQUARTERS

- A. Headquarters for all County employees shall be the County location to which they normally report for work. Residence for County employees shall be the place where the employee resides.
- B. No travel expenses shall be allowed for travel between residence and headquarters ("commute miles").

## III. ALLOWABLE PURPOSES FOR TRAVEL

- A. Continuing Education/Training Programs
  - 1) An employee shall be reimbursed for meals to the extent authorized by this Policy, mileage, and other related travel expenses for attendance at continuing education/training programs that are necessary as a condition of employment in order to maintain licensure with the State of California, or to maintain eligibility to perform one's job duties, or that is department approved, work-related training.
  - 2) Employees shall be allowed sufficient leave with pay to meet the minimum continuing education/training required. The allowed leave shall be subject to the convenience of the department and the approval of the Department Head.

- 3) Reimbursement of costs associated with continuing education or training is subject to the approved budget for the respective employee's department.
- 4) Training programs do not include ongoing educational courses offered by colleges or universities for specific degrees, e.g., Masters Certification. Funding provisions for those programs are covered in the Revised Educational Reimbursement Policy of October 2, 1984, Board Resolution No. 84-70. If this provision is inconsistent with the provision(s) of any current County employee bargaining unit Memoranda of Understanding, the latter shall prevail.
- 5) Employees requesting reimbursement of travel expenses for attending Peace Officers Standards and Training Programs (POST) must indicate, on the face of the claim for reimbursement or request for a travel advance, that it was for participation in a POST Training Program and is credited toward their hours of required continuing education. The employee is responsible for presenting the completed original "Training Reimbursement Request" form to the course coordinator/instructor on or before the first day of training. When funding is available, the department is responsible for ensuring that reimbursement from the State of California, Department of Justice Commission on Peace Officer Standards and Training, is received to the extent allowable.
- 6) Employees requesting reimbursement of travel expenses for attending the Standards and Training for Corrections Program (STC) must indicate on the face of the claim for reimbursement that it was for participation in an STC Training Program and is credited toward their hours of required continuing education. When funding is available, the department must seek reimbursement from the State Board of Corrections to the extent allowable.

**B. Conventions and Conferences**

- 1) All County non-classified, appointed and elected Department Heads are authorized to attend any conference or convention within the State.
- 2) All other County employees must secure prior written authorization from the Department Head before attending conventions or conferences.
- 3) Elected officials' travel shall be governed by Section 29610 of the California Government Code, which states in part, "The . . . expenses of any elected county...officer...incurred while traveling to and from while attending the annual convention of his respective association, are county charges."

**C. Business Travel/Meetings**

- 1) Business travel is defined as any travel that is required as a necessary adjunct to employment and is not covered in Section III.A, B and C above. It is restricted to those functions that must be reasonably performed in the course of carrying out department duties and responsibilities.

For members of the Board of Supervisors and County Boards/Committees/ Commissions, business expenses incurred in connection with the following kinds of activities are allowable:

- a. Meeting with representatives of regional, state and national government on County adopted policy positions;
- b. Participating in regional, state and national organizations whose activities affect the County's interests;
- c. Recognizing service to the County;
- d. Attending events within the County for the purpose of conducting County business;
- e. Implementing a County-approved strategy for attracting or retaining businesses to the County.

Every claim must state the purpose of travel to be able to determine which section of the Policy applies.

**IV. REIMBURSABLE EXPENSES**

**A. Transportation and Mileage**

**County "Pull Notice" Policy for Drivers License Review** (described at Part I, Section 21C of the Napa County Policy Manual); Claimants should be aware of and familiar with the County's Pull Notice Policy. The Policy states that "to further provide for the protection of all citizens within the County and reduce as much as possible the County's risk exposure, it is the Board of Supervisors intent, with this recent amendment effective December 1, 1996, to institute a drivers license review program for all employees, volunteers or interns who drive County equipment or personal vehicle to conduct County business. The County will use the Pull Notice Program available free of charge through the State Department of Motor Vehicles for this purpose. This program provides an annual report on each individual enrolled in the Program and a special report whenever there is any activity regarding the individual's driver license." (For additional

information regarding this program, see Napa County Policy Manual re: Use and Operation of County Vehicles at Part I, Section 21C.)

1) Use of County Vehicles

- a. Any employee who drives a County-owned vehicle shall be aware of and have reviewed the County policy on “Rules and Regulations Governing Use and Operation of County Vehicles on County Business.” (Part I: Section 21C of the County Policy Manual.) Department Heads shall be responsible to ensure that all employees are aware of this requirement.
- b. If a department is assigned County vehicles, those vehicles shall be considered the preferred vehicles for the conduct of County business.
- c. County vehicles shall be used only for County business. Vehicles may not be used for personal business while driving to and from work or on weekends, except an employee may use a vehicle to eat out during meal periods that occur while the employee is traveling on County business. Transportation of persons not on business with, or the responsibility of, the County is strictly prohibited except when an employee uses a County vehicle to attend a continuing education/training program, conference or meeting and is accompanied by family, a friend or another agency representative.
- d. Reimbursement for reasonable and necessary charges for parking and tolls will be allowed.

2) Use of Privately Owned Vehicles

- a. All mileage reimbursement will be calculated by first deducting the employee’s standard commute miles from the total miles traveled.
- b. Private vehicles may be used for County business in lieu of a County vehicle. However, in such instances, the private vehicle owner’s insurance coverage is primary in the event of an accident.
- c. Owners of private vehicles must meet insurance coverage requirements of the California Financial Responsibility Law, which requires a minimum coverage of \$15,000 per person/\$30,000 per occurrence/aggregate for bodily injury and \$5,000 for property damage. This requirement may be met by a combined single limit per occurrence coverage of \$50,000.

- d. Employees traveling under this Policy will be reimbursed the mileage to their destination under the following circumstances:
  - i. Travel to and from an employee's headquarters to another County workplace that occurs during the employee's regular work day. If for some personal reason the employee does not go directly to and from one location to the other, the employee cannot claim more than the amount of mileage it would have taken to go directly between the workplaces.
  - ii. Travel to locations other than to another County workplace for purposes of attending training, conferences or meetings relating to County business, where the work assignment is expected to last for less than one month.
- e. Reimbursement for the use of privately owned vehicles will be paid at the rate established annually by the Internal Revenue Service (IRS). This rate is intended to reimburse the employee for the per mile cost of normal maintenance, insurance costs and wear and tear of vehicle. The Auditor-Controller will notify departments of the appropriate rate.
- f. If a private vehicle is used instead of air travel, reimbursement for mileage shall not exceed the sum of the round-trip coach airfare of a common carrier, needed local mileage/ground transportation and other related costs had airfare been chosen. A recent analysis of this comparison must be attached to the travel/mileage expense form.
- g. Reimbursement for the use of privately owned vehicles shall be made only for each vehicle operated regardless of the number of persons transported. No additional reimbursement for transportation shall be allowed any passenger in a vehicle operated by another employee, Department Head or public official of the County of Napa.
- h. Reimbursement for reasonable and necessary charges for parking and tolls will be allowed.
- i. Claims for mileage should be submitted within five (5) business days of the end of the month in which the mileage occurred. See Sec. XII, Claim Submission, for further details.
- j. Management employees and members of the Board of Supervisors who receive an auto allowance pursuant to their applicable Management Compensation Plan may receive reimbursement for mileage driven outside

the boundaries of Napa County [see Section II.A.15 of Management Compensation Plans 37C-1, 37C-2, 37C-3: [Section 37C-1 Management Classified](#), [Section 37C-2 Management Non-Classified](#), [Section 37C-3 Management Non-Classified \(Other\)](#)].

3) Ground Transportation

- a. The use of public transportation services, e.g., airport shuttle services, is encouraged in lieu of taxi or other on-call transport (e.g., Uber) or car rental unless availability, cost or employee safety dictates otherwise. Car rental is reimbursable only if rental is necessary as part of official County business. Officials and employees shall consider alternative transportation (shuttles, taxis, subways, etc.), availability and cost prior to car rental. Officials and employees should consult the Purchasing website at <http://cabernet/sites/Purchasing/SitePages/Home.aspx> for current County car rental discount programs and utilize those programs when they exist. If the County has a car rental discount program and an employee or official chooses to utilize another car rental company, the employee's or official's reimbursement will be limited to the rate included in the County's discount program.
- b. If a car is rented and insurance is purchased, the rental car insurance company's coverage is primary. If insurance is not purchased, the employee's insurance coverage is primary. The purchase of car rental insurance shall be authorized in advance.

4) Airfare, Trains, and Other Modes of Travel

- a. Tickets for transportation, whether by bus, railroad or airline, may be purchased by the individual. Reimbursement shall be made upon submission of a proper expense claim. Only economy class fares will be reimbursed.
- b. Airline and other travel reservations shall be made to take advantage of available advance purchase discounts. Government rate, or the group rate, should be requested when available. Absent a government rate, or the group rate, the lowest available rate shall be used. Department Heads are responsible for ensuring that internal departmental procedures exist for obtaining the best price for airline tickets.
- c. Personal frequent flier miles should not be used to purchase airline tickets for travel pursuant to this Policy unless the employee wishes to donate such value to the County. Employees will not be reimbursed for tickets purchased using frequent flier miles. When the employee uses a personal



credit card to purchase airline tickets for travel pursuant to this Policy, the employee may retain any frequent flier miles or other incentives earned.

- d. **Baggage fees:** The County will reimburse baggage fees for a maximum of two (2) pieces of luggage under the following conditions:
  - i. If the airline charges baggage fees for all luggage, the County will reimburse the employee for a maximum of two (2) pieces of the employee's luggage.
  - ii. If the airline allows for one piece of luggage with airfare at no charge, the County will reimburse the employee for one additional piece of the employee's luggage (i.e., two pieces total).
  - iii. The County will not reimburse an employee for any overweight baggage fees.

**B. Lodging**

- 1) All County personnel are expected to secure reservations as economically as possible commensurate with the standards of accommodations available at the location of official travel. Government rate, or the established group rate for the activity or conference, should be requested when available. Absent a government rate, or the group rate, the lowest available rate shall be obtained.
- 2) Reimbursement for lodging must not exceed the rate for a single occupant. Except when there is only one rate listed for both single and double occupancy, when a hotel voucher indicates double occupancy, reimbursement will be limited to either the single occupancy rate, which must be obtained from the hotel by the claimant, or half the double occupancy rate, if the single occupancy rate is not provided with the claim.
- 3) Lodging receipts must clearly identify the amounts paid, the number of occupants, and the single room rate before submitting for reimbursement.

**C. Meal Reimbursement and Per Diem Allowance**

- 1) **Same-Day Travel Meals**

Except as otherwise provided in IV.C.3. below:

- a. Reimbursement for breakfast during same-day travel is authorized only when the claimant is required to leave from residence or headquarters before 6:00 a.m. and returns after 11:00 a.m.

- b. Reimbursement for lunch during same-day travel that spans the hours of 11:00 a.m. to 2:00 p.m. is authorized.
- c. Reimbursement for dinner during same-day travel is authorized only when the claimant is reasonably required to leave before 5:00 p.m. and return from travel and arrive at residence or headquarters after 7:00 p.m.
- d. Claimants shall be reimbursed for the actual cost of meals under this section in an amount not to exceed \$8 for breakfast, \$12 for lunch and \$18 for dinner.
- e. If meals are included in the cost of the event, no additional meal reimbursement is authorized.
- f. If meals are not included in the cost of the event, reimbursement is limited to no more than the per diem rates, regardless of dietary restrictions or other individual needs.
- g. Same-day travel meals are taxable as wages unless the meal has a business purpose under Section IV.C.3 below.

## 2) Overnight Travel Meals

- a. Employees may claim per diem meal allowances for authorized out-of-county overnight travel. Claims shall be paid in accordance with the current IRS Per Diem Meals Allowance Rates for the locality visited [See Table 4 at [www.gsa.gov/portal/category/104711](http://www.gsa.gov/portal/category/104711)].

When an employee does not travel a full day (on day of departure or return), the employee may claim the amount of each allowable meal in accordance with the current IRS Per Diem Meal Allowance Rate for the locality visited. The IRS per diem rates for breakfast, lunch and dinner by locality can be found at [www.gsa.gov/portal/content/101518](http://www.gsa.gov/portal/content/101518).

**Breakfast allowance** is authorized only if the employee is reasonably required to depart from their residence or headquarters before 6:00 a.m., or if the employee has breakfast before departing from their travel destination to return to their residence or headquarters.

**Lunch allowance** is authorized only if the employee is reasonably required to depart from their residence or headquarters before 11:00 a.m., or if the employee is reasonably unable to return from their travel destination before 2:00 p.m.

**Dinner allowance** is authorized only if the employee is reasonably required to depart from their residence or headquarters before 5:00 p.m., or is reasonably unable to return from their travel destination before 7:00 p.m.

- b. Members of the Board of Supervisors and authorized members of County commissions, committees or boards shall be reimbursed for the actual, reasonable costs of their meals when an overnight stay is involved. Reasonableness is defined as up to 110% of the per diem amount for each meal. The IRS standards for Maximum Federal Per Diem Rates for the locality visited will be used as a guide for determining reasonableness under this subparagraph. Any reimbursement for meal expenses shall be made only upon submission of receipts and the appropriate County claim, which shall reflect the date and purpose of the meal for which reimbursement is being claimed.
- c. Department Heads may elect to receive reimbursement for meals when overnight stay is involved under either subparagraph a. or b. of this Section IV.C.2.

### 3) Business-Related Meals

Except as otherwise provided in Sections IV.C.1 and IV.C.2 (regarding meal reimbursement during travel), meals and refreshments for Napa County employees shall only be purchased with County funds or reimbursed in the following cases.

- a. Required training at a conference or seminar that includes meals and refreshments as part of the cost.
- b. Business-related meetings with outside agencies, groups, organizations, service clubs, etc. where the employee is speaking or has been designated as the representative of the County/Department and where the circumstances warrant the meeting being held during mealtime.
- c. Official County business requires attendance of County personnel at a meeting where circumstances warrant the meeting being held during mealtime. Normal or routine staff meetings of County departments or personnel over the meal period do not qualify.
- d. With authorization of the sponsoring Department Head, the County may provide refreshments or meals of reasonable expense at training sessions sponsored by the County. Such costs shall be paid out of the sponsoring department's budget account for business meals.

- e. Official meetings of County personnel with consultants, trainers, or other persons to conduct business that is of primary benefit to the County, where the circumstances warrant the activity being held during mealtime.
- f. Meals consumed while carrying out prison transport duties that require continual supervision of prisoners, where continual supervision is required and there is no reasonable opportunity for a duty-free meal break.
- g. Meals consumed during transportation of children as part of child protective or law enforcement services, where continual supervision is required and there is no reasonable opportunity for a duty-free meal break.

**D. Food Provided to Non-Employees**

- 1) County offices and departments may provide meals and refreshments for trainers, consultants and other persons providing services to the County.
- 2) The County Executive Officer/Emergency Services Department Head, Sheriff, or Public Works Department Head is authorized to “furnish food” to any person(s) directed to assist during the course of an emergency situation, including but not limited to lost persons, escapees, flood, fires and any other catastrophe where emergency feeding is determined to be necessary.

**V. PAYING EXPENSES OF ANOTHER EMPLOYEE OR INDIVIDUAL**

- A. When the entire party consists of officials or employees of Napa County, and the meal is a business-related meal under Section IV.C.3, one member of the party may make payment for the meal. The reimbursement request must indicate the first and last names of participating employees and the County business discussed during the meal. Reimbursement of such expenses shall be limited to the amount authorized by this Policy for each employee. If the meal is not business-related under Section IV.C.3, the entire amount of the reimbursement will be considered taxable wages for the individual who pays for the meal.
- B. Taxi and toll bridge fares may be paid by one member of a party and submitted on their expense claim.
- C. Hotel accommodations occupied by more than one official or employee of the County may be paid by one member of the party. The reimbursement request must indicate the first and last names of the involved employees.
- D. Department Heads, elected officials and management employees may be reimbursed for the cost of meals for non-County officials doing business with the County. The

reimbursement request must indicate the first and last names of the participants and the nature of the business. The Auditor-Controller shall honor such claims only if signed by the Department Head.

## **VI. NON-REIMBURSABLE EXPENSES**

Employees will not be reimbursed for the following:

- 1) Laundry
- 2) Haircuts and barbering
- 3) Alcohol
- 4) Entertainment
- 5) Any gratuities **except for** gratuities of twenty (20%) percent or less (unless a group gratuity rate is being levied) of the cost of meal(s) or taxi fares, excluding tax unless required through contractual arrangement with provider
- 6) Transportation of personal baggage (including portage fees)
- 7) Personal expenses including mileage, taxi fares, car rental and other transportation costs to places of entertainment and other non-business facilities
- 8) Hotel housekeeping tips
- 9) Personal telephone calls
- 10) Early check-in or priority boarding on flights
- 11) Valet parking, unless it is the only option
- 12) Any personal expense

## **VII. TRAVEL ADVANCES**

A. County Purchasing Cards issued to departments ("P-Cards") should be used when possible to reserve and pay for travel-related expenses for employees. Travel advances for out-of-county travel should be the exception and requested rarely and must be approved by the Department Head or designee. Travel advances for out-of-county travel are authorized only if all of the following conditions are met:

- 1) Travel as defined in this Policy where the actual costs of overnight accommodations, meals and registration or fees can be determined in advance. Up to two (2) weeks of expenses may be advanced at a time.
- 2) Travel by employees where the per diem basis for meal reimbursement is utilized.
- 3) Anticipated travel costs as estimated by the department are for travel in excess of three (3) days.
- 4) Anticipated travel costs exceed \$100.

- B. The request for the advance shall be made on a claim form prescribed by the Auditor-Controller. The advance shall be issued not more than ten (10) days prior to commencement of the authorized travel period except under unusual circumstances as approved by the appropriate County official. The request for an advance must be received by the Auditor-Controller's Office at least ten (10) days prior to the issuance of the County Warrant.
- C. Advances shall be accounted for by submitting the original advance claim with necessary receipts and any excess monies within five (5) working days following the completion of travel. Excess travel advance funds will be returned to the department and deposited into the Treasury, and a copy of the receipt for return of the funds will be submitted with the travel claim. Failure to submit timely travel claims shall render the individual receiving the advance in default and personally liable for the full amount advanced.
- D. Under no circumstances shall any travel advance be considered as a personal loan to any individual, and any unauthorized expenditure of any advance shall be deemed a misappropriation of public funds.

#### **VIII. OUT-OF-STATE AND OUT-OF-COUNTRY TRAVEL**

- A. In addition to any other requirements of this Policy, unless otherwise expressly provided by law:
  - 1) Out-of-State Travel: All out-of-state travel by County employees, including Department Heads who are not elected officials, must receive prior written approval from the County Executive Officer (CEO) using the Out-of-State Travel Authorization Form.
  - 2) Out-of-Country Travel: All out-of-country travel by County employees, including Department Heads who are not elected officials, must receive prior approval from the Board of Supervisors.
  - 3) CEO/Board of Supervisors:
    - a. Out-of-State Travel: All out of state travel by the CEO and members of the Board of Supervisors must receive prior approval from the Board of Supervisors.
    - b. Out-of-Country Travel: All out-of-country travel by the CEO and members of the Board of Supervisors must receive prior approval from the Board of Supervisors.

- c. If time constraints do not allow prior Board approval to be obtained in a timely manner, subject to ratification at the next Board of Supervisors meeting, the Chair or Vice Chair of the Board of Supervisors may authorize the travel of the CEO and/or members of the Board of Supervisor.
  - 4) Elected Officials: All out-of-state and out-of-country travel by elected officials (other than members of the Board of Supervisors) must be reported to the CEO and the Board of Supervisors prior to commencement of travel. If time constraints do not allow for reporting before the travel occurs, the report shall be made at the next Board of Supervisors' regular meeting following the completion of the travel.
- B. Exception: Board of Supervisor and/or CEO approval is not required for out-of-state and out-of-country travel when employees are involved in any of the activities listed below. Instead, out-of-state and out-of-country travel shall require prior written authorization of the Department Head, or Department Head's designee, and the reimbursement request must clearly indicate that the travel was authorized pursuant to this section of the Policy for the following activities:
  - 1) Transporting prisoners, juvenile court wards or dependents, children receiving Child Welfare services, mental health clients, and children recovered in child abduction cases.
  - 2) Transporting patients to and from State mental hospitals, residential treatment facilities or court appearances.
  - 3) Travel to inspect facilities and provide supervision to children in placement, i.e., foster homes, group homes or residential treatment facilities.
  - 4) Travel to investigate or to prosecute a crime for purposes of law enforcement, or for purposes of civil litigation filed by the District Attorney.
  - 5) Travel to investigate a crime for purposes of legal defense by the Office of the Public Defender.

## **IX. OVERTIME POLICY DURING TRAVEL**

Napa County complies with Fair Labor Standards Act (FLSA) laws for overtime related to travel, which are described in the County Overtime Policy, contained in Sec. 37B of the County Policy Manual. Any questions should be directed to Napa County Human Resources.

## **X. TRAVEL BY THE BOARD OF SUPERVISORS**

Except as otherwise provided in this Policy, travel expenses incurred by members of the Board of Supervisors shall be reimbursed consistent with the application of this Policy to other County Department Heads and elected officials.

## **XI. OTHER**

### **A. Individuals Serving on County Boards/Committees/Commissions**

- 1) Out-of-County Travel: Individuals appointed to represent the County on various committees, boards and commissions established by the Board of Supervisors by formal action, whether County employees or not, may be reimbursed for all actual expenses involved when attending meetings relating to committee/board/commission business held outside of Napa County.
- 2) In-County Travel: Actual expenses involved when attending meetings relating to committee/board/commission business held within Napa County may be reimbursed only to the extent authorized by County ordinance or by bylaws of the committee/board/commission.
- 3) Attendance at educational conferences or activities is subject to the limitations set forth in Section III of this Policy. Reimbursement shall be limited to the expenses described in this Policy.
- 4) Board of Supervisors' approval must be given prior to attendance of any meetings in order to receive reimbursement. Board approval is evidenced by the availability of sufficient budget appropriations. In emergency situations in which Board of Supervisors' approval is not possible for the travel of commissioners (members of a board/committee), the CEO may grant such authorization subject to ratification at the next Board of Supervisors' meeting following the completion of the travel.
- 5) The Department Head, or designee, of the department that provides staff support for the commission, board or committee shall approve the attendance, in advance, and reimbursement of travel expenses, and related expense reports, of members of 4) above. Documentation of the expenses incurred must be provided as set forth in this Policy.

### **B. County Department Head and Farm Advisor at Cooperative Extension**

County Department Head and Farm Advisor at Cooperative Extension shall be reimbursed on the same basis as non-classified employees under this Policy.



**C. CAL FIRE Employees**

California Department of Forestry and Fire Protection employees, under contract with the County, are eligible for reimbursement under this Policy, the same as County employees generally.

**D. Volunteers or Interns**

Volunteers or interns assigned and authorized by a Department Head to use their private vehicles to conduct County business will be reimbursed pursuant to Section IV of this Policy. The owner of the private vehicle must maintain the insurance coverage as required in Section IV.A.2.c., and their insurance coverage shall be primary in the event of an accident.

**E. Other Governmental Agencies or Third Parties that Provide Reimbursement**

When employees (and other individuals specified under this Policy) are entitled to reimbursement for part or all of travel expenses incurred on behalf of the County from other governmental agencies or third parties, they are required to seek reimbursement from these other agencies or third parties.

- 1) Reimbursement from other parties for County incurred expenses shall be remitted to the County if received by the employee/individual.
- 2) Employees traveling on County business and using County funds (receiving advance funds and/or submitting a travel claim) are required to comply with this Policy even though they or their department may be receiving full or partial reimbursement for their claim from another agency or a third party. The fact that another agency or third party may reimburse the County for an expenditure that is non-allowed under this Policy does not justify the expense unless the CEO, or designee, has provided written permission.

**F. Job Applicants**

The CEO, or designee, may authorize the reimbursement of actual and necessary travel and lodging expenses for a job candidate traveling to Napa for purposes of participating in an employment selection process. This reimbursement is not generally available to all job candidates, but only for those job recruitments the CEO, or designee, determines reimbursement is necessary to recruit a qualified person. The CEO shall set criteria for reimbursement that are consistent with the standards in Section IV of this Policy, relating to out-of-county travel.

**XII. CLAIM SUBMISSION [See Sections III. and IV. for additional information]**

**A. General Policy**

- 1) All **expense claims** (business travel and training/conference expenses) **other than**

**monthly mileage claims** should be submitted within ten (10) business days after completion of travel. Per Section IV.A.2.i., claims for monthly mileage should be submitted within five (5) business days of the end of the month in which the mileage occurred. Any expense claims or monthly mileage claims submitted beyond a six (6) month period or in a subsequent fiscal year require approval of the CEO or Assistant CEO prior to processing by the Auditor-Controller.

- 2) Claims for reimbursement of expenses must indicate the following:
  - a. purpose and location of the trip
  - b. cities and states traveled from/to (state is required only when traveling outside of California)
  - c. dates of travel
  - d. time of departure and return (not necessary when only claiming mileage reimbursement)
  - e. type of travel, e.g., business, training (Continuing Education or non-Continuing Education), conference, convention, and
  - f. For business-related meals: time and place of the meal, the business purpose of the meal and, if applicable, the business relationship of the employee and the other individuals provided a meal for which reimbursement is claimed.
- 3) Unless otherwise provided in this Policy, all expense claims shall be accompanied by required documentation and approved by the Department Head or designated representative of the Department Head.
- 4) Reimbursement shall be allowed only for the actual days of authorized travel.

## **B. Required Documentation**

Employees (and other individuals eligible for reimbursement under this Policy) must complete and certify an itemized travel expense report upon return from travel. The following provisions must be followed in order for reimbursement of travel expenses to be made.

- 1) Expense claims may be submitted on forms prescribed by the Auditor-Controller; mileage claims may be submitted only once a month.
  - a. Each claim for travel or mileage expense shall contain a certification providing as follows:

“I certify the expenses submitted are accurate and comply with expense policy.”

The foregoing certification shall be in addition to any oath or certification required by law for the County of Napa claim forms.

- b. A travel cost comparison shall be attached to the expense claim for private vehicle travel in lieu of air travel.
  - c. Prior approval of the Department Head or designee is required. An e-mail approval may be acceptable so long as purpose and destination are included in the e-mail.
- 2) The original receipts or acceptable substitute (the Auditor may accept, at their discretion, other forms of documentation such as credit card receipts, invoices, statements, cancelled checks (copy of front and back)) shall be submitted with the claim for reimbursement for every item of expense, **except** that the following do not require receipts: taxi, public transportation, bridges and road tolls, parking meter fees, and overnight per diem amounts.

In cases where receipts cannot be obtained, a statement to that effect shall be entered on the expense claim and the reason given. In the absence of a satisfactory explanation, as may be determined by the Auditor-Controller, the amount involved shall not be allowed.

3) Documentation of Alternative Methods and Times of Travel

Employees should consider methods and times of travel to minimize costs to the County, for example, considering travel to a nearby, less expensive hub and renting a car. When an employee extends travel or travels to an alternative location to save money, written documentation substantiating the savings must be submitted with the reimbursement request. Employees who extend travel or travel to alternate destinations that result in increased expenses shall be required to pay for any such difference in cost.

### **XIII. PUBLIC DISCLOSURE**

All County expenditures are public records subject to disclosure under the Public Records Act and other laws.

### **XIV. VIOLATION OF THIS POLICY**

Use of public resources or falsifying expense reports in violation of this Policy may result in any or all of the following:

- 1) loss of reimbursement privileges
- 2) a demand for restitution to the County
- 3) the County's reporting of the expense reimbursement as income to state and federal tax authorities
- 4) civil penalties of up to \$1,000 per day and three times the value of the resources used and
- 5) prosecution for misuse of public resources. Except in the case of elected officials, use of public resources or falsifying expense reports in violation of this Policy may further result in disciplinary action, up to and including termination.

## **EXHIBIT E**

### **HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Exhibit shall constitute the Business Associate Agreement And Qualified Service Organization Agreement (the “Agreement”) between Credible Behavioral Health, Inc. (the “Business Associate”) and Napa County (the “Covered Entity”), and applies to the functions Business Associate will perform on behalf of Covered Entity (collectively, “Services”), that are identified in the Master Agreement (as defined below).

1. **Purpose.** This Agreement is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to “Protected Health Information” (as defined below) that the Business Associate may create, receive, maintain, transmit, use, or disclose in connection with the Services to be provided by the Business Associate to the Covered Entity, and that such safeguards will be consistent with the standards set forth in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (“HITECH Act”). Additionally, certain of Covered Entity’s operations will constitute a program (the “Part 2 Program”) as defined in federal alcohol and drug rehabilitation regulations at 42 C.F.R. Part 2 (“Part 2”). With respect to the Part 2 Program, Business Associate will also be a qualified service organization as defined under Part 2.

2. **Regulatory References.** All references to regulatory Sections, Parts and Subparts in this Agreement are to Title 45 of the Code of Federal Regulations or Part 2 as in effect or as amended, and for which compliance is required, unless otherwise specified.

3. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in Sections 160.103, 164.304 and 164.501.

(a) Business Associate. “Business Associate” shall mean the party identified above as the “Business Associate”.

(b) Breach. “Breach” shall have the same meaning as the term “breach” in Section 164.402.

(c) Covered Entity. “Covered Entity” shall mean the County of Napa, a hybrid entity, and its designated covered components, which are subject to the HIPAA Rules.

(d) Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.

(e) Electronic Media. “Electronic Media” shall have the same meaning as the term is defined in Section 160.103.

(f) Electronic Protected Health Information. “Electronic Protected Health Information” (“EPHI”) is a subset of Protected Health Information and means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

(g) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(h) Individual. “Individual” shall have the same meaning as the term

“Individual” in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

(i) Master Agreement. “Master Agreement” shall mean the contract or other agreement to which this Exhibit is attached and made a part of.

(j) Minimum Necessary. “Minimum Necessary” shall mean the minimum amount of Protected Health Information necessary for the intended purpose, as set forth at Sections 164.502(b) & 164.514(d): *Standard: Minimum Necessary*.

(k) Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at Part 160 and Part 164, Subparts A and E.

(l) Protected Health Information. “Protected Health Information” shall have the same meaning as the term “protected health information” in Section 160.103, limited to the information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

(m) Required By Law. “Required by law” shall have the same meaning as the term “required by law” in Section 164.103.

(n) Secretary. “Secretary” shall mean the Secretary of the United States Department of Health and Human Services (“DHHS”) or his/her designee.

(o) Security Incident. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of personally identifiable information. A Security Incident includes the attempted or successful unauthorized access, use, disclosure, modification, or destruction of or interference with systems operations in an information system which processes Protected Health Information that is under the control of Covered Entity, or Business Associate of Covered Entity, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

(p) Security Rule. “Security Rule” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

(q) Subcontractor. “Subcontractor” means a subcontractor of Business Associate that creates, receives, maintains, or transmits Protected Health Information on behalf of the Business Associate.

(r) Substance Use Disorder Records. “Substance Use Disorder Records” means the subset of PHI that is records, as defined under Part 2, provided Covered Entity has advised Business Associate in writing that such PHI constitutes records as defined under Part 2.

(s) Unsecured Protected Health Information. “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in Section 164.402, limited to the information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

#### **4. Business Associate’s Obligations and Compliance with the HIPAA Privacy and Security Rules.**

(a) Business Associate acknowledges that it is directly required to comply with the HIPAA Rules and that Business Associate (including its subcontractors) may be held directly liable and subject to penalties for failure to comply. To the extent the Business Associate is to carry out one or more of Covered Entity’s obligations under Subpart E of

45 CFR Part 164 of the Privacy Rule, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

(b) Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by this Agreement, or as required by law.

(c) Business Associate shall not sell Protected Health Information.

## **5. Permitted Uses and Disclosures.**

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes specified in Attachment 1 to this Exhibit, which if completed and attached hereto is incorporated by reference, or as otherwise specified in the Master Agreement, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. Business Associate must make reasonable efforts to limit Protected Health Information to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.

(b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).

(e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).

(f) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 of the Privacy Rule if done by Covered Entity, except for the specific uses and disclosures set forth herein.

(g) Business Associate acknowledges that, with respect to Substance Use Disorder Records, Business Associate is obligated to comply with Part 2. Business Associate (i) shall use, disclose, and release Substance Use Disorder Records in accordance with Part 2 and (ii) if necessary, will resist in judicial proceedings any efforts to obtain access to Substance Use Disorder Records except as permitted by Part 2.

## **6. Appropriate Safeguards.**

(a) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information that is created, received,

maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to the Minimum Necessary.

(b) Safeguarding Electronic Protected Health Information. Business Associate agrees to comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information. Business Associate must secure all Electronic Protected Health Information by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with the National Institute of Standards Technology (NIST) Standards and Federal Information Processing Standards (FIPS) as applicable. Should Business Associate fail to comply with this provision, it agrees to hold harmless, defend at its own expense and indemnify Covered Entity in accordance with the terms of Section 9 of the Agreement, "Indemnification".

(c) Destruction of Protected Health Information on paper, film, or other hard copy media must involve either shredding or otherwise destroying the Protected Health Information so that it cannot be read or reconstructed.

(d) Should any employee or subcontractor of Business Associate have direct, authorized access to computer systems of Covered Entity that contain Protected Health Information, Business Associate shall immediately notify Covered Entity of any change of such personnel (e.g. employee or subcontractor termination, or change in assignment where such access is no longer necessary) in order for Covered Entity to disable the previously authorized access.

## **7. Reporting Unauthorized Uses and Disclosures.**

(a) Business Associate agrees to notify Covered Entity of any access, use or disclosure of Protected Health Information not permitted or provided for by the Agreement of which it becomes aware, including any breach as required at Section 164.410, or security incident,. Such notification will be made as soon as reasonably practicable and no later than 24 hours after discovery by telephone call at 707.253.4715, plus e-mail at Privacy.Officer@countyofnapa.org, and will include, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the Protected Health Information involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by Business Associate. Business Associate will also provide to Covered Entity any other available information that the Covered Entity is required to include in its notification to the Individual under Section 164.404(c) at the time of the initial report or promptly thereafter as the information becomes available.

(b) In the event of a request by law enforcement under Section 164.412, Business Associate may delay notifying Covered Entity for the applicable timeframe.

(c) A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.

(d) In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Agreement, it is understood and agreed that Business Associate is at all times acting as an independent



contractor in providing services pursuant to this Agreement and the Master Agreement.

**8. Mitigating the Effect of a Breach, Security Incident, or Unauthorized Access, Use or Disclosure of Unsecured Protected Health Information.**

(a) Business Associate agrees to mitigate, to the greatest extent possible, any harm that results from the breach, security incident, or unauthorized access, use or disclosure of Unsecured Protected Health Information by Business Associate or its employees, officers, subcontractors, agents, or other representatives.

(b) Following a breach, security incident, or any unauthorized access, use or disclosure of Unsecured Protected Health Information, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make this documentation available to Covered Entity.

(c) Except as required by law, Business Associate agrees that it will not inform any third party of a breach or unauthorized access, use or disclosure of Unsecured Protected Health Information without obtaining the Covered Entity's prior written consent. Covered Entity hereby reserves the sole right to determine whether and how such notice is to be provided to any Individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice. When applicable law requires the breach be reported to a federal or state agency or that notice be given to media outlets, Business Associate shall cooperate with and coordinate with Covered Entity to ensure such reporting is in compliance with applicable law and to prevent duplicate reporting, and to determine responsibilities for reporting.

**9. Indemnification.**

(a) Business Associate agrees to hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 8, above.

(b) Business Associate agrees to assume responsibility for any and all costs associated with the Covered Entity's notification of Individuals affected by a breach or unauthorized access, use or disclosure by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.

(c) Business Associate agrees to hold harmless, defend at its own expense and indemnify Covered Entity, including Covered Entity's employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party"), against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

(d) Survival. The obligations of Business Associate under this Section 9 shall survive this Agreement. Additionally, and notwithstanding anything to the contrary in this Agreement, any limitations of liability set forth in the Master Agreement, including Section 9 of the Software License and Master Services Agreement attached as an exhibit to the Master Agreement, shall be applicable to this Agreement.

**10. Individuals' Rights.**

(a) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under Section 164.524.

(b) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an Individual, and in the reasonable time and manner designated by the Covered Entity.

(c) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

(d) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 10(c) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

(e) Provided that Covered Entity has notified Business Associate as set forth in Section 11.(c) below, Business Associate agrees to comply with any restriction to the use or disclosure of Protected Health Information that Covered Entity agrees to in accordance with Section 164.522.

**11. Obligations of Covered Entity.**

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

**12. Agents and Subcontractors of Business Associate.**

(a) Business Associate agrees to enter into written agreements with any agent, subcontractor or vendor, to whom it provides Protected Health Information received from Covered Entity or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, that impose the same restrictions, conditions and requirements that apply through this Agreement to Business Associate with respect to

such information, including the requirement to notify the Business Associate as soon as reasonably practicable and no later than 24 hours of any instances of any breach, security incident, intrusion, or unauthorized access to or use or disclosure of Protected Health Information of which it becomes aware.

(b) Business Associate shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

**13. Audit, Inspection, and Enforcement.**

(a) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.

(b) With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of Protected Health Information to determine compliance with the terms of this Agreement. To the extent permitted by law, such disclosures shall be held in strictest confidence by Covered Entity. Business Associate shall promptly correct any violation of this Agreement found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under this Agreement.

**14. Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

**15. Term and Termination.**

(a) The terms of this Agreement shall remain in effect for the duration of all services provided by Business Associate under the Master Agreement and for so long as Business Associate remains in possession of any Protected Health Information received from Covered Entity, or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this Section 15 that it is not feasible to return or destroy all Protected Health Information.

(b) Upon termination of the Master Agreement, Business Associate shall recover any Protected Health Information relating to the Master Agreement and this Agreement in its possession and in the possession of its subcontractors, agents or representatives. Business Associate shall return to Covered Entity, or destroy with the consent of Covered Entity, all such Protected Health Information, in any form, in its possession and shall retain no copies.

(c) If Business Associate believes it is not feasible to return or destroy the Protected Health Information, Business Associate shall so notify Covered Entity in writing. The notification shall include: (1) a statement that the Business Associate has determined that it is not feasible to return or destroy the Protected Health Information in its possession, and (2) the specific reasons for such determination. Business Associate may retain only that Protected Health Information which is necessary for Business

Associate to continue its proper management and administration or to carry out its legal responsibilities. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the Protected Health Information, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Master Agreement and this Agreement shall be extended to any Protected Health Information for so long as Business Associate maintains such Protected Health Information, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the Protected Health Information infeasible.

(d) Covered entity may terminate the Master Agreement if it determines that Business Associate has violated a material term of this Agreement and Business Associate has not cured the violation as set forth in Section 2.9.(a) of Exhibit C of the Master Agreement.

(e) Survival. The obligations of Business Associate under this Section 15 shall survive this Agreement.

16. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Rules.

17. **Entire Agreement.** This Exhibit constitutes the entire HIPAA Business Associate Agreement between the parties, and supersedes any and all prior HIPAA Business Associate Agreements between them.

18. **Notices.**

(a) All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

(b) Any mailed notice, demand, request, consent, approval or communication that Covered Entity desires to give to Business Associate shall be addressed to Business Associate at the mailing address set forth in the Master Agreement.

(c) Any mailed notice, demand, request, consent, approval or communication that Business Associate desires to give to Covered Entity shall be addressed to Covered Entity at the following address:

Napa County Compliance and Privacy Officer  
2751 Napa Valley Corporate Dr. Suite B  
Napa, CA 94559  
707.253-4715

(d) For purposes of subparagraphs (b) and (c) above, either party may change its address by notifying the other party of the change of address.

19. **Lost Revenues; Penalties/Fines.**

(a) Lost Revenues. Business Associate shall make Covered Entity whole for any revenues lost arising from an act or omission in billing practices by Business Associate.

(b) Penalties/Fines for Failure to Comply with HIPAA. Business Associate shall

pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.

(c) Penalties/Fines (other). Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

## **HIPAA BUSINESS ASSOCIATE PROVISIONS**

### **ATTACHMENT 1 TO EXHIBIT E**

As provided in Paragraph 5 of Exhibit E of this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes specified below, or as otherwise specified in this Agreement and the Master Agreement authorizing functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

**EXHIBIT F**  
**SOFTWARE LICENSE AND MASTER SERVICES AGREEMENT (MSA)**



<b>Customer Name:</b>	Napa County Health and Human Services
<b>Contact Name:</b>	Carolina Harry
<b>Address:</b>	2751 Napa Valley Corporate Drive, Napa, CA 94559
<b>Phone Number:</b>	707-299-2116
<b>Email Address:</b>	carolina.harry@countyofnapa.org
<b>Effective Date:</b>	

This Software License and Master Services Agreement (this "Agreement") is made as of the Effective Date set forth above between Credible Behavioral Health, Inc. ("Vendor"), a Delaware corporation having its principal place of business at 315 Deaderick St., Suite 2300, Nashville, Tennessee 37238, and the Customer identified above.

**1. Definitions.** Capitalized terms used and not defined in this Agreement or in a Service Order Form have the meanings set forth below and in the Definitions.

(a) **Affiliate.** "Affiliate" means, with respect to a particular person or entity, another person or entity that directly or indirectly controls, is controlled by or is under common control with that particular person or entity by another person or entity. For this definition, "control" means the ability to direct the management and policies of another person or entity, either through ownership, by contract, or by law.

(b) **BAA.** "BAA" means the business associate agreement, attached hereto as Exhibit A and incorporated herein and made a part of this Agreement.

(c) **Billing Commencement Date.** "Billing Commencement Date" means the earlier of the actual completion of Customer training or the scheduled date for completion of Customer training that is set forth in the Project Plan (as adjusted for any delays not caused by Customer).

(d) **Customer Data.** "Customer Data" means any of Customer's information, documents, or electronic files that are provided to Vendor hereunder.

(e) **Documentation.** "Documentation" means any online or printed user manuals, functional specifications attached to this Master Agreement or Statements of Work that are provided to Customer by Vendor, and any derivative works of the foregoing.

(f) **Error.** "Error" means any reproducible material failure of the Software to function in accordance with its Documentation.

(g) **Go-Live Date.** "Go-Live Date" means the moment in time that Customer first logs into the Software for actual clinical documentation or file review/access for the purpose of clinical and/or billing functionality.

(h) **HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act (commonly referred to as the "HITECH Act"), and the regulations promulgated under the foregoing from time to time by the United States Department of Health and Human Services, all as amended from time to time.

(i) **Implementation Scope.** "Implementation Scope" means the scope of services and project duration, described in the Service Order Form, that is included in the implementation price for the Customer implementation. The Implementation Scope will be determined by Vendor based on the scope that it deems appropriate for an organization with Customer's size and lines of business.

(j) **Named User.** "Named User" means a named individual to whom Customer has granted access to use the Software on Customer's behalf.

(k) **P1 Error.** "P1 Error" means an Error in the Software that (i) causes all of Customer's Named Users at a location or facility to be unable to access or use any of the critical functions of the Software, and for which no workaround is available or (ii) an Error in the Software that poses a material risk of a Breach of PHI that is Unsecured Protected Health Information (as defined in the BAA).

(l) **P2 Error.** "P2 Error" means an Error in the Software that causes either (i) some of Customer's Named Users to be unable to access or use any of the critical functions of the Software, or (ii) some, but not all, of the critical functions of the Software to be inaccessible or non-functional for all of Customer's Named Users at a location or facility, in either case where there is no workaround available.

(m) **P3 Error.** "P3 Error" means an Error in the Software is not a P1 Error or P2 Error.

(n) **Product Enhancements.** "Product Enhancements" means any new features, new modules, or other extensions or modifications of the Software requested by Customer and developed by Vendor pursuant to a Service Order Form or Service Change Form. "Product Enhancements" does not include new features, new modules, or extensions or modifications of the Software to the extent incorporated into a general Update.

(o) **Service Order Form.** "Service Order Form" means a document signed by authorized representatives of both parties and itemizing the Software and services purchased by Customer thereunder.

(p) **Software.** "Software" means those computer programs designated on one or more Service Orders Forms or Service Change Forms to be provided to Customer by Vendor hereunder, including any Product Enhancements and Updates relating thereto that may be provided hereunder or thereunder, and any derivative works of the foregoing.

(q) **Support.** "Support" means the ongoing services by Vendor to support the Software as defined in Section 3 below.

(r) **Update.** "Update" means any patch, bug fix, release, version, modification or successor to the Software.

**2. License**

(a) **License.** During the Term and subject to the terms and conditions of this Agreement, Vendor hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right and license to access and use the Software in object code form for its

internal business purposes only. The license in the preceding sentence is limited to the number of Named Users for which Customer has paid in accordance with the applicable Service Order Form or Service Change Form, and to Customer's external auditors to the extent required to perform an audit of Customer or its facilities. All rights in and to the Software not expressly granted herein are reserved to Vendor.

(b) License and Use Restrictions. Customer shall not, directly, indirectly, alone, or with another party, (i) copy, disassemble, reverse engineer, or decompile the Software; (ii) modify, create derivative works based upon, or translate the Software; (iii) transfer or otherwise grant any rights in the Software in any form to any other party; (iv) take any action or omit to take any action constituting information blocking as defined in 42 U.S.C. § 300jj-52 and regulations thereunder in connection with this Agreement, nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder.

(c) Customer Feedback. Vendor shall have, and Customer hereby grants to Vendor, a perpetual, worldwide, transferable, sublicensable, irrevocable, royalty-free right and license to use, modify, or incorporate into the Software, Support, Product Enhancements, or any other Vendor products and services any ideas, suggestions, enhancements, recommendations, or other feedback provided by or on behalf of Customer.

(d) Customer Data. Customer owns all right, title and interest in the Customer Data. Customer hereby grants to Vendor, a non-exclusive, non-transferable, non-sublicensable right and license to use, copy, transmit, modify and display the Customer Data solely for purposes of Customer's use of the Software and for providing benchmarking services and reports that do not uniquely identify Customer. Vendor shall not use the Customer Data except as necessary to perform its obligations hereunder or otherwise permitted or required by this Agreement, including the BAA.

(e) Named Users; Security. Customer is solely responsible for maintaining the security of all usernames and passwords granted to it or its Named Users, for the security of its information systems used to access the Software, and for its users' compliance with the terms of this Agreement. Vendor has the right at any time to terminate access to any user if Vendor reasonably believes that such termination is necessary to preserve the security, integrity, or accessibility of the Software or Vendor's network.

### **3. Support and Training.**

(a) Services Generally. Except as set forth herein, Vendor shall provide services and support as specified on the applicable Service Order Form or Service Change Form. Support does not include, and Vendor is not obligated to provide services for, (i) development of Product Enhancements, or (ii) any Service Change (as defined in Section 4(b) below).

(b) Updates. Vendor shall deliver to Customer any Updates of the Software at no charge unless the Update includes third party components for which additional charges apply.

(c) Customer System Administrators. Customer shall at all times have at least one and no more than five designated Customer System Administrators, who will be the primary points-of-contact between Vendor and Customer for support issues. Customer System Administrators must also be Named Users. Customer may only change a Customer System Administrator upon written notice (which may be by email) to Vendor.

(d) Support Procedures. Customer shall route all Software-related support questions to a Customer System Administrator. If the Customer System Administrator is unable to resolve the issue, then the Customer System Administrator may contact Vendor for support. Support is available during normal business hours as set

forth in the Service Order Form. After-hours telephone support is available to Customers for P1 Errors.

(e) Error Response Times. In the event of a P1 error, Vendor shall provide a preliminary response to Customer within 60 minutes of its awareness of the Error and shall use its reasonable efforts to provide updates to Customer every three hours until the Error is resolved. In the event of a P2 Error, Vendor shall provide a preliminary response to Customer within 4 hours during normal business hours or by 10 AM Central Time the next business day if reported after normal business hours. In the event of a P3 Error, Vendor shall provide a preliminary response to Customer within one business day of its awareness of the P3 Error and shall use its reasonable efforts to provide updates to Customer once every week until the P3 Error is resolved.

(f) Error Correction Times. Vendor shall use commercially reasonable efforts to correct all Errors. For P1 Errors, Vendor shall use its best efforts to correct the P1 Error or provide a reasonable workaround within 4 hours of its awareness of the P1 Error. For P2 Errors, Vendor shall use its best efforts to correct the P2 Error or provide a reasonable workaround within 3 business days of its awareness of the P2 Error. Customer shall provide such access, information, and support as Vendor may reasonably require in the process of resolving any Error.

(g) Support Exclusions. Vendor is not obligated to correct any Errors or provide any other support to the extent such Errors or need for support were created in whole or in part by:

(i) the acts, omissions, negligence or willful misconduct of Customer, including any unauthorized modifications of the Software or its operating environment;

(ii) any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of Vendor's firewall, but not excluding failures or defects of Vendor's connectivity or hosting vendors);

(iii) Customer's use of the Software other than in accordance with the Software's documentation; or

(iv) a Force Majeure Event.

(h) Support Fees. Vendor has the right to bill Customer at its standard services rates for any support issues excluded by Section 3(g) above.

(i) Hosting Service Levels. Vendor shall provide hosting for the Software. Provided that Customer is current with respect to all amounts owing to Vendor hereunder, Vendor shall comply with the following service level agreement with respect to the production environment:

(i) Vendor shall provide Customer with Software availability ("Uptime") of at least at 99% during any calendar month beginning the first full calendar month after the Go-Live Date, calculated on a monthly basis and subject to the exceptions below.

(ii) The Software is considered unavailable for any period of time (measured in minutes) ("Downtime") during which the Software is materially impaired such that Customer or its Named Users cannot access the Software on Vendor's servers. Downtime does not include periods of time during which the Software is unavailable as a result of (a) Scheduled Maintenance, (b) the acts, omissions, negligence or willful misconduct of Customer, (c) any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of Vendor's firewall), (d) unplanned maintenance to implement urgent security patches or to address other urgent information security matters, or (e) a Force Majeure Event.



(iii) "Scheduled Maintenance" means any planned maintenance by Vendor that might cause the Software to be unavailable to Customer or its Named Users. Vendor shall not perform Scheduled Maintenance between the hours of 7:00 AM and 9:00 PM Central Time. Vendor shall make commercially reasonable efforts to notify Customer by e-mail at least 3 business days in advance of any Scheduled Maintenance.

(iv) For any calendar month in which Uptime is less than 99%, Vendor shall issue a credit (a "Service Level Credit") against Customer's next invoice in an amount determined according to the following percentages of monthly recurring charges for the affected Software (excluding any one-time fees that Customer is paying on a monthly amortized basis):

Uptime	Credit
At least 90% but less than 99%	5%
At least 80% but less than 90%	25%
Less than 80%	50%

(j) Limitation of Remedies. Correction of Errors as defined in this Agreement and the Service Level Credits as set forth above are Customer's sole remedies for any Errors in the Software or any failure by Vendor to meet the Uptime commitment set forth herein, except for the termination remedy set forth in Section 6(c) below.

(k) Training. Vendor shall provide training as specified on the applicable Service Order Form or Service Change Form.

#### 4. Implementation

(a) Project Plan. Upon execution of the Service Order Form, the parties shall create and agree upon a plan in writing that is consistent with the Implementation Scope for the completion of the project (the "Project Plan"). Vendor and Customer shall develop and implement the Software in accordance with this Project Plan.

(b) Service Changes. Customer may request changes to a Service Order Form or Project Plan by delivering a written statement of the desired changes (a "Service Change Request"). Upon receipt of a Service Change Request, if Vendor is willing to consider implementing the changes, Vendor shall prepare a written statement including any estimated impact of the requested change on costs and on the Project Plan (a "Service Change Form"). Once a Service Change Form has been executed by authorized representatives of both parties, then Vendor shall develop or implement the Software in accordance with the original Service Order Form as amended by the Service Change Form, and the executed Service Change Form will be deemed an amendment to, and a part of, the Service Order Form to which it relates. For further clarification, Vendor is not obligated to implement changes to a Service Order Form other than pursuant to a Service Change Form executed by authorized representatives of both parties.

(c) Adjustments for Customer Delays. The Implementation Scope and Project Plan are based on Vendor's determination of best practices for a successful implementation. If Customer wishes to delay the implementation due to no fault of Vendor, Vendor may begin invoicing Customer on the Billing Commencement Date. Customer acknowledges that if an implementation is delayed, Vendor may redeploy the current project team to another implementation and cannot guarantee the same team will be available to return to the project once it resumes. Additionally, if through no fault of Vendor, the timeline exceeds what was specified in the Implementation Scope, Vendor will prepare a Statement of Work for the remaining time required and Customer shall pay for the additional hours at the then current time and materials rates.

#### (d) Product Enhancements

(i) Customer may request Product Enhancements, and Customer shall pay for the development of any Product Enhancements that Vendor agrees to develop. Vendor is not obligated to develop any Product Enhancements except pursuant to a mutually-agreed upon Service Order Form, Service Change Form or Statement of Work specifying the Product Enhancements to be developed and any applicable pricing, if other than standard time and materials.

(ii) Upon execution of a Service Order Form, Service Change Form or Statement of Work specifying Product Enhancements, the parties shall adhere to the process set forth in this Section for designing, developing, implementing, and testing the Product Enhancements.

(iii) At no charge to Customer, Vendor shall modify the Software to implement any changes mandated by Federal regulatory changes that are applicable to all customers.

(iv) To the extent that a Customer requires a modification to the Software to implement changes mandated by a payor or MCO, that modification will be treated as a Product Enhancement for all affected customers, and Vendor shall provide that Product Enhancement at its then current time and materials rates, and Customer and all other customers affected by that same change shall pay an equal pro rata portion of the total cost.

#### 5. Financial Terms

(a) Fees. In return for the products, services and licenses provided by Vendor to Customer hereunder and pursuant to the applicable Service Order Form or Service Change Form, Customer shall pay to Vendor the fees in the amount and on the schedule set forth on the Service Order Form or Service Change Form. Unless specified to the contrary on a Service Order Form or Service Change Form, monthly recurring fees will commence upon the Billing Commencement Date; if the Billing Commencement Date is not the first of the month, the fees for that month will be pro-rated based on the number of days remaining in that month. Fees for add-on modules will commence upon the Go-Live Date for each such modules. All dollar amounts refer to U.S. dollars.

(b) Expenses. Customer shall reimburse Vendor for its reasonable and necessary expenses (including travel and travel-related expenses).

(c) Billing Practices. Vendor bills all time-based charges in quarter hour increments. For services provided on-site on Customer premises that require travel of more than 50 miles, Customer shall pay for a minimum of 8 hours for each such day of services, plus travel time.

(d) Payment Terms. Vendor shall invoice Customer monthly in advance for all recurring charges, which invoices will also include all non-recurring charges and expenses incurred since the previous invoice. Customer shall pay all Vendor invoices within 30 days of the invoice date. If Customer is delinquent in payment of any portion of an invoice that it has not disputed in good faith, Vendor may, in addition to other remedies it may have, including termination, limit any or all of Customer's Named Users to read-only access to the Software. Customer agrees to pay interest on delinquent amounts at the rate of one and one half percent (1½%) per month (or, if lower, the maximum amount permitted by law) that a payment is overdue. If Vendor takes any legal action to collect on delinquent amounts, Customer shall reimburse Vendor for its actual costs incurred in pursuing such action, including but not limited to legal fees and court costs.

(e) Taxes. Customer shall pay or shall reimburse Vendor for all sales taxes and other taxes, however characterized by the taxing authority, based upon the license fees or other charges under this Agreement or otherwise incurred on account of

Customer's use of the Software, except for any taxes based upon Vendor's net income or gross receipts or for any franchise or excise taxes owed by Vendor. If Customer is a tax-exempt organization, then, upon Vendor's receipt of proof of such status, then Vendor shall not charge Customer for any taxes from which Customer is exempt.

(f) Product Innovation Increases. In order to support Vendor's ongoing research and development of the Software, commencing 18 months from the Term Start Date, Customer's Monthly Recurring Charges will automatically increase on an annual basis by 3.50 % of the monthly Software enterprise fee.

## **6. Term and Termination**

(a) Term. This Agreement commences on the Effective Date hereof and will continue for an initial term of 60 months from the latter of the Effective Date or the Term Start Date set forth in the initial Service Order Form (the "Initial Term"). Thereafter, this Agreement will automatically renew for an unlimited number of 60 month renewal terms (each, a "Renewal Term"), unless either party notifies the other party of its intention not to renew at least 90 days in advance of the expiration of the then current term. The "Term" of this Agreement shall be the Initial Term and any Renewal Terms.

(b) Termination for Cause. Either party can terminate this Agreement for cause upon written notice to the other party:

(i) if a party fails to pay the other party any delinquent amounts owed to the other party hereunder within 10 days of written notice by the other party specifying the amounts owed;

(ii) in the case of Vendor, immediately upon any breach by Customer of Section 2(b) above;

(iii) if the other party has committed any other material breach of its obligations under this Agreement (including, without limitation, the BAA) and has failed to cure such breach within 45 days of written notice by the non-breaching party specifying in reasonable detail the nature of the breach (or, if such breach is not reasonably curable within 45 days, has failed to begin and continue to work diligently and in good faith to cure such breach); or

(iv) upon the institution of bankruptcy or state law insolvency proceedings against the other party, if such proceedings are not dismissed within 30 days of commencement.

(c) Termination for Repeated SLA Violations. If Vendor fails to achieve the Service Level Agreements specified in Section 3(i) above for any 3 consecutive months, or for any 6 months during any 12 consecutive month period, then Customer has the right to terminate this Agreement on 90 days prior written notice delivered at any time during the 60 day period immediately following the month in which the termination right first arises.

(d) Obligations Upon Termination. Upon termination of this Agreement:

(i) To the extent that Customer has not obtained an electronic copy of its Customer Data through any export functionality of the Software and requests an electronic copy of its Customer Data within 30 days of termination, then Vendor shall send Customer an electronic copy of its Customer Data in a structured file export within 30 days of receipt of the request and Customer shall pay Vendor a fee for such export of \$150 per hour;

(ii) Vendor shall immediately terminate access to the Software by Customer and its Named Users; and

(iii) if the Agreement is wrongfully terminated by Customer, or if Vendor terminates the agreement due to a breach by Customer, then, in addition to any other remedies that may be available to Vendor, Customer shall pay Vendor a termination fee equal to the then current minimum monthly

recurring fees multiplied by the number of months remaining in the then current term.

## **7. Confidentiality**

(a) Definition of Confidential Information. "Confidential Information" means any and all tangible and intangible information (whether written or otherwise recorded or oral) of a party that: (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or (B) the disclosing party designates as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation: (i) nonpublic information relating to a party's technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (ii) third-party information that Company is obligated to keep confidential; (iii) the material terms and conditions of this Agreement; and (iv) any nonpublic information relating to any activities conducted hereunder.

(b) Exclusions. Notwithstanding the above, the term "Confidential Information" does not include any information that is:

(i) readily discernible from publicly-available products or literature; or

(ii) approved for disclosure by prior written permission of an executive officer of the disclosing party; or

(iii) protected health information, as defined under HIPAA (because such information is subject to the provisions of the BAA).

(c) Confidentiality of Confidential Information. Each party receiving Confidential Information from the other party shall maintain the confidentiality of the Confidential Information. The receiving party shall only use or disclose to any third party the disclosing party's Confidential Information (i) for Vendor or Customer to perform its obligations or exercise its rights under this Agreement and when the third party is required to protect the confidentiality of the Confidential Information, (ii) in accordance with Section 7(d) or 7(e), or (iii) with the disclosing party's express written authorization.

(d) Required Disclosures. A receiving party may disclose Confidential Information of the disclosing party as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that the receiving party (i) gives the disclosing party reasonable written notice to allow it to seek a protective order or other appropriate remedy (except to the extent compliance with the foregoing would cause the receiving party to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) and uses its best efforts to obtain confidential treatment for any Confidential Information so disclosed.

(e) Communications. Notwithstanding anything to the contrary, this Agreement shall not be construed to prohibit or restrict any communication in a manner that violates the Condition of Certification at 45 C.F.R. § 170.403(a). Further, Customer shall not impose any prohibition or restriction on any third party that prohibits or restricts any communication in a manner that violates the Condition of Certification.

(f) Return of Information. If a disclosing party so requests at any time, the receiving party shall return promptly all copies, extracts, or other reproductions in whole or in part of the Confidential Information in its possession.

(g) Survival. The parties hereto covenant and agree that this Section 7 will survive the expiration, termination, or cancellation of

this Agreement for a period of 3 years, except for Confidential Information described in Section 7(a)(A), with respect to which this Section will survive the expiration, termination, or cancellation of this Agreement for so long as such Confidential Information remains a trade secret.

## **8. Indemnification**

(a) Indemnification. Each party shall indemnify the other, the other's Affiliates, and all of their stockholders, officers, directors, agents, and employees (each, an "Indemnified Party") at all times from and after the Effective Date against any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, including reasonable legal expenses, arising out of or relating to any claim by an unAffiliated third party (i) alleging that the use in accordance with this Agreement of the Software or the services infringes or misappropriates any intellectual property rights of the unAffiliated third party (only in the case of Vendor as the indemnifying party), (ii) alleging that Vendor's use of the Customer Data, in accordance with this Agreement, infringes or misappropriates any intellectual property or privacy rights of the unAffiliated third party (only in the case of Customer as the indemnifying party), (iii) alleging negligent or other improper acts or omissions in the provision of health care items or services to patients (only in the case of Customer as the indemnifying party); or (iv) that arises or is alleged to have arisen solely out of the intentional misconduct of the indemnifying party (each a "Third Party Claim"). Notwithstanding the foregoing, if the Software becomes the subject of such a claim of infringement then Vendor may, at its option: (x) procure for Customer the right to use the Software free of any liability for infringement; (y) replace or modify the Software to make it non-infringing but with reasonably comparable functionality; or (z) if Vendor determines that the previous two options are not available on a commercially reasonable basis, grant to Customer a credit for the unused portion of any prepaid access rights fees and refund any deposits paid by Customer for the affected Software. Furthermore, Vendor has no liability for, and no obligation to indemnify Customer against, any Third Party Claim arising or alleging based in whole or in part on use of the Software other than as specified in this Agreement, or its documentation, including use with third party hardware and software products not specifically authorized by Vendor.

(b) Indemnification Process. The Indemnified Party shall promptly notify the indemnifying party in writing of any Third Party Claim, stating the nature and basis of the Third Party Claim, to the extent known. The indemnifying party shall have sole control over the defense and settlement of any Third Party Claim, provided that, within fifteen (15) days after receipt of the above-described notice, the indemnifying party notifies the Indemnified Party of its election to so assume full control. The foregoing notwithstanding, the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ counsel at its own expense to assist in the handling of such claim, except that the Indemnified Party's legal expenses in exercising this right shall be deemed legal expenses subject to indemnification hereunder to the extent that (x) the indemnifying party fails or refuses to assume control over the defense of the Third Party Claim within the time period set forth above; (y) the Indemnified Party deems it reasonably necessary to file an answer or take similar action to prevent the entry of a default judgment, temporary restraining order, or preliminary injunction against it; or (z) representation of both parties by the same counsel would, in the opinion of that counsel, constitute a conflict of interest. The Indemnifying Party shall not settle any such Third Party Claim without the written consent of the Indemnified Party, except for a complete settlement requiring only

the payment of money damages to be paid by the Indemnifying Party.

(c) Sole Remedy. Indemnification pursuant to this Section is the parties' sole remedy for any third party claim against the other party relating to the matters subject to indemnification.

## **9. Disclaimers and Limitations**

(a) Disclaimer of Warranties. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, VENDOR MAKES NO, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, THE SERVICES PROVIDED OR THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE OF THE SOFTWARE. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, VENDOR DISCLAIMS ANY WARRANTY THAT THE SOFTWARE, THE SERVICES PROVIDED BY VENDOR, OR THE OPERATION OF THE SOFTWARE ARE OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED. VENDOR MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

(b) Disclaimer of Consequential Damages. VENDOR HAS NO LIABILITY WITH RESPECT TO THE SOFTWARE, SERVICES, ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND THE COST OF COVER) EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) Limitations of Remedies and Liability. EXCEPT FOR ANY CLAIMS SUBJECT TO INDEMNIFICATION HEREUNDER, CUSTOMER'S SOLE REMEDIES FOR ANY ERROR CONSTITUTING A BREACH OF THIS AGREEMENT BY VENDOR ARE (i) CORRECTION OF ERRORS AS SET FORTH HEREIN, (ii) IF APPLICABLE, THE REPROCESSING OF ANY DATA THAT IS INCORRECT AS A RESULT OF THE BREACH, AND (iii) APPLICATION OF ANY APPLICABLE SERVICE LEVEL CREDITS AS DESCRIBED IN THIS AGREEMENT.

(d) EXCEPT FOR SERVICE LEVEL CREDITS APPLIED AS DESCRIBED ELSEWHERE IN THIS AGREEMENT, VENDOR'S TOTAL LIABILITY TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, INDEMNIFICATION, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, IS LIMITED TO ALL FEES PAID TO VENDOR BY THE CUSTOMER IN RESPECT OF USER LICENSES FOR THE SOFTWARE DURING THE SIX MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY.

## **10. General**

(a) Ownership of Intellectual Property. Vendor owns all right, title and interest in and to the Software and Documentation as well as all Vendor trademarks and intellectual property rights in connection therewith. To the extent that such rights do not automatically vest in Vendor as works made for hire, Customer hereby assigns any and all right, title and interest, including any intellectual property rights, it may have or acquire with respect to the Software and Documentation, and Customer agrees, at Vendor's expense, to take any and all actions reasonably requested by Vendor to secure such rights for Vendor. Customer

shall not challenge Vendor's ownership of the Software or Documentation nor any part thereof.

(b) Promotional Materials. Either party may include statements, and may use the other party's name and logos, in its website, commercial advertisements and promotional materials for the sole purpose of indicating that Customer is a user of the Software.

(c) Non-Solicitation. Customer shall not, during and for 2 years after the termination or expiration of this Agreement, by either party and regardless of reason, hire or attempt to hire, directly or indirectly, any person who, during the previous twelve months, was an employee of Vendor. If Customer breaches this paragraph, Customer shall pay Vendor liquidated damages in the amount of six months of the employee's gross compensation. The preceding liquidated damages remedy is in addition to, and not in lieu of, any other remedy that Vendor may have in law or in equity.

(d) No Penetration Testing. Customer acknowledges and agrees that certain laws prohibit any unauthorized attempt to scan, test, or penetrate Vendor's computer systems. In no event shall Customer or any third party acting on its behalf conduct any testing, penetration testing, "white hat" hacking, scanning, or intrusion or attempted intrusion into Vendor's system(s), platform, software, and/or information technology security processes ("Testing") without the express prior written consent of an authorized officer and General Counsel of Vendor in each instance.

(e) Removed.

(f) Force Majeure. "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the obligations of the other party (the "Performing Party") under this Agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party (including, but not limited to, any natural or human-made disaster, public health emergency, public safety incident, war, terrorist attack, civil insurrection, strike or other labor unrest, telecommunication or internet service interruption, or act of military, civil, or regulatory authority), and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. "Force Majeure Event" does not include economic hardship, changes in market conditions, and insufficiency of funds and does not excuse Customer's non-payment of amounts due under this Agreement. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this Agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event.

(g) Assignment. Customer shall not assign any of its rights under this Agreement, except with the prior written consent of Vendor. The preceding sentence applies to all assignments of rights, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law or any other manner. Any change of control transaction is deemed an assignment hereunder. Any purported assignment of rights in violation of this Section is void.

(h) Notices. Notices under this Agreement shall be in writing and sent to Vendor at Attn: Chief Financial Officer, Qualifacts Systems, LLC, 315 Deaderick St., Suite 2300, Nashville, Tennessee 37238, and to Customer's Contact at the address as set forth at the top of page one of this Agreement. Such notices

shall be deemed given (i) when personally delivered, (ii) on the third business day after deposit, properly addressed and postage pre-paid, when sent by certified or registered U.S. mail to the address provided herein, or (iii) on the next business day when sent with next-business-day instruction by recognized overnight document delivery service to the address provided herein.

(i) Nature of Relationship. Vendor shall perform this Agreement as an independent contractor to Customer, and nothing contained herein shall be deemed to create any agency or other relationship between the parties or any of their Affiliates. Neither party shall have the right, power, or authority under this Agreement to create any duty or obligation on behalf of the other party.

(j) Governing Law; Venue. The laws of the State of Tennessee (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Except as set forth in Section 10(k) below, any claims or actions regarding or arising out of this Agreement must be brought exclusively in a court of competent jurisdiction sitting in Nashville, Tennessee, and each party to this Agreement submits to the jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this Agreement. Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to (i) the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any state or federal court sitting in Nashville, Tennessee; and (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

(k) Arbitration. Any controversy or claim arising out of or relating to this Agreement, or any breach thereof, must be resolved by confidential binding arbitration in Nashville, Tennessee in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Either party may, without inconsistency with this agreement to arbitrate, seek from a court any provisional remedy that may be necessary to protect trademarks, copyrights, or other rights or property pending the establishment of the arbitral tribunal or its determination of the merits of the controversy. The parties agree that the arbitrator has the power to award all costs of the arbitration, including reasonable attorneys' fees and expenses, to the prevailing party.

(l) Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the unsuccessful party shall pay to the successful party its reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled.

(m) Waiver. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of, any right or remedy as to subsequent events.

(n) Severability. If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then (i) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected; (ii) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held wholly or partly invalid or unenforceable would be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in



conformity with the parties' intent as manifested herein; and (iv) if the ruling, and/or the controlling principle of law or equity leading to the ruling, subsequently is overruled, modified, or amended by legislative, judicial or administrative action, then the provision(s) in question as originally set forth in this Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

(o) Entire Agreement. This Agreement (including, without limitation, the BAA) and any Service Order Forms, Service Change Forms and Statements of Work hereunder, constitute the final agreement between the parties. In the event of any conflicts between this Agreement, a Service Order Form, a Service Change Form and/or a Statement of Work, the order of precedence is the order set forth in this sentence, except to the extent that the conflicting document expressly states its intention to override a specific provision of the controlling document. To the extent of any conflict between a provision of the BAA and any other provision of this Agreement, the BAA provision shall control. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than any that are expressly stated in this Agreement. Further, by executing this Agreement and any Service Order Form or Service Change Form, the parties expressly acknowledge and intend that the terms contained in such documents related to the content and manner of a request for access, exchange, or use of electronic health information, including any and all terms related to fees, reflect the parties' mutual agreement (in an arms' length transaction without coercion) and meet the "content" and "manner requested" conditions of the Content and Manner Exception at 45 C.F.R. §§ 171.301(a) and (b)(1), respectively.

(p) Amendments. The parties can amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement. Notwithstanding the foregoing, in

the event that Vendor reasonably determines that a change in a statute, regulation or other law requires an amendment to this Agreement, then Vendor may amend this Agreement as necessary to bring this Agreement into compliance with the law by delivering written notice to Customer. The amendment shall be effective upon the earlier of the effective date of the change in law or a date at least 60 days after delivery of the written notice. In the event that Customer objects to the amendment, Customer may terminate this Agreement upon 60 days advance written notice to Vendor unless Vendor agrees to withdraw the amendment.

(q) No Third Party Beneficiaries. No provision of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever, and any implication to the contrary is expressly disclaimed by each party.

(r) Survival of Certain Provisions. Each party hereto covenants and agrees that the provisions in Sections 1, 2(b), 9, and 10 in addition to any other provision that, by its terms, is intended to survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.

(s) No Federal Claims. Both parties agree that the Software is proprietary operating/vendor software as that term is used in of 45 CFR 95.617(c) and is not subject to any state or federal claims or rights.

(t) Counterparts. This Agreement may be executed and delivered by facsimile or other electronic means in separate counterparts, each of which shall constitute an original, but all such counterparts shall constitute one and the same instrument. Manually-executed counterparts may be delivered in faxed or scanned electronic form, each of which (whether originally executed or such a faxed or scanned electronic document) shall be deemed an original, and all of which together shall constitute one and the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart hereof signed by each of the parties.

(u) Authorized Representatives. The individual signing on behalf of each party below represents and warrants to the other party that such individual is authorized to enter into this contract on behalf of, and to bind, the party for which he or she is signing.

## NAPA COUNTY HEALTH AND HUMAN SERVICES

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

Print: Ryan Gregory

Title: Chair, Napa County Board of Supervisors

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

## CREDIBLE BEHAVIORAL HEALTH, INC.

By: 

Print: JEREMY LANDA

Title: CFO

Date: 9/9/2022