

## FONEMED SERVICES AGREEMENT

**THIS SERVICES AGREEMENT** ("Agreement") is made as of January 23, 2024, ("Effective Date") **BY AND BETWEEN** San Bernardino County of 150 South Lena Road, San Bernardino, CA 92415 (Client) and Fonemed, LLC of 3 Lincoln Drive, Ventura, CA 93001 ("Fonemed") (Client and Fonemed each a "Party" and collectively the "Parties").

The Parties agree as follows:

1. **Schedules, Attachments, Scopes of Work.** The provisions of all Schedules, Attachments, Scopes of Work, and Addendums are incorporated by reference into the terms and conditions of this Agreement, whether created now or subsequent to execution of this Agreement. Such documents, to the extent they are applicable, shall include, but are not limited to:
  - [Schedule I, General Provisions](#)
  - [Schedule II, Service Statements of Work](#)
  - [Schedule III, Client Specific Provisions](#)
  - [Schedule IV, HIPAA/HITECH Business Associate Agreement](#)
2. **Services.** Fonemed will provide such services to Client in accordance with the respective Statement(s) of Work defined in Schedule II. Any additional services or changes to existing services are documented in Schedule III as special provisions. Client remains responsible for the care provided to patients/members. To the extent any Services provided by Fonemed represent billable services to third party payors, Client is solely and exclusively responsible for the preparation and submission of claims for reimbursement to such third-party payors, collection of any patient financial responsibility, and medical coding.
3. **Make a selection: Nurse Triage & Advice** - ☐ **24/7** or ☐ **After Hours**
4. **Go-Live Date: February 1, 2024**
5. **Contract Administration.** Each Party assigns the following individual(s) as contacts for administration of this Agreement.

**Fonemed**

**Name:** Isabel Attigliato  
**Title:** Contracts Specialist  
**Email:** [Isabel.attigliato@fonemed.com](mailto:Isabel.attigliato@fonemed.com)  
**Phone:** 800-366-3633 ext. 2266

**Client**

**Name:** Karla Rosales  
**Title:** Program Coordinator  
**Email:** [karla.rosales@dph.sbcounty.gov](mailto:karla.rosales@dph.sbcounty.gov)  
**Phone:** 909-531-1795

6. **Account Administration.** Each Party assigns the following individual(s) as contacts for account management matters (i.e., billing, services).

**Fonemed**

**Name:** Todd Foote  
**Title:** Director of Sales & Marketing  
**Email:** [Todd.foote@fonemed.com](mailto:Todd.foote@fonemed.com)  
**Phone:** (800)366-3633 ext. 5240

**Client**

**Name:** Karla Rosales  
**Title:** Program Coordinator  
**Email:** [karla.rosales@dph.sbcounty.gov](mailto:karla.rosales@dph.sbcounty.gov)  
**Phone:** 909-531-1795

- 1. Assurances.** Client agrees to provide Fonemed with requested implementation information from Fonemed's applicable Client Information Form in a timely manner for Fonemed to provide Services to Client and its patients, members, or other beneficiaries. Client expressly acknowledges that Fonemed's ability to provide these Services is a function of the Client's performance of its obligations under this Agreement including providing client intake and other implementation information that is complete and accurate. Services may be delayed or rendered impossible to deliver if, Client fails to fulfill its obligations under this Agreement; any such failure by the Client shall in no way relieve the Client of its obligation to pay fees as outlined in this Agreement.
- 2. Professional Licensure.** Throughout the term of this Agreement, Fonemed represents and warrants that it and, as applicable, its individual healthcare practitioners furnishing these Services to Client's patients are and will remain: 1) duly licensed, certified and/or otherwise qualified to provide services hereunder, with appropriate training, education, and experience in their particular field and 2) appropriately licensed in the applicable state(s). All Registered Nurses Fonemed uses to provide Services under this Agreement shall be licensed in the State where the patient is located or otherwise meet licensure requirements and shall possess all skills and qualifications necessary to provide the Services hereunder. Nurse Qualifications and Performance of Services: Fonemed Registered Nurses are licensed, certified, or registered as verified through a credentialing process, in accordance with applicable federal, state, and local laws. Fonemed Registered Nurses are competent and fit to perform the contracted services, as assessed through a privileging process.
- 3. Confidential Information, Ownership of Data.** "Intellectual Property" means any patent, copyright, trademark, trade name, service mark, service name, brand mark, brand name, logo, corporate name, internet domain name, industrial design, registrations or pending applications thereof, any know-how, trade secret, trade right, formula report, membership list, contract, marketing data, computer program, software, database, application, and license or other contract relating to any of the Services. Fonemed shall own all right, title, and interest, including all related Intellectual Property rights, in and to the Fonemed technology, applications, software, Services, and any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or its officers, employees, contractors, or agents. Client retains ownership of all information it provides to Fonemed; Fonemed shall have a nonexclusive right to use such information to evaluate the Services provided and to affect improvements and/or modifications to the Services.
- 4. Privacy of Health Information.** In the course of providing Services, Fonemed may have access to Protected Health Information (PHI). Both Parties agree to comply with all applicable federal, state and local laws, rules and regulations including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and modified by the Health Information Technology for Economic and Clinical Health ("HITECH") Act of 2009, the Omnibus Rule of 2013 and the Family Educational Rights and Privacy Act (FERPA) if applicable in the performance of their obligations hereunder. If Client receives a request for access from its patients/members to have access to their PHI, Fonemed will provide PHI back to Client in accordance with HIPAA's right to access provisions at 45 CFR 164.524 as amended from time to time. For FERPA University Education

Records ("Education Records"), as those terms have been defined under FERPA and its implementing regulations, Fonemed agrees to abide by the limitations and requirements, imposed on school officials. Fonemed will use the Education Records only for the purpose of fulfilling its duties under the Agreement for the Client and its end users' benefit and will not share such data with or disclose it to any third party except as provided for in the Agreement, required by law, or authorized in writing by Client.

- 5. Indemnity.** The Parties agree to indemnify, defend) and hold harmless the other Party and its authorized owners, officers, employees, and agents from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, caused by the indemnifying Party, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Party being indemnified on account of any such claim except where such indemnification is prohibited by law.
- 6. Insurance.** Fonemed agrees to purchase and maintain in full force and effect during the term of this Agreement and for a period of at least three (3) years following the termination of this Agreement: (1) a policy of comprehensive general liability coverage, including property damage, (2) a policy of professional liability coverage for errors and omissions, (3) worker's compensation coverage in statutorily prescribed amounts and Cyber Liability and Data Breach coverage, counting claims for HIPAA and HITECH violations and including, but not limited to, coverage for cybercrime, remediation, fines and professional fees associated with the breach. Any Client-specific requirements or requests that Fonemed acquires and maintain insurance coverage in excess of that which Fonemed maintains as its standard insurance policies may be subject to additional costs to Client upon mutual agreement.
- 7. Term and Termination:** This Agreement shall commence on the Effective Date and remain in effect for three (3) years ("Initial Term"). After the initial term the contract may be renewed for two (2) additional one (1) year terms upon written agreement. Each party reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Fonemed shall promptly discontinue services unless the notice directs otherwise. Fonemed shall deliver promptly to County all completed work, and work in progress, including drafts, documents, forms, data, and reports.

**a.** Additionally, this Agreement can be terminated at any time as provided below:

- 1)** By either Party upon material breach of this Agreement by the other Party and the failure of such Party to cure the alleged breach within fifteen (15) days of written notice of such material breach.
- 2)** By Fonemed if any invoice to Client remains unpaid for more than thirty (30) days.
- 3)** Immediately by a Party if the other Party files a petition in bankruptcy or has filed against it an involuntary petition in bankruptcy that is not dismissed within 90 days after such filing or makes a general assignment for the benefit of creditors, a receiver or trustee is appointed for the other party's business, or other insolvency proceedings in respect of the other Party are commenced.

4) Should Client cease using the Services during the Initial Term by not referring calls or by other means, except for the reasons detailed above, the Agreement remains in force and effect through the end of the Initial Term even if Client has provided prior notice of intent to cease using the service. In such a circumstance Fonemed shall have the option of either continuing to collect the minimum fee each month until the end of the Initial Term, provided that the Services remain available to Client for that period, or negotiating a final payment from Client, not to exceed the amount of the monthly minimum for the remaining Initial Term.

5) Fonemed reserves the right to renegotiate or terminate the contract with ninety (90) days written notice, if services rendered differ from the original Statement of Work.

b. Upon termination of this Agreement, Client shall remain responsible for payment for Services rendered and Fees due through the effective date of termination.

## **8. Compensation and Payment.**

a. **Compensation for Services.** Client will pay all Fees specified in each subscribed Statement of Work. Additionally, Client will reimburse Fonemed for expenses incurred at the written request of Fonemed. After the first year, fees are subject to an annual 3.5% increase for each additional one (1) year term.

### **b. Invoices.**

Services are billed in arrears. Invoices are issued mid-month for the prior month's services. Billing will be for either Monthly Minimum or Actual Call Volume for the month, whichever is greater. All invoices are due within thirty (30) days of receipt unless otherwise specified in this Agreement. If payment is not received by the date the next monthly invoice is rendered, the invoice is considered past-due. All invoices will be rendered and payable in U.S. dollars.

c. **Non-Payment.** Client shall be responsible for payment of legal or collection fees associated with recovering past-due balances.

9. **Acceptance of Calls.** Fonemed will accept all calls to the toll-free number assigned to the Client by Fonemed in accordance with the applicable Scope of Work. The Client is responsible for control of access to the toll-free number including calls originating from the Client's answering service or directly from the Client (as applicable). For greater clarity, client is responsible for any and all calls that come in on their toll-free number. Fonemed will bill Client as set forth in this Agreement.

10. **Custom IT Requests.** Client custom requests will have an additional fee of \$250.00 per hour minimum. Total cost will be mutually agreed upon by both Parties.

11. **Marketing Materials.** Any costs for the production and distribution of materials describing Fonemed Services shall be the responsibility of Client. Client shall secure Fonemed's written approval prior to making any use of any materials, including but not limited to, printed and electronic media, which refer to or describe Fonemed Services. Fonemed shall have not less than five (5) working days to approve, reject, or request revisions to such materials. Client shall participate and cooperate in featuring Fonemed or its affiliates or business partners on all portals, digital properties, marketing collateral, benefit card/guides, and open enrollment guides/materials.

12. **Non-Exclusivity, No Referral Requirement.** This Agreement is non-exclusive and neither

Party has any obligation or expectation, whether express or implied, to make referrals to the other for any health care services.

**13. Independent Contractors.** All Parties expressly intend that with regard to the provisions of this Agreement, the Parties are independent contractors, and no Party hereto shall receive any other benefits besides those expressly provided for herein. Further, it is the express intent of the Parties that no agent, servant, contractor, or employee of one Party shall be deemed an agent, servant, contractor, or employee of the other Party. The Parties have no authority to bind the other in any way.

**14. Force Majeure.** Neither Party shall be liable to the other for any failure to perform its obligations under this Agreement for the period of time that it is prevented, hindered, or delayed in performing those obligations by circumstances beyond its control, including, but not limited to, fire, strike, war, riots, acts of terrorism, disaster, acts of God, acts of any governmental authority, communicable disease outbreak, epidemic or pandemic, unavailability or shortages of labor, materials, or equipment, disruption of transportation, or any other comparable event. Client specifically acknowledges Fonemed shall have no liability under this Agreement for breach of contract or other failure to perform Services or obligations as a result of electrical or other system downtime or brief periods of downtime for system improvements or upgrades with reasonable notice to Client when feasible. Fonemed does not represent or warrant that Services will be entirely free of interruption.

**15. Entire Agreement.** This Agreement, including all Schedules, attachments, scopes of work, and addendums contains the entire agreement of the Parties relative to the Services provided to the Client. No representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied in this Agreement will be in force and effect. This Agreement specifically supersedes any prior written or oral agreements between the Parties relating to the provision of Services.

**16. Miscellaneous.**

**a. Authority.** Each person signing this Agreement on behalf of their respective Party represents and warrants s/he has requisite authority and power to bind the party for which s/he signs.

**b. Confidential Information.** Each Party recognizes and acknowledges that, by virtue of entering into this Agreement such Party and its staff may have access to confidential information of the other Party, including Intellectual Property, Protected Health information, and/or Education Records as applicable ("Confidential Information"). Each Party agrees that, except as otherwise required by applicable law, neither it nor any of its employees, agents or consultants will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without the express prior written consent of the other Party, any Confidential Information, except as reasonably required to perform its obligations under this Agreement.

**c. Material Change in Law.** In the event that, after the Effective Date, there is a material change in law, rule or regulation (including, but not limited to, reimbursement levels under any governmental program) which results in this Agreement or the Parties' performance of their obligations hereunder being in violation of applicable law, or which would result in the Parties' continued performance hereunder having a material adverse effect on either Party, the Parties shall negotiate in good faith with

one another to amend this Agreement so as to eliminate such result or adverse effect.

**d. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and each of their respective successors and permitted assigns. The Parties shall not assign this Agreement without the written consent of the other Party, which shall not be unreasonably withheld.

**e. Security Assessments Language.** On an annual basis, Fonemed will complete a Systems and Organization Controls (SOC 2 Type 2) audit which will be performed by a qualified third (3<sup>rd</sup>) party auditor. Upon written notice by the client, Fonemed agrees that within thirty (30) days of having received that written notice, the client shall be provided access to Fonemed's most recent Systems and Organization Controls (SOC 2 Type 2) audit report. Upon learning of any internal control deficiencies found as a result of such audits, Fonemed agrees to immediately notify the client of any such deficiencies. Fonemed also agrees to provide a deficiencies remediation plan, if applicable. If the Client requests additional security assessment information, other than the information specified herein, the Client shall communicate the same to Fonemed in writing, Fonemed shall then estimate the cost to be incurred for that purpose and communicate the amount of the Additional Cost in writing to the Client. Fonemed shall not provide any additional security assessment information without first obtaining written approval from the Client regarding Additional Cost.

**f. Notices.** Notices or communications to be given under this Agreement will be given to the respective Parties in writing and shall be deemed given if provided as set forth below to the addresses set forth below or to such other addresses and to such other persons as either Party may from time to time designate by notice given as herein provided. Such notices or communications will be deemed to have been given upon (a) personal delivery, (b) three (3) business days after being sent by registered or certified mail, postage prepaid, or (c) one (1) business day after delivery to a reputable overnight delivery service for overnight delivery, in each case addressed as follows:

**Fonemed**

**Name:** Michelle Howard  
**Title:** Compliance Officer  
**Email:** Michelle.howard@fonemed.com  
**Phone:** 800-366-3633

**Client**

**Name:** Karla Rosales  
**Title:** Program Coordinator  
**Email:** Karla.rosales@dph.sbcounty.gov  
**Phone:** 909-531-1795

**g. No Waiver.** Waiver by either Party of a breach or violation of any provision of this Agreement will not operate as, or be construed to be, a waiver of any prior, concurrent, or subsequent breach. None of the provisions of this Agreement will be considered waived by either Party except when such waiver is given in writing.

**h. Access to Records.** Pursuant to 42 U.S.C. § 1395x(v)(1)(I), until the expiration of four (4) years after the provision of services under this Agreement, Fonemed shall make available, upon written request of the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States Government Accountability Office or any of their duly authorized representatives, a copy of this Agreement, and such books, documents, and records as are necessary to certify to the nature and extent of the costs of the services provided under this Agreement. Fonemed agrees that in the event that it carries out any of its duties under this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization, such contract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of services pursuant to such subcontract, the related organization shall make available, upon written request, to the Secretary of the United States Department of Health and Human Services or upon request of the Comptroller General of the United States Government Accountability Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents, and records of such organization as are necessary to verify the nature and extent of such costs.

**i. Amendment.** This Agreement may be amended or modified only by a writing duly executed by both Parties.

**j. Severability.** If any term or provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby and each term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law, unless doing so will materially alter the rights or obligations of either Party.

**k. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one and the same agreement.

**l. Conflicts.** In the event of a conflict between this Agreement and any attachment, addendum, exhibit, schedule, or statement of work, the provisions of such attachment, addendum, exhibit, schedule, or statement of work shall control.



## Schedule II – Service Statements of Work

### **STATEMENT OF WORK: NURSE TRIAGE AND ADVICE SERVICE**

**A. DEFINITIONS.** For the purposes of this Nurse Advice Statement of Work:

1. The term “Client Group” shall mean the primary organization of which Fonemed’s telephony and software will be configured for the Client.
2. The term “Subgroup” shall mean any subset of the “Client Group” requiring reporting by Fonemed (e.g., clinics, departments) either based on either physical location or functional specialty.

**B. SERVICE.** Fonemed shall provide the following Services for Client:

1. Fonemed will provide a single, dedicated toll-free number that will be provisioned on Fonemed’s telephony system. This line will be configured with an automated greeting message. Client acknowledges this toll-free number enables Fonemed to track calls for Client billing purposes. As such, Client should only share its dedicated toll-free number with eligible recipients and should advise its eligible recipients on permitted uses of the toll-free number.
2. Fonemed’s software will be configured with one “client group”.
3. Health Care Navigator (HCN). The standard call process is as follows:
  - a. Upfront automated greeting: “Thank-you for calling the Nurse Advice Line. This call may be recorded for quality assurance purposes. If this is a medical emergency, please hang up and dial 911 or your local emergency assistance number.” Client can specify a custom, automated greeting message if preferred. Fonemed reserves the right to modify the greeting message from time to time.
  - b. Live initial call intake by a qualified HCN
    - 1) Greeting: “Hello, my name is “\*\*\*\*\*”. I am a health care navigator. May I have your name please?”
    - 2) Intake information collected:
      - a. Caller First Name / Last Name (In the event that the caller is not the patient)
      - b. Caller Relationship (e.g., Parent)
      - c. Patient First Name / Last Name
      - d. Patient Date of Birth
      - e. Return Phone Number
      - f. Patient Gender
      - g. “Initial Intention”
      - h. Reason for Call
  - ii. Patients with emergent symptoms are warm transferred to a registered nurse.
  - iii. Patients with non-emergent symptoms are queued for registered nurse call back.
- c. Registered Nurse (RN), Using Fonemed’s proprietary software and licensed medical protocols, Fonemed’s Registered Nurses (“RN(s)”) shall address patients health care concerns and assess symptom presentation to recommend the most appropriate level of care using Schmitt/Thompson protocols.



- 1).** Triage Assessment (if applicable or health info call)
  - a. Presenting Complaint
  - b. Protocol
  - c. Triage Assessment
  - d. Disposition
  - e. Care Advice
  - f. Confirm understanding and intention to follow care advice.
  - g. Closing Disclaimer Provided
- d.** All encounters are documented in a standard "encounter report" which will be available to the Client via a secure, web-based portal:

**1)** Standard encounter reports will have the following information:

- a. Report Header
- b. Standard Logo (See special provisions)
- c. Client Group name
- d. Subgroup name (if applicable)
- e. Call Completed Time
- f. Caller Name (if applicable)
- g. Patient Name
- h. Patient Date of Birth
- i. Patient Age
- j. Patient Gender
- k. Nurse initials
- l. Call back Phone Number
- m. System Call ID
- n. Nurse Triage
- o. Care Advice and follow up recommendations.

**C. MONTHLY REPORTS.** The following monthly reports are available upon Client request:

- 1.** Call log
- 2.** Complete call summary
- 3.** Satisfaction Survey - Fonemed will routinely contact up to 5% of callers "company-wide" to assess their satisfaction with the service.

**D. FEES.**

**1. Service Implementation**

One-Time Implementation	Fee: \$845.00
Subgroup/s	*Fee: \$250.00

**2. Billing Minimum:**

Monthly Service Access:	Fee: \$ 285.00
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**3. Call Pricing**

Cost per call:	***Fee: \$25.55
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Escalation to MDLive	Fee: \$129.60 per escalation.
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\* Set-up price is dependent upon service requirements and will be agreed upon by both parties.  
Subgroups added after initial implementation are subject to Fonemed's current fees at time of implementation.

\*\*\*blended clinical/non-clinical rate that is inclusive of translation fees, holiday surcharge and behavioral health calls.

## **Schedule III – Client Specific Provisions**

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## Schedule IV – Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is entered into as of the Effective Date by and between San Bernardino County ("Covered Entity") and Fonemed, LLC ("Business Associate") (collectively, "Parties").

### RECITALS

**WHEREAS**, the Covered Entity and the Business Associate have entered into an agreement for Business Associate to provide covered services as an independent contractor for Covered Entity in which the Covered Entity may Disclose certain Protected Health Information to the Business Associate or the Business Associate may create, receive, maintain, or transmit Protected Health Information for or on behalf of the Covered Entity; and

**WHEREAS**, Covered Entity and Business Associate acknowledge that each has obligations in their respective roles as Covered Entity and Business Associate under the American Recovery and Reinvestment Act of 2009, Public Law No. 111-005, Part I, Title XIII, Subpart D, Sections 13401-13409 ("ARRA"), as well as the applicable guidance documents and additional regulations issued under ARRA by the U.S. Department of Health and Human Services ("HHS"), and, with respect to security breaches by non-covered entities, by the U.S. Federal Trade Commission ("FTC");

**WHEREAS**, pursuant to the Health Insurance Portability and Accountability Act Privacy Security Rules ("HIPAA") and ARRA, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the Uses, Disclosures, and safeguards relating to PHI; and

**WHEREAS**, this Agreement sets forth the terms and conditions upon which the Covered Entity will disclose Protected Health Information to the Business Associate or will allow the Business Associate to create or receive Protected Health Information for, or on behalf of, the Covered Entity.

**NOW, THEREFORE**, in reliance on the mutual covenants and promises contained herein, the Parties hereto hereby agree as follows:

### TERMS AND CONDITIONS

1. **Definitions.** Unless otherwise defined in this Agreement, capitalized terms have the meaning as set forth in the current HIPAA Privacy and Security Rules, as may be amended from time to time.
2. **Services.** The Covered Entity and the Business Associate have executed, and may in the future execute, agreements ("Engagements") pursuant to which the Business Associate provides services to Covered Entity that require the Use or Disclosure of Protected Health Information ("Services"). Except as expressly provided herein or as otherwise Required by Law, the Business Associate may only Use or Disclose the Protected Health Information for providing the Services. The Business Associate expressly agrees all Uses or Disclosures of Protected Health Information by the Business Associate will be done in accordance with the terms of this Agreement and the provisions of all applicable federal and state laws and regulations, including without limitation, the HIPAA Privacy and Security Rules.

3. **Obligations of the Business Associate.**

- a. Permitted Uses and Disclosures. Business Associate is permitted or required to Use or Disclose Protected Health Information it creates, receives, maintains, or transmits for or from Covered Entity only as follows:
  - i. Functions and Activities on Covered Entity's Behalf. Business Associate is permitted to Use and Disclose Protected Health Information it creates, receives, maintains, or transmits for or from Covered Entity as required to fulfill its obligations under its Engagement(s) with Covered Entity so long as such Uses or Disclosures are consistent with HIPAA and other applicable privacy and security laws.
  - ii. Business Associate's Operations. Business Associate may Use Protected Health Information it creates, receives, maintains, or transmits for or from Covered Entity as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities. Business Associate may use Protected Health Information to provide data aggregation services relating to health care operations of the Covered Entity. Business Associate may Disclose such Protected Health Information as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities.
- b. Prohibition of Unauthorized Use or Disclosure. Business Associate will neither Use nor Disclose Protected Health Information it creates or receives for or from Covered Entity or from another business associate of Covered Entity, except as permitted or required by this Agreement, as Required by Law, or as otherwise permitted in writing by Covered Entity.
- c. Information Safeguards. The Business Associate agrees to implement administrative, physical, and technical safeguards as required by 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate will document and keep these safeguards current.
- d. Compliance with Privacy Rules and Covered Entity's Privacy Policies and Procedures. Business Associate agrees to comply with requirements of the HIPAA Privacy and Security Rules in 45 C.F.R. §§ 160 – 164.318, 164.500 – 164.514, and 164.522 – 164.534.
- e. Subcontractors and Agents. Business Associate will ensure any agent, including without limitations any Subcontractor or Workforce member, to whom the Business Associate provides any Protected Health Information received from the Covered Entity, or created, received, maintained, or transmitted by the Business Associate for or on behalf of the Covered Entity, agrees to the same restrictions as apply through this Agreement to the Business Associate with respect to the Protected Health Information, including the implementation of administrative, physical, and technical safeguards to reasonably and

appropriately protect Electronic Protected Health Information. Notwithstanding the foregoing, the Business Associate shall only Disclose that Protected Health Information to such agents as is reasonably necessary to perform the Engagement or to fulfill a specific function required or permitted under this Agreement. Business Associate must enter into a HIPAA-compliant Business Associate Agreement with the Subcontractor.

- f. Access, Amendment, and Accounting. Business Associate agrees:
    - i. To provide access to Protected Health Information to Covered Entity in accordance with 45 C.F.R. § 164.524;
    - ii. To make amendments of Protected Health Information and incorporate such amendments, if applicable, that Covered Entity directs or agrees to in accordance with 45 C.F.R. § 164.526 within ten (10) days; and
    - iii. To provide an accounting of disclosures to Covered Entity or to requesting Individual in accordance with 45 C.F.R. § 164.528.
  - g. Mitigation and Reporting of Violation. Business Associate agrees:
    - i. To mitigate, to the extent practicable, any harmful effects of which the Business Associate becomes aware that arise out of the Use or Disclosure of Protected Health Information by the Business Associate that are in violation of this Agreement;
    - ii. To report to the Covered Entity any Use or Disclosure of Protected Health Information not specifically permitted by this Agreement of which it becomes aware, including unauthorized Uses or Disclosures related to Protected Health Information of Business Associate's Subcontractors; and
  - h. Notification of Breach. Business Associate will promptly notify the Covered Entity of any Security Incident or Breach of Unsecured Protected Health Information.
  - i. Inspection of Books and Records. Business Associate will make available to the Covered Entity or the Secretary all internal practices, books and records, including but not limited to policies and procedures relating to the Use and Disclosure of Protected Health Information received from, or created, received, maintained, or transmitted by the Business Associate from or on behalf of, the Covered Entity necessary to allow the Secretary to determine whether the Covered Entity is in compliance with the Privacy Rules.
4. **Obligations of the Covered Entity.** The Covered Entity shall notify the Business Associate of:
- a. Any limitation(s) in its Notice of Privacy Practices required by 45 C.F.R. § 164.520, to the extent that such limitation(s) may affect the Business Associate's Use or Disclosure of the Protected Health Information;
  - b. Any changes in, or revocation of, permission by an Individual to Use or Disclose Protected Health Information, to the extent that such change or revocation may affect the Business Associate's Use or Disclosure of Protected Health Information; and

- c. Any restriction(s) on the Use or Disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction(s) may affect the Business Associate's Use or Disclosure of Protected Health Information.
  - d. Covered Entity gives Business Associate the authority to conduct the daily operations of its business and to perform its responsibilities under the Engagement(s) and this Agreement without supervision, direction, or control of Covered Entity other than as provided under the terms of this Agreement. Covered Entity retains no right to control the conduct of Business Associate in the performance of Business Associate's activities.
5. **Permissible Requests of the Covered Entity.** The Covered Entity shall not request the Business Associate Use or Disclose any Protected Health Information in any manner that would not be permissible under the HIPAA Privacy Rules if done by the Covered Entity, except as may otherwise be provided by this Agreement.
6. **Term and Termination.**
- a. **Term.** This Agreement shall be effective as of the Effective Date, or the date of the Parties' underlying Engagement(s), whichever is earlier, and shall terminate when Services are no longer provided by Business Associate pursuant to the Engagement unless this Agreement is terminated for cause as set forth below.
  - b. **Effect of Patient Authorization.** If, at any time during the provision of Services by Business Associate to Covered Entity, an authorization is obtained from the Individual whose Protected Health Information is Used or Disclosed which permits the Disclosure of Protected Health Information to the Business Associate by the Covered Entity, such authorization shall govern the Use and Disclosure of such information and the use and Disclosure provisions of this Agreement shall no longer apply to that information.
  - c. **Termination by the Covered Entity.** If the Business Associate materially breaches this Agreement, the Covered Entity may:
    - i. Provide the Business Associate written notice that the Business Associate has materially breached this Agreement and provide the Business Associate an opportunity to cure the breach to the satisfaction of the Covered Entity within thirty (30) days, after which time this Agreement and all the Engagements shall be automatically terminated if the breach is not cured;
    - ii. Immediately terminate this Agreement and the Engagement(s) without penalty if the Business Associate has materially breached a material term of this Agreement and cure is not possible; or
    - iii. If neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.



- d. Termination by the Business Associate. So long as any Engagement(s) by and between the Covered Entity and the Business Associate shall exist, the Business Associate shall have no right to terminate this Agreement.
- e. Automatic Termination. This Agreement will automatically terminate, without any further action by the Parties hereto, when there is no longer any Engagement by and between the Parties hereto.
- f. Effect of Termination.
  - i. Upon termination of this Agreement for any reason, the Business Associate shall return or destroy all Protected Health Information received from the Covered Entity, or created, received, maintained, or transmitted by the Business Associate for or on behalf of the Covered Entity within sixty (60) days of the termination of this Agreement. This provision shall apply to all Protected Health Information that is in the possession of any Subcontractor or agent of the Business Associate. The Business Associate shall retain no copies of the Protected Health Information for its records.
  - ii. If the Business Associate believes returning or destroying the Protected Health Information is not feasible, within thirty (30) days of any termination hereof the Business Associate shall provide written notice to the Covered Entity setting forth the conditions that the Business Associate believes make return or destruction of the Protected Health Information not feasible. Within five (5) business days of its receipt of such notice from the Business Associate, the Covered Entity shall determine whether, in its sole discretion, the return or destruction of the Protected Health Information is not feasible and provide written notice to the Business Associate of its decision. Business Associate agrees to continue all protections, limitations and restrictions contained in this agreement to Business Associate's Use and/or Disclosure of any Protected Health Information retained after the termination of the agreement, and to limit any further Uses and/or Disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

7. **Miscellaneous.**

- a. Any reference made herein to any provision of law or regulation shall be a reference to such section as in effect and as same may be amended from time to time.
- b. This Agreement may not be amended except in a writing signed by both Parties hereto. Both Parties hereto agree that this agreement shall be amended to comply with all state or federal laws, rules or regulations, including without limitation any future laws, rules or regulations.
- c. Any ambiguity in this Agreement shall be resolved to permit the Parties hereto to comply with the HIPAA Privacy and Security Rules.

- d. This Agreement and all rights and obligations hereunder shall be binding upon and shall inure to the benefit of the respective successors and assigns of both Parties hereto.
- e. The respective rights and obligations of the Business Associate set forth in this Agreement shall survive any termination of this Agreement.
- f. All notices which are required to be given hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered personally, (b) the next business day following the day on which the same has been delivered prepaid to a nationally recognized overnight courier service, or (c) three (3) days after sending by registered or certified mail, postage prepaid, return receipt requested, in each case to the address first set forth above to the attention of the person signing below, or to such other person at such other address as the Party may designate, by giving notice.
- g. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be void or unenforceable, all remaining provisions hereof shall continue to be binding on the Parties hereto with the same force and effect as though such void or unenforceable provision had been deleted.
- h. No failure or delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other further exercise thereof or the exercise of any other right, power or remedy. The rights provided hereunder are cumulative and not exclusive of any rights provided by law.
- i. Agreement and the Engagement constitute the entire agreement between the Parties hereto relating to the subject matter hereof, and supersede any prior or contemporaneous verbal or written agreements, communications and representations relating to the subject matter herein.
- j. This agreement may be signed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. A copy of this Agreement bearing a facsimile, email or other electronically delivered signature shall be deemed to be an original.
- k. By signing on behalf of either Party below, the signor represents and warrants s/he has authority to enter into this Agreement on behalf of his or her respective Party.
- l. Business Associate hereby represents and warrants that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under

investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.

- m. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, or (ii) a relationship of employer and employee between the Parties. Business Associate is an independent contractor, and not an agent of Covered Entity.
  - n. In the event of a conflict between this Agreement and any attachment, addendum, exhibit, schedule, or statement of work, the provisions of such attachment, addendum, exhibit, schedule, or statement of work shall control.
8. **Venue** The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the State of Missouri.
9. **Electronic Signatures.** This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

## Signature Page

### Client

Signature: \_\_\_\_\_

Printed Name: Dawn Rowe \_\_\_\_\_

Title: Chair, San Bernardino County Board of  
Supervisors \_\_\_\_\_

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

### Fonemed

Signature: \_\_\_\_\_

Printed Name: Isabel Attigliato \_\_\_\_\_

Title: Contracts Specialist \_\_\_\_\_

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