

# Software License and Service Agreement

## Cover Page

This License and Service Agreement (the “**Agreement**”) is made and entered into by and between NaphCare, Inc. (“**NaphCare**”), and San Bernardino County (**Customer**), by and through its Sheriff/Coroner/Public Administrator (“**Sheriff’s Department**”) and its Probation Department (“**Probation Department**”), as of the Effective Date indicated below (the “**Effective Date**”).

**Effective Date:** January 28, 2025

**Customer Name:** San Bernardino County  
(Full Legal Name of Customer)

**Licensed Sites:**

**SHERIFF’S DEPARTMENT:** 9500 Etiwanda Avenue Rancho Cucamonga, CA 91739  
(Physical Street Address) (City) (State) (Zip)

**PROBATION DEPARTMENT:** 175 W. 5th Street, San Bernardino, CA 92415  
(Physical Street Address) (City) (State) (Zip)

**Customer Address (for notices):** 655 E Third Street San Bernardino, CA 91739  
(Sheriff’s Department) (Physical Street Address) (City) (State) (Zip)

Sheriff’s WVDC- Health Services Division  
(Department/ Attention)

**Customer Address (for notices):** 175 W. 5th Street, San Bernardino, CA 92415  
(Probation Department) (Physical Street Address) (City) (State) (Zip)

Probation – Medical Services  
(Department/Attention)

**Customer Address (for billing):** 655 E. Third Street San Bernardino, CA 92415  
(Sheriff’s Department) (Street Address or P.O. Box) (City) (State) (Zip)

San Bernardino County Sheriff’s Department, Bureau of Administration, Accounts Payable Unit  
(Department/ Attention)

**(Probation Department)** 175 W. 5th Street, 4th Floor, San Bernardino, CA 92415  
(Street Address or P.O. Box) (City) (State) (Zip)  
San Bernardino County Probation Department, Fiscal Services – Accounts Payable  
(Department/Attention)

## Exhibits and Addenda:

This Agreement is comprised of this page (**Cover Page**), the **Background, Term of Agreement, Governing Law, Location of Performance, Definitions**, and the following exhibits, each of which is attached hereto and incorporated herein by this reference: **Exhibit A** (General Terms and Conditions) (the “**General Terms**”), **Exhibit B** (Business Associate Agreement), **Exhibit C** (Implementation and Training Services), **Exhibit D** (Hosted Server and Network Services), **Exhibit E** (TechCare EHR Customization for CalAIM Implementation), **Exhibit F** (Deliverables, Schedule and Fees), and **Exhibit G** (Information Security Addendum). **Exhibit H** (Appendix II to Part 200, Title 2), **Exhibit I** (Levine Act-Campaign Contribution Disclosure (formerly referred as Senate Bill 1439), **Exhibit J** (Maintenance and Support Services). Any additional terms and conditions or

modifications to the terms and conditions set forth in the General Terms shall be reflected in one or more amendments executed by the parties that expressly reference this Agreement.

Capitalized terms not otherwise defined shall have the meanings ascribed in the Definitions. In the event of a conflict between the provisions of an exhibit or amendment to this Agreement and the General Terms, the General Terms shall govern unless the exhibit or addendum (i) expressly states otherwise, or (ii) includes additional and/or more specific terms and conditions with respect to a concept addressed generally in the General Terms.

### **Background**

NaphCare, Inc. is an Alabama corporation providing its correctional healthcare software services throughout the United States.

The Customer seeks to use the services of NaphCare for implementation and use of NaphCare's TechCare v5.0 Software System in conjunction with existing Contract No. 15-886, between the parties, which outlines the current scope of Software and Services related to the TechCare EHR System.

### **Term of Agreement**

The term of this Agreement shall commence on the Effective Date and, unless otherwise terminated as provided herein, shall continue for a period of three (3) years from the Effective Date (Initial Term). provided, however, that this Agreement may be renewed by written amendments executed by both parties to match the Term of existing Contract No. 15-886, unless (i) Customer notifies NaphCare of non-renewal in writing at least one hundred twenty (120) days prior to expiration of the then-current term or (ii) NaphCare notifies Customer of non-renewal in writing at least one-hundred twenty (120) days prior to expiration of the then current term. Fees related to maintenance and support for NaphCares's TechCare v5.0 will be memorialized, at the rates listed in Exhibit F, section 4, through an amendment to existing Contract No. 15-886 between the parties, which will also include this Agreement as an exhibit with the scope of Software and Services related to TechCare v5.0. In the event the parties fail to execute an amendment for a Renewal Term, the Agreement shall expire at the end of the then-current Initial Term or Renewal Term, as applicable. The Initial Term and the Renewal Term(s) shall together constitute the "Term."

### **Governing Law**

This Agreement shall be construed and enforced in accordance with the laws of the State of California and venue shall be exclusively in the federal or state courts sitting in San Bernardino County. The parties to this Agreement hereby specifically submit to the jurisdiction of said courts and waive all objections based upon jurisdiction and venue.

### **Location of Performance**

Except where NaphCare obtains the Customer's prior written approval, NaphCare shall perform all of the Services only from or at locations within the geographic boundaries of the contiguous United States, as further specified herein. Any Customer approval for the performance of Services outside of the continental United States shall be limited to the specific instance and scope of such written approval, including the types of Services and locations involved.

### **Signatures**

NaphCare and Customer have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**NAPHCARE:**

**CUSTOMER:**

By \_\_\_\_\_  
Name Bradford T. McLane

By \_\_\_\_\_  
Name Dawn Rowe

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## Definitions

Unless otherwise defined herein, capitalized terms used in this Agreement shall have the following definitions.

- a) “Affiliate” means, as to a party, any other entity that directly or indirectly controls, is under common control with, or is controlled by, such party; as used in this definition, “control” and its derivatives mean possession, directly or indirectly, of power to direct the management or policies of an entity. For clarification and avoidance of doubt, in the case of Customer, Affiliate shall mean any entity that has a formal or informal relationship with Customer including, but not limited to, Customer’s subsidiaries.
- b) “Application” means the current version of the System Software offered by NaphCare in object/executable (and/or encrypted source code) form only, and any associated database structures and queries, interfaces, data conversion software, tools, and the like, together with any and all Updates thereof, as may be licensed by NaphCare to Customer pursuant to this Agreement. For clarification and avoidance of doubt, the Application shall include all customizations and Feature Requests developed by NaphCare for Customer. For the purposes of this definition, “current version” means the current Production version as well as any new Update of the Production version that has been released but is not yet installed.
- c) “Application Error” means an error or defect in the Application Software which requires correction by NaphCare.
- d) “Available” means that the Application is available and functioning correctly for use in accordance with the warranties and the SLAs.
- e) “Authorized User” means any individual, whether on-site at a Licensed Site or at a remote location, who is (a) a Customer employee, including temporary employees or contract employees, (b) a physician or other medical professional authorized to perform services at a Customer facility or Licensed Site, or (c) an employee of such physicians and medical professionals, in each case as duly authorized by Customer to access the System.
- f) “BAA” means, a Business Associate Agreement executed by the parties in compliance with HIPAA.
- g) “Change Advisory Board” means the group of Customer personnel responsible for decisions related to requested changes in the System.
- h) “Concept” means (i) any method, process, procedure, know-how, and the like utilized by NaphCare in performing its obligations under this Agreement or otherwise and related to the Licensed Materials or the Services that is used, held, or acquired for use by NaphCare in the course of its business and (ii) any finding, invention, improvement, discovery, or idea of NaphCare, either alone or jointly with Customer or a third party, whether or not patentable, and related to the Licensed Materials or the Services that is conceived or reduced to practice during the Term.
- i) “Confidential Information” means any information of any type in any form that (i) is disclosed to or observed or obtained by one party from the other party (or from a person the recipient knows or reasonably should assume has an obligation of confidence to the other party) in the

course of, or by virtue of, this Agreement and (ii) either is designated as confidential or proprietary in writing at the time of such disclosure or within a reasonable time thereafter (or, if disclosure is made orally or by observation, is designated as confidential or proprietary orally by the person disclosing or allowing observation of the information) or is of a nature that the recipient knew or reasonably should have known, under the circumstances, would be regarded by the owner of the information as confidential or proprietary. Without limiting any other provisions of this Agreement, and whether or not otherwise meeting the criteria described herein, the Application shall be deemed conclusively to be Confidential Information. For purposes of this Agreement, however, the term “Confidential Information” specifically shall not include any portion of the foregoing that (i) was in the recipient’s possession or knowledge at the time of disclosure and that was not acquired directly or indirectly from the other party, (ii) was disclosed to the recipient by a third party not having an obligation of confidence of the information which the recipient knew or which, under the circumstances, the recipient reasonably should have assumed to exist, (iii) is or, other than by the act or omission of the recipient, becomes a part of the public domain not under seal by a court of competent jurisdiction, or (iv) is independently developed by a party without reference to or use of the other party’s Confidential Information, and the term “Confidential Information” specifically shall not include protected health information (as defined under HIPAA), because such information is subject to the provisions of the BAA. No combination of information will be deemed to be within any of the foregoing exceptions, regardless of whether the component parts of the combination are within one or more exceptions. In the event of any ambiguity as to whether information is Confidential Information, the foregoing shall be interpreted strictly and there shall be a rebuttable presumption that such information is Confidential Information.

- j) “Customer Data” means (i) all data entered, collected, stored, processed, or generated through Customer’s use of the Application, or (ii) entered into the Application by or on behalf of Customer pursuant to a conversion of data from another system, in either case as such data is maintained in the Application from time to time. Customer Data includes all Protected Health Information (“PHI”) as such term is defined by HIPAA.
- k) “Deliverables” mean the specific Deliverables set forth in Exhibit F, Section 1.
- l) “Documentation” means all documentation (whether printed or in an electronic retrieval format) supplied to Customer by NaphCare for use with or in support of the Application, including descriptions of how to configure and use the features and functions of the Application, and any and all Updates thereof as may be supplied by NaphCare to Customer during the Term. Documentation shall also include the Functional Specifications.
- m) “Excusable Outage” means unavailability (i) during Scheduled Maintenance, or (ii) caused by or resulting from negligent or intentional acts or omissions of Customer, its Affiliates, an Authorized User, their respective employees, agents, contractors, or vendors, or any other party gaining access to the Application due to any such negligent act or omission, or (iii) arising from Customer’s direction that NaphCare cease making the Application Available for use other than in the event of a material breach of the Agreement by NaphCare, or (iv) caused by outages of Customer’s LAN, or (v) caused by outages of Network Connectivity not provided by NaphCare, or (vi) caused by outages of individual end-user devices (e.g., workstations, printers, and peripheral devices).
- n) “Feature Requests” means a request for additional software functionality that does not currently exist in the application and exceeds the defined scope of the contract, and

## Requirements Document.

- o) “Functional Specifications” means (i) the specifications describing features and functions of the Application as set forth in Exhibit C and, (ii) any mutually agreed upon specifications for customizations, interfaces, data imports/conversions, Feature Requests, and other deliverables related to the Application that are attached to this Agreement, a Statement of Work, or are subsequently agreed upon by the parties.
- p) “Go Live” means the time period immediately leading up to and immediately following the first productive use of the system with the customers environment. Note that there may be multiple “Go Lives” based on the project plan.
- q) “HIPAA” means, collectively, 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, each as amended from time to time.
- r) “SLAs” means the service level agreements for the System which includes hosting.
- s) “Information blocking” is a practice by a health care provider, health IT developer, or health information network or exchange that, except as required by law or covered by an exception, is likely to interfere with the access, exchange, or use of electronic health information.
- t) “LAN” refers to Customer’s Local Area Network, specifically the interconnection via IP communication of computers within a single physical location (i.e., Licensed Site).
- u) “Licensed Materials” means the Application and the Documentation.
- v) “Licensed Site” means the primary and secondary locations (facilities) set forth or referred to on the Cover Page of this Agreement.
- w) “Malfunction” means a material failure of the System, when operated in accordance with the Documentation, to provide the functionality described in the Documentation or to perform in conformance with any standards and specifications expressly stated therein. A Malfunction may or may not be caused by an Application Error.
- x) “Minor Deviations” means those adjustments to the tasks or resources required of NaphCare or to the date on which Services are to be performed or a Deliverable is scheduled to be delivered and/or accepted which do not (i) alter or eliminate any specifications, Deliverables or training; (ii) change the period of time Customer is given to review any Deliverable or training; (iii) result in NaphCare deviating from the deadlines for milestones (earlier or later); or (iv) require any greater resources from the Customer than those identified in the Project Plan that has been accepted by Customer.
- y) “Network Connectivity” means connectivity of two (2) or more computing resources via Internet Protocol communication technology.
- z) “Defendant” means a person incarcerated in or otherwise confined to a penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential

community program center operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody, including juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

- aa) “Final System Acceptance” means the acceptance by Customer that System is operating in a productive capacity and meets requirements of the contract and the Requirements Documents.
- bb) “Private Connection” means Network Connectivity between geographically separate locations by way of a third-party telecommunication provider in which the communication is segmented from Internet traffic.
- cc) “Problem Report” means a written report delivered to NaphCare by Customer describing in reasonable detail a suspected Malfunction or deficiency of a Deliverable.
- dd) “Project Plan” means the schedule of activities, tasks, events, Deliverables, milestones, and responsibilities of both parties for the implementation of the Application. At a minimum, the Project Plan will address the configuration and customization of Application, Customer’s testing of the Application, the training of Authorized Users, and the activation of the Application in a production environment.
- ee) “Software” means (i) the proprietary computer program(s) wholly owned by NaphCare that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.
- ff) “Scheduled Maintenance” means System downtime associated with or caused by (i) maintenance, upgrades, or replacement of infrastructure, hardware, software, or telecommunications services provided as part of the Hosting Services; or (ii) maintenance or Updates to the Application, but only if the foregoing occurs between 12:00 a.m. (midnight) and 4:00 a.m. Eastern Time (Monday–Saturday) and between 12:00 a.m. (midnight) and 4:00 a.m. Eastern Time on Sunday, but not more than once in any calendar month. Scheduled Maintenance shall also include System downtime for which NaphCare has notified Customer at least twenty-four (24) hours in advance and Customer has consented to such downtime.
- gg) “Statement of Work” means an addendum to this Agreement duly executed by each party that sets forth requirements, pricing, acceptance methodology, fees, and other respective responsibilities of the parties as to implementation, interface development, customization, and other Services to be provided by NaphCare to Customer pursuant to this Agreement; provided, however, that the failure of a Statement of Work to comply with the foregoing standards shall not, in itself, invalidate such Statement of Work.
- hh) “Subject Matter Experts” means those Customer personnel with sufficient training or job function that qualifies them to be an authority with respect to a specific workflow or operation.
- ii) “System” means the combination of (i) the Application; (ii) any third party software or content

that is licensed by NaphCare for use in conjunction with the Application, specifically including the Third Party Products, and (iii) the equipment and software that comprise the Hosting Services, as may be supplied by NaphCare to Customer pursuant to this Agreement.

- jj) “TechCare” (or “TechCare®”), means the proprietary name assigned to the Application or System, as applicable, by NaphCare.
- kk) “Third Party Products” means the third party software and content identified in Exhibit E, Section 1.2.
- ll) “Update” means all corrections, changes, and improvements to the Application, regardless of the term used by NaphCare to describe such changes (e.g., updates, upgrades, enhancements, versions, releases, etc.). Updates shall not materially diminish any functionality available in the then-current release of the Application.
- mm) “User Acceptance Testing” means Testing activities performed by the customer which validate the software meets all requirements of the Software and Interface Requirements Document.
- nn) “Including” means “including without limitation” unless otherwise expressly provided in a given instance.
- oo) “WAN” means Wide Area Network, specifically the interconnection via IP communication of physically separate locations.



## **Exhibit A – General Terms and Conditions**

1. License to Customer.

Subject to terms and conditions of this Agreement, NaphCare grants to Customer a non-exclusive, non-transferable (except as otherwise provided herein) license during the Term (i) for use of the Licensed Materials and Third Party Products by Authorized Users in the course of providing, or related to the provision of, healthcare services to patients, (ii) for access to and use of the System by Authorized Users in the course of providing, or related to the provision of, healthcare services to Patients, (iii) for access to and use of the Services (as defined below) by Authorized Users for purposes of System implementation, operation, maintenance, and support, and (iv) for copying and use of the Documentation by Authorized Users in furtherance of the foregoing.

2. Services.

Subject to terms and conditions of this Agreement, and provided Customer is not in material breach of its obligations hereunder, NaphCare shall provide the following services (the “Services”) during the Term:

- 2.1. Requirements Gathering. NaphCare shall provide requirements gathering services as set forth in Exhibit C.
- 2.2. Application Customization. NaphCare shall provide the Customization Services set forth in Exhibit C, Exhibit D, and in any subsequent Statement of Work executed by the parties.
- 2.3. Interface Development. NaphCare shall provide the Interface Development as set forth in Exhibit C, and in any subsequent Statement of Work executed by the parties.
- 2.4. Implementation and Training. NaphCare shall provide the Implementation and Training Services set forth in Exhibit C, Exhibit D and in any subsequent Statement of Work executed by the parties.
- 2.5. Maintenance and Support. NaphCare shall provide the Maintenance and Support Services set forth in existing Contract No. 15-886, as amended.
- 2.6. Hosting. NaphCare shall provide the Hosting Services in accordance with Exhibit D.
- 2.7. Other Services. NaphCare shall perform such other services as may be set forth in Statements of Work executed by the parties concurrent with the execution of this Agreement or from time to time thereafter. Unless otherwise set forth in such Statements of Work, all such other services shall be billed at NaphCare’s rates as defined in existing Contract No. 15-886, as amended.

If any services, functions, and responsibilities not specifically described in this Agreement are reasonably required for the proper performance of the Services, or are an inherent part of a necessary service, function, or task included within, necessary to, appropriate in the provision of, or otherwise ancillary to the Services, such services, functions, and responsibilities shall be deemed to be implied by and included within the scope of the Services, and no such service, function, and responsibility shall be subject to an additional order or any increase in fees payable hereunder.

3. Restrictions.

Except as may be expressly authorized in this Agreement, Customer shall not do, nor shall it authorize any person do, any of the following: (i) use the Licensed Materials for any

purpose or in any manner not specifically authorized by this Agreement; (ii) except as permitted in Sections 1 and 2 hereof, make any copies or prints, or otherwise reproduce or print, any portion of the Licensed Materials, whether in printed or electronic format; (iii) distribute, republish, download, display, post, or transmit any portion of the Licensed Materials for the benefit of any third party who is not an Affiliate; (iv) create or recreate the source code for, or re-engineer, reverse engineer, decompile, or disassemble any Licensed Materials that is computer software; (v) modify, adapt, translate, or create derivative works from or based upon any part of the Licensed Materials, or combine or merge any part of the Licensed Materials with or into any other software, document, or work; (vi) refer to or otherwise use any part of the Licensed Materials as part of any effort to develop a product or service having any functional attributes, visual expressions, or other features or purposes similar to those of Licensed Materials; (vii) remove, erase, or tamper with any copyright, logo, or other proprietary or trademark notice printed or stamped on, affixed to, or encoded or recorded in the Licensed Materials, or fail to preserve all copyright and other proprietary notices in any copy of any portion of the Licensed Materials made by Customer; (viii) sell, market, license, sublicense, distribute, rent, loan, or otherwise grant to any third party (other than an Affiliate) any right to possess or utilize any portion of the Licensed Materials without the express prior written consent of NaphCare (which may be withheld by NaphCare for any reason or conditioned upon execution by such party of a confidentiality and non-use agreement and/or such other covenants and warranties as NaphCare in its sole discretion deems desirable); (ix) use the Licensed Materials to gain or attempt to gain access to any software applications, computer systems, or data not expressly authorized under this Agreement; or (x) attempt to do or assist any third party in attempting to do any of the foregoing.

4. Ownership.

4.1. Customer Data. As between NaphCare and Customer, Customer has and retains exclusive ownership of all Customer Data. All data (a) created by Customer and/or (b) stored by Customer within NaphCare's and on NaphCare's servers are Customer's property and for Customer's exclusive use. The Customer shall allow access to such data by authorized Customer personnel and shall provide access in compliance with the Customer's Privacy Policy. NaphCare makes no claim of ownership of any server content, Application content, or any other type of data contained within the Customer's server space on NaphCare's servers. NaphCare may access, use, and disclose the Customer Data for purposes permitted by the BAA and solely to the extent required to perform the Services and provide the System, or as otherwise agreed upon in a Statement of Work. Any other use of the Customer Data by NaphCare, even if such Customer Data is de-identified, is strictly prohibited unless NaphCare receives prior written consent from the Customer's Corrections Bureau Deputy Chief, in conjunction with its Department Information Systems Administrator (DISA), and Legal Counsel.

4.2. Licensed Materials. As between NaphCare and Customer, NaphCare has and retains exclusive ownership of the Licensed Materials and all intellectual property and proprietary rights therein. Customer acknowledges that the foregoing constitutes valuable assets and may constitute trade secrets of NaphCare. Customer acknowledges that Customer may suggest Concepts and the parties may discover or create Concepts jointly and that NaphCare, at its sole option, may incorporate such Concepts in the Licensed Materials or in other products or services that may

or may not be made available to Customer. Any such Concept shall be and remain solely the property of NaphCare and may be used and sold, licensed, or otherwise provided by NaphCare to third parties, or published or otherwise publicly disclosed, in NaphCare's sole discretion without notice, attribution, payment of royalties, or liability to Customer. Customer hereby assigns to NaphCare any and all of its right, title, and interest, including copyright and patent rights, in and to any such Concepts.

5. Confidentiality.

- 5.1. Security of Confidential Information. In addition to any other restrictions or obligations imposed at law or provided under this Agreement, each party possessing Confidential Information of the other party will maintain all such Confidential Information under secure conditions, using the same security procedures used by such party for the protection of its own Confidential Information of a similar kind and in any event not less than reasonable security measures.
- 5.2. Non-Disclosure Obligation. Except as otherwise may be permitted by this Agreement, neither party shall disclose any Confidential Information of the other party to any third party without the express prior written consent of the other party; provided, however, that either party may disclose appropriate portions of Confidential Information of the other party to those of its Affiliates, employees, contractors, agents, and professional advisors having a substantial need to know the specific information in question in connection with such party's exercise of rights or performance of obligations under this Agreement, provided that all such third parties (i) have been instructed that such Confidential Information is subject to the obligation of confidence set forth by this Agreement and (ii) are bound either by contract, employment policies, or fiduciary or professional ethical obligation to maintain such information in confidence.
- 5.3. Compelled Disclosure. If either party (as the recipient of the other party's Confidential Information) is ordered by a court, administrative agency, or other governmental body of competent jurisdiction to disclose Confidential Information, or if it is served with or otherwise becomes aware of a motion or similar request that such an order be issued, then such party will not be liable to the other party for disclosure of Confidential Information required by such order if such party complies with the following requirements: (i) such party promptly shall notify the other party of the motion or order by the most expeditious possible means so that the disclosing party may contest the disclosure or seek a protective order with respect to such Confidential Information; and (ii) such party shall not oppose a motion or similar request by the other party for an order protecting the confidentiality of the Confidential Information, including not opposing a motion for leave to intervene by the other party; and (iii) such party shall exercise its best efforts to obtain reasonable assurance that confidential treatment will be accorded the Confidential Information so disclosed.
- 5.4. Non-Use Obligation. Except as expressly authorized in this Agreement, during the Term and forever thereafter (or for such shorter period as may be imposed by applicable law), neither party shall use any Confidential Information of the other

party, except at the request of and for the benefit of such other party, without the express prior written consent of the other party.

- 5.5. Copying of Confidential Information. Except as necessary to carry out a party's responsibilities and to perform a party's duties and obligations pursuant to this Agreement or as otherwise may be permitted by this Agreement, neither party shall copy or otherwise reproduce any part of any Confidential Information of the other party, nor attempt to do so, without the prior written consent of the other party. Any embodiments of Confidential Information of a party that may be generated by the other party, either pursuant to or in violation of this Agreement, will be deemed to be the sole property of the first party and fully subject to the obligations of confidence set forth herein. Notwithstanding the foregoing, Customer may freely reproduce Documentation for use by Authorized Users.
  - 5.6. Proprietary Legends. Without the other party's prior written consent, neither party shall remove, obscure, or deface on or from any embodiment of any Confidential Information any proprietary legend relating to the other party's rights.
  - 5.7. Reports of Misappropriation. Each party shall promptly report to the other party any act or attempt by any person of which such party has knowledge or reasonably suspects (i) to use or disclose, or copy Confidential Information without authorization from the other party or (ii) to reverse assemble, reverse compile, or otherwise reverse engineer any part of the Confidential Information.
  - 5.8. Post-Termination Procedures. Upon written request of the disclosing party after the termination date of the Agreement, the receiving party shall turn over to the other party (or destroy and certify the same in writing) any embodiments of any Confidential Information of the other party. Notwithstanding the foregoing, neither party shall be required to return or destroy (i) Confidential Information which the receiving party requires for its own business records (such as, for example, copies of deliverables or work product containing Confidential Information), or (ii) Confidential Information which is not readily available for return or destruction (such as, for example, Confidential Information which is stored on backup media that also contains other unrelated information). If return or destruction of certain Confidential Information is not feasible, the receiving party will extend the protections of this Agreement to the retained Confidential Information and limit further uses and disclosures to those purposes that make the return or destruction of the Confidential Information not feasible.
6. Representations and Warranties; Remedies; Disclaimers.
    - 6.1. Right to License. NaphCare represents and warrants that it either owns or has the right to (i) license all property included in the Application and that all such property is free of liens and claims, (ii) provide and perform all the Services. Further, NaphCare warrants that it has the right to license (i) any third-party software or content included in the Application (ii) the Third-Party Products.
    - 6.2. Services. NaphCare warrants that it will perform the Services described in this Agreement in a competent, professional, and workmanlike manner consistent with industry standards and the requirements of this Agreement using duly qualified and

experienced personnel. Customer's remedy for the breach of this warranty shall be (i) replacement of the assigned NaphCare personnel, if requested by Customer, and (ii) re-performance of the Services at NaphCare's sole expense if re-performance can reasonably cure the breach. The foregoing remedy shall not limit Customer from pursuing any other remedy that is otherwise permitted under this Agreement, at law or in equity.

- 6.3. Excluded Participant. NaphCare represents that it is not now and at no time has been excluded or debarred from participation in any federally-funded healthcare program, including Medicare and Medicaid. NaphCare will notify Customer immediately of any such exclusion or debarment, which shall be deemed a breach of this Agreement pursuant to which Customer may terminate this Agreement, as of the effective date of such exclusion or debarment, by written notice to NaphCare, without prejudice to any other rights and remedies available to such party.
- 6.4. REPRESENTATION AND WARRANTY DISCLAIMERS. THE EXPRESS WARRANTIES AND EXPRESS REPRESENTATIONS OF NAPHCARE SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND NAPHCARE DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE LICENSED MATERIALS OR ANY PART THEREOF, INCLUDING MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT NAPHCARE KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR OTHERWISE IS IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING, OR OTHERWISE. NAPHCARE EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER WITH RESPECT TO THE LICENSED MATERIALS OR ANY PART THEREOF.
- 6.5. Responsibility for Medical Use. Customer shall communicate to each Authorized User that the Application is a support tool only and expressly is not to be relied upon as a sole source of information in connection with medical advice or the provision of medical services.
- 6.6. Intent of Software. Customer acknowledges and understands that the Application is being used for an intended purpose and goal, specifically to facilitate the delivery and administration of healthcare services; however, Customer further acknowledges and understands that NaphCare cannot and does not guarantee that such intended purpose and goal will be completely met by the Application and that other methods and services currently in place or contemplated to be put into place must also work independently and in tandem to achieve success. Customer acknowledges and understands, and shall communicate to each user of the Software, that the Software is a support tool only and expressly is not to be relied upon as a sole source of information in connection with medical advice or the provision of medical services.
- 6.7. Other Disclaimers. Customer will be exclusively responsible as between the parties for, and NaphCare makes no representation or warranty with respect to,

determining whether the Licensed Materials will achieve the results desired by Customer, ensuring the accuracy of any Customer Data entered by Customer, or selecting, procuring, installing, operating, and maintaining Customer's internal technical infrastructure for Customer's access to and use of the Licensed Materials. NaphCare shall not be liable for, and shall have no obligations with respect to, (i) any aspect of the Licensed Materials that is modified by any person other than NaphCare or its contractors, (ii) use of the Licensed Materials other than in accordance with the most current operating instructions provided by NaphCare, (iii) malfunctions or failures caused by defects, problems, or failures of software or hardware not provided by NaphCare, or (iv) malfunctions or failures caused by acts or omissions of Customer or any third party not affiliated with NaphCare. Customer acknowledges that the operation of the Licensed Materials will not be error free in all circumstances, that not all immaterial defects in the Licensed Materials may be corrected, and that the operation of the Licensed Materials may be interrupted by reason of defect therein or by reason of fault on the part of NaphCare; provided, however, that such interruptions may be subject to the SLAs.

7. Intellectual Property Indemnification; General Indemnification.

7.1. Indemnity. NaphCare agrees to indemnify, defend (with counsel reasonably approved by Customer), and hold harmless Customer, its officers, directors, employees, and agents against any damage (including reasonable attorney's fees and expenses), suit, or proceeding brought against Customer for patent, copyright, trade secret, or other proprietary right infringement arising out of the Licensed Materials provided by NaphCare under this Agreement ("Infringement Claim"). Customer shall give NaphCare prompt written notice of the Infringement Claim, allow NaphCare the sole control of the defense or settlement of the Infringement Claim, and provide NaphCare with assistance, information, and authority reasonably necessary to carry out NaphCare's obligations under this Section. NaphCare shall reimburse Customer its reasonable out-of-pocket expenses incurred in providing such assistance. In the event an injunction is threatened or issued against Customer relating to an Infringement Claim, in addition to any other obligation NaphCare may have to Customer under the Agreement or otherwise, NaphCare shall, at NaphCare's option: procure for Customer, at NaphCare's expense, a license from the patent, copyright, or other proprietary right owner to use the Licensed Materials; or modify or replace the offending portion of the Licensed Materials or Services, at NaphCare's expense, to make the Licensed Materials non-infringing without materially impairing their usefulness or performance. Notwithstanding anything in this Agreement to the contrary, any limitations on liability or damages contained in this Agreement shall not apply to indemnification for Infringement Claims.

7.2. Reserved.

7.3. EXCLUSIVE REMEDY. THE FOREGOING STATES THE ENTIRE OBLIGATION OF NAPHCARE, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO THIRD-PARTY CLAIMS REGARDING INFRINGEMENT OF INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS AND MISAPPROPRIATION OF TRADE SECRETS.

7.4. General Indemnification. NaphCare, its successors and assigns, hereby agree to indemnify, defend (with counsel reasonably approved by Customer), and hold harmless Customer and its parent, subsidiaries, Affiliates, directors, officers, employees, agents, successors, and assigns, from and against any third party claim, allegation, demand, suit, proceeding or cause of action, and any debts, costs, damages, liabilities, or expenses, including court costs and reasonable legal fees, arising from, in connection with or related to (i) the damage, loss, or destruction of real or tangible personal property caused by the tortious conduct of NaphCare or its agents; (ii) the negligent acts or omissions or the willful misconduct of NaphCare or its agents; (iii) a breach by NaphCare or its agents of the confidentiality obligations set forth in this Agreement; (iv) a breach of Exhibit G (Information Security Addendum) by NaphCare or its agents; (v) the violation by NaphCare or its agents of any applicable federal or state law governing NaphCare's performance under this Agreement; and (vi) an employment-related claim brought by a NaphCare employee or agent. Customer hereby agrees to indemnify, defend, and hold harmless NaphCare, its subsidiaries, directors, officers, employees, agents, successors, and assigns, from and against any third party claim, allegation, demand, suit, proceeding or cause of action, and any debts, costs, damages, liabilities, or expenses, including court costs and reasonable legal fees, arising from, in connection with or related to a breach by Customer or its agents of: (i) the confidentiality obligations set forth in this Agreement; and/or (ii) a violation of HIPAA. NaphCare is not required to provide indemnification for the actions or inactions of Customer's medical employees or custodial staff.

8. Termination.

8.1. Notice of Breach; Cure Period. In the event of a breach of provision of this Agreement, except as otherwise may be provided in the BAA, the notice and cure procedures set forth in this paragraph shall apply. The non-breaching party shall give the breaching party notice describing the breach and stating the time within which the breach must be cured. The cure period shall be at least thirty (30) days. The non-breaching party shall have the option, but not the obligation, to extend the cure period beyond the stated time period. Any such extension shall not prejudice the non-breaching party's right to terminate at any time thereafter if the cure has not been provided in a timely fashion.

8.2. Termination for Cause. If a breach of any provision of this Agreement has not been cured at the end of the applicable cure period, then the non-breaching party thereupon may terminate this Agreement by thirty (30) days' written notice to the other party. Termination of this Agreement by NaphCare for breach by Customer shall terminate all licenses granted to Customer herein. This Agreement and the licenses granted to Customer herein shall terminate automatically, to the extent permitted by applicable law in the jurisdiction or jurisdictions in question, if Customer makes an assignment for the benefit of its creditors, files a petition in bankruptcy, receivership, reorganization, or other like proceeding under any present or future debtor relief law (or is the subject of an involuntary such petition or filing that is not dismissed within sixty (60) days after the effective filing date thereof), or admits of a general inability to pay its debts as they become due. Any termination of this Agreement for cause shall be (i) subject to the provisions of

Section 8.4 (Transition Assistance), and (ii) in addition to, and not in lieu of, any other rights or remedies available at law or in equity.

- 8.3. Termination for Convenience. Beginning one (1) year after the Effective Date of this Agreement, NaphCare or Customer shall have the option to terminate this Agreement without penalty for any reason or no reason (a “Termination for Convenience”). In the event of a Termination for Convenience, the terminating party shall provide with one hundred twenty (120) days’ written notice of termination. Such termination shall be effective upon the date specified in the notice; provided, however, that Customer’s license and access to the Application and access to the Services may continue to be provided by NaphCare, and the date of termination may be extended, pursuant to the provisions of Section 8.4 hereof (Transition Assistance).
- 8.4. Transition Assistance Upon Termination. Except in the event of termination relating to Customer’s material breach of its payment obligations, for a period of up to six (6) months following termination, expiration, or non-renewal of this Agreement (the “Transition Period”), NaphCare agrees to provide Customer continued, uninterrupted, and undiminished access to and use of the Application and Services at the contracted fees (prorated monthly) to allow for the orderly transition of the Customer Data to an alternative of Customer’s choosing. Further, during the Transition Period, NaphCare shall cooperate fully with Customer and provide conversion services at NaphCare’s hourly rates set forth in Exhibit F, Section 3, for the purpose of assisting Customer in obtaining an orderly migration of the Customer Data to a new platform. NaphCare will provide the Customer Data in an industry-standard format and transmission method mutually agreed to by the parties. If the Agreement is terminated by NaphCare for material breach by Customer of its payment obligations, then NaphCare will provide transition assistance as described in this Section only if, prior to the start of the Transition Period, Customer pays to NaphCare all past due undisputed accounts receivable and prepaids (at least fifteen (15) days in advance of the commencement of the applicable monthly period) the applicable monthly fees during the Transition Period. For clarification and avoidance of doubt, the actual termination date shall be the last day of the Transition Period as determined by Customer.
- 8.5. Following completion of the Transition Period, Customer will immediately cease all use of the Application and Services. Notwithstanding the foregoing, (i) NaphCare shall not destroy any Customer Data maintained by NaphCare until Customer has received a full and complete copy of the Customer Data and has notified NaphCare that it has successfully migrated the Customer Data to a new platform; and (ii) NaphCare may not retain any archival copies of Customer Data.
- 8.6. Compliance with the 21st Century Cures Act. NaphCare agrees that it will comply with the 21st Century Cures Act by refraining from practices that constitute information blocking as defined in Section 3022(a) of the Public Health Service Act.

9. Risk Allocation.



- 9.1. EXCLUSION OF INDIRECT DAMAGES. EXCEPT FOR CLAIMS ARISING UNDER THE PARTIES' INDEMNIFICATION OBLIGATIONS, OR FROM THE PARTIES' GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR VIOLATIONS OF LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY'S RIGHTS) FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING LOST PROFITS, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE), WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, SHOULD HAVE ANTICIPATED, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY ANYONE. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.
- 9.2. MAXIMUM AGGREGATE LIABILITY. OTHER THAN WITH RESPECT TO (I) THE PARTIES' INDEMNIFICATION OBLIGATIONS, OR FROM THE PARTIES' GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR VIOLATIONS OF LAW, (II) CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, (III) CUSTOMER'S USE OF THE LICENSED MATERIALS OTHER THAN IN ACCORDANCE WITH THE LICENSE GRANTED IN THIS AGREEMENT, (IV) LOSS OF CUSTOMER DATA BY NAPHCARE; (V) NAPHCARE'S BREACH OF THE INFORMATION SECURITY ADDENDUM; OR (VI) NAPHCARE'S BREACH OF THE BAA, IN NO EVENT SHALL A PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY OR THROUGH SUCH PARTY), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, WARRANTY, TORT (INCLUDING GENERAL NEGLIGENCE), OR OTHERWISE, EXCEED THE FEES PAID OR PAYABLE HEREUNDER DURING THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE ACT GIVING RISE TO CLAIM. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.
- 9.3. Intentional Risk Allocation. Each party acknowledges that the provisions of this Agreement were negotiated, as a material part of the agreement memorialized herein, to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions involved with this Agreement. The warranty disclaimers and limitations in this Agreement are intended, and have as their essential purpose, to limit the circumstances of liability. The remedy limitations and the limitations of liability are separately intended, and have as their essential purpose, to limit the forms of relief available to the parties.

10. Insurance.

During the Term of this Agreement, and any subsequent extensions, NaphCare will use commercially reasonable efforts to maintain, at NaphCare's sole expense, the following insurance coverage:

- 10.1. Workers' compensation coverage as required by applicable law; the policy shall be endorsed to waive subrogation in favor of the San Bernardino County. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing Services on behalf of the Contractor and all risks to such persons under the Contract.

If NaphCare has no employees, it may certify or warrant to the Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance

- 10.2. Automobile Liability coverage of at least \$1,000,000 single limit per accident for bodily injury and property damage. If NaphCare is transporting one or more non-employee passengers in performance of Contracted Services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the NaphCare owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- 10.3. Commercial General Liability insurance coverage insuring all operations by or on behalf of NaphCare with coverage of at least \$2,000,000 per occurrence and \$11,000,000 aggregate. The policy coverage shall include:
- a. Premises operations and mobile equipment.
  - b. Products and completed operations.
  - c. Broad form property damage (including completed operations).
  - d. Explosion, collapse, and underground hazards.
  - e. Personal injury.
  - f. Contractual liability.
- 10.4. Professional Liability (non-medical) /E&O insurance with coverage of at least \$2,000,000 per occurrence and \$11,000,000 aggregate; and
- 10.5. Cybersecurity and Technology E&O insurance coverage in the amount of \$5,000,000 per occurrence and \$5,000,000 aggregate, covering privacy violations,

information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, and network security. The policy shall protect the involved Customer entities and cover breach response cost as well as regulatory fines and penalties.

Any limits described above may be covered through a combination of the underlying policy, umbrella and excess liability insurance policies. Upon request by Customer, NaphCare will deliver to Customer a certificate of insurance evidencing the insurance coverage required in this Section.

NaphCare shall require the carriers of required coverages to waive all rights of subrogation against the Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit NaphCare and NaphCare's employees or agents from waiving the right of subrogation prior to a loss or claim. NaphCare hereby waives all rights of subrogation against the Customer. NaphCare shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

It is understood and agreed to by the parties hereto that NaphCare's insurance shall be construed as primary insurance, and the Customer's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory. NaphCare agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between NaphCare and Customer or between the Customer and any other insured or additional insured under the policy.

11. Nature of Relationship; Subcontractors. NaphCare shall provide all Services hereunder as an independent contractor to Customer. Subject to the provisions of this Agreement regarding confidentiality, NaphCare may perform its obligations hereunder through its employees and through subcontractors. With respect to use of subcontractors, NaphCare shall provide prior written notification to Customer stating (i) the identity of the subcontractor and (ii) the work that is being assigned to the subcontractor. NaphCare will be responsible for the work performed by the subcontractor to the same extent that NaphCare would be if it were NaphCare's own work. All other provisions of this Agreement, including but not limited to Customer's right to require NaphCare to remove and replace personnel, will apply to the work of the subcontractor in the same manner and to the same extent as if the work were performed by NaphCare hereunder. NaphCare shall also execute a Subcontractor Business Associate Agreement with each subcontractor that contains provisions at least as strict as this Agreement's BAA. Notwithstanding the foregoing, NaphCare shall not use any subcontractor personnel who are located outside of the United States. Nothing contained herein shall be deemed to create any agency, partnership, joint venture, employment arrangement, or other relationship between the parties or any of their Affiliates, and neither party shall have the right, power, or authority under this Agreement to create any duty or obligation on behalf of the other party.
12. Customer Data.

- 12.1. Location. Customer Data managed by NaphCare will be stored and accessed from NaphCare datacenters owned, managed, and maintained by NaphCare in Birmingham, Alabama, and/or Las Vegas, Nevada.
- 12.2. Segregation. NaphCare will implement reasonable and appropriate measures designed to secure and segregate Customer content and resources against accidental or unlawful loss, access, or disclosure as the Customer is a “Business Associate” of NaphCare as defined in HIPAA. NaphCare will provide documentation, at Customer’s request, of technical configuration supporting this segmentation and protection.
13. Other Provisions.
- 13.1. Notice. Except as otherwise expressly provided herein, notices given under this Agreement shall be made in writing and shall be transmitted by (i) personal delivery, or (ii) nationally recognized overnight courier service with delivery confirmation capability, or (iii) registered or certified mail, postage prepaid, return receipt requested. Notices shall be effective upon receipt. Such notices shall be sent to NaphCare at Attn: CEO, NaphCare, Inc. 2090 Columbiana Road, Suite 4000, Birmingham, Alabama 35216, and to Customer at the address shown on the Cover Page, with copy to any other addressee shown on the Cover Page, if so indicated. Either party may change its address for purposes of notice by written notice thereof to the other party.
- 13.2. Survival. The covenants, conditions, and rights set forth herein concerning license rights and restrictions relating thereto, Confidential Information, indemnification, post-termination procedures, and any other provision that, by its nature, is intended to survive this Agreement shall survive any termination or expiration of this Agreement except as otherwise expressly set forth in this Agreement.
- 13.3. Force Majeure. Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control of such party and not due to such party’s own fault or negligence or that of its contractors or representatives or other persons acting on its behalf, and which cannot be overcome by the exercise of due diligence and which could not have been prevented through commercially reasonable measures, including acts of God, acts of terrorists or criminals, acts of domestic or foreign governments, change in any law or regulation, fires, floods, explosions, epidemics, disruptions in communications, power, or other utilities, strikes or other labor problems, riots, or unavailability of supplies. For clarification and avoidance of doubt, (i) software, hardware, or telecommunications failures caused by NaphCare, (ii) failure, inadequate performance, or unavailability of NaphCare’s suppliers or subcontractors, and (iii) configuration changes, software changes, changes to the hosting environment, malware, or other errors or omissions introduced, or permitted to be introduced, by NaphCare that result in an outage or inability for Customer to access the System or utilize the Services, shall not constitute a force majeure event. Further, a force majeure event shall not relieve NaphCare of its obligations under this Agreement to provide disaster recovery services. Notwithstanding any other provision of this Agreement, Customer shall be relieved of its payment obligations for amounts due for Services which Customer

is unable to receive or NaphCare is unable to perform during the period or duration of a force majeure event.

- 13.4. Assignment. The parties hereby agree that NaphCare may assign its interests and obligations stated within in this Agreement upon the Customer's acceptance in writing of any proposed assignment. No other assignment of this Agreement shall be made by either party unless both parties agree to same in writing as set forth in Section 13.8 herein below. Notwithstanding the foregoing, NaphCare may assign its rights and delegate its duties under this Agreement without prior Customer approval due to operation of law, corporate reorganization, consolidation, merger, or sale of all of its assets, provided that advance notice is given to the Customer.
- 13.5. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns permitted by this Agreement.
- 13.6. No Third Party Beneficiaries. Nothing in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- 13.7. Entire Agreement. Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. With the exception of the terms of existing Contract No. 15-886, as amended, no prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto will be of any force or effect. Each party represents and warrants that, in entering into and performing its obligations under this Agreement, it does not and will not rely on any promise, inducement, or representation allegedly made by or on behalf of the other party with respect to the subject matter hereof, nor on any course of dealing or custom and usage in the trade, except as such promise, inducement, or representation may be expressly set forth herein.
- 13.8. Amendment and Waiver. No modification or amendment to this Agreement will be valid or binding unless in writing and duly executed by authorized representatives of the parties. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.
- 13.9. Severability. If any provision of this Agreement is ruled wholly or partly invalid or unenforceable by a court or other 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 body making the ruling; (iii) the parties will negotiate in good faith in order to amend the provision held wholly or partly invalid or unenforceable to the minimum extent necessary to render such provision valid and enforceable in conformity with the parties' intent as manifested herein; and (iv) if the ruling 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 in question as originally set forth in this Agreement shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

- 13.10. Attorney Fees. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under this Contract's indemnification and insurance requirements.
- 13.11. Injunctive Relief. Each party acknowledges that any violation of its covenants in this Agreement relating to the other party's Confidential Information and intellectual property may result in damage to such party that is largely intangible but nonetheless real and that is incapable of complete remedy by an award of damages. Accordingly, any such violation shall give such party the right to a court-ordered injunction or other appropriate order to enforce specifically those covenants.
- 13.12. Headings. The headings of the sections used in this Agreement are included for convenience only and are not to be used in construing or interpreting this Agreement.
- 13.13. Counterparts. This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts 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. The parties agree that the electronic signature of a party shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. 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.
- 13.14. Dispute Resolution. Customer and NaphCare agree to first attempt in good faith to resolve any dispute or controversy by negotiation and consultation between the senior executives, or their designees, of each party with the authority to agree to any proposed resolution. In the event that such dispute or controversy is not resolved on such informal basis within sixty (60) days after one party provides written notice to the other party of such dispute or controversy, either party may file suit in the state or federal courts specified herein.
- 13.15. Invoice Payment Terms. All fees and expenses due and payable to NaphCare pursuant to this Agreement shall be paid by Customer within sixty (60) days after receipt of an undisputed invoice. NaphCare shall have the right to suspend Services if any undisputed invoice to Customer is not paid within ninety (90) days of the due date; provided, however, that NaphCare will provide written notice and a cure period of at least ten (10) days prior to any suspension of Services.

NaphCare shall not be held responsible and payment shall not be withheld for the delay, noncooperation, nonperformance, inability, or noncompliance of the Customer or third party vendors as it relates to services and features NaphCare agrees to provide under this Agreement. This includes, but is not limited to, provided customizations or interfaces that rely on external systems managed by the Customer or third party vendors. If the Customer delays implementing a service or feature NaphCare will provide the service or feature at a later date during the course of this Agreement or any renewals hereof. In the event NaphCare discovers inability, noncooperation, nonperformance, or noncompliance by interface vendors or third party vendors, it shall inform Customer in writing and Customer shall have thirty (30) days from the date notification is received to cure the stated issues raised by NaphCare.

- 13.16. Access to Books, Documents & Records. In the event that the Secretary of the Department of Health and Human Services (the “Secretary”) or the Comptroller General of the United States (the “Comptroller General”) or their representatives determine that this Agreement is a contract described in Section 1861(v)(1)(I) of the Social Security Act, NaphCare agrees that for a period of four (4) years after the furnishing of goods or services under this Agreement, it will make available upon written request to Customer or to the Secretary, or, upon request, to the Comptroller General, or any of their duly authorized representatives, this Agreement, and those books, documents, and records of NaphCare that are necessary to certify the nature and extent of amounts paid to NaphCare by Customer pursuant to this Agreement. If NaphCare carries out any of the duties of this Agreement through a subcontract with a value of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, with a related organization as defined in applicable regulations, such subcontract will contain a clause to the effect that, until the expiration of four (4) years after the furnishing of such goods or services pursuant to such subcontract, the related organization will make available, upon written request to Customer or to the Secretary, or, upon request, to the Comptroller General, or any of their duly authorized representatives, the subcontract, and all books, documents, and records of such organization that are necessary to verify the nature and extent of such costs. In the event access to books, documents, and records is requested pursuant to this Section by the Secretary, the Comptroller General, or any of their duly authorized representatives, NaphCare will promptly notify Customer, and the books, documents, records, and subcontracts will also be made available to Customer.
- 13.17. Compliance with HIPAA, HIPAA Regulations and the HITECH Act. Under this Agreement, NaphCare will receive or create PHI on behalf of Customer and will therefore, be a Business Associate, as defined in the HIPAA Regulations. NaphCare and Customer hereby agree to comply with all applicable regulations and breach reporting requirements contained in the HIPAA Regulations and the HITECH Act, including the terms of the BAA attached hereto as Exhibit B.
- 13.18. NaphCare Personnel.
- 13.18.1. Customer shall have the right to review resumes or statements-of-qualifications and to conduct interviews (either on-site or via telephone, at Customer’s discretion and expense) for key or primary personnel,

including any subcontractors, which NaphCare contemplates assigning to Customer for onsite Implementation and Training Services and, after consultation with NaphCare, to reject individuals who are reasonably deemed to be unqualified.

- 13.18.2. For NaphCare personnel providing onsite Services, including any subcontractors, NaphCare will comply with Customer's policies and requirements for background checks and health screening.
- 13.18.3. Customer shall have the right to require NaphCare to replace any NaphCare personnel, including any subcontractors, providing onsite Services whom Customer reasonably deems to be unqualified, unfit, or otherwise unsatisfactory. Race, gender, age, national origin, disability, or other grounds impermissible by state or federal law shall not be valid grounds for such request. NaphCare will replace such personnel as soon as reasonably possible, so as not to cause a material delay in the Project Plan. Additionally, NaphCare shall bear all costs and expenses associated with the transition of service responsibility to the replacement resource.
- 13.18.4. Continuity. NaphCare acknowledges and agrees that continuity of personnel is important to the success of the projects for which services are being provided. Except upon Customer's request or in the event of resignation, termination for cause, death, disability, leave of absence, family emergency, or other circumstance out of NaphCare's control, NaphCare will not replace key or primary assigned Implementation and Training personnel, including any subcontractors, without prior written consent of Customer. In the event NaphCare must remove any personnel, including any subcontractors, for reasons permitted in the preceding sentence, NaphCare will provide Customer with adequate notice, except in circumstances where such notice is not possible, and will work with Customer in good faith to develop a mutually agreeable transition plan to ensure continuity of the contracted Services. NaphCare will transition the responsibilities from the removed staff member to the replacement staff member without charging Customer for time or expenses involved with the replacement staff member becoming familiar with the assigned project(s) and responsibilities.
- 13.19. Application Alerts. NaphCare shall maintain a procedure whereby Customer is alerted (promptly notified in a manner commensurate with the severity) of Application Malfunctions, whether discovered by NaphCare or another NaphCare customer, that NaphCare believes will likely (i) critically impact Patient care or Patient safety, or (ii) create, cause, or result in a material negative financial impact to Customer.
- 13.20. Outstanding Litigation. As of the Effective Date, NaphCare represents and warrants that there is no outstanding litigation or arbitration to which NaphCare is a party which, if decided unfavorably to NaphCare, would adversely affect NaphCare's ability to fulfil its obligations under the Agreement.



- 13.21. Confidentiality. Customer's confidentiality obligations set forth herein shall not prohibit Customer from sharing its experiences in using the System and/or the Services with other healthcare entities who are using, or who are contemplating using, the System or the Services.
- 13.22. Solicitation and Hiring. Customer and NaphCare agree that, during the term of this Agreement and for a period of one (1) year thereafter, each party will not solicit or hire, directly or indirectly, and will not knowingly engage as an independent contractor, any employee of the other party who has been involved in rendering or receiving Services hereunder without the prior written approval of the other party; provided, however, that the foregoing provisions shall not apply with respect to any person who seeks employment or engagement from the other party on such person's own initiative such as, but not limited to, in response to a party's general announcement or advertisement of an employment opportunity.
- 13.23. Taxes. Customer shall pay when due all taxes, levies, or assessments based on or in any way measured by this Agreement, including the Licensed Materials and the Services provided hereunder, but excluding taxes based on NaphCare's net income; provided, however, that if Customer notifies NaphCare in writing that Customer is exempt from paying applicable state, county, city, or other local sales or use taxes and delivers to NaphCare a copy of Customer's tax exemption certificate or other evidence satisfactory to NaphCare demonstrating such exemption, then NaphCare shall not collect and pay such taxes on Customer's behalf except pursuant to an order from a court of competent jurisdiction or notice from such taxing authority. If Customer has notified NaphCare of such a tax exemption, Customer shall notify NaphCare promptly of any change in the status of such exemption.
- 13.24. Reserved.
- 13.25. In the event NaphCare discovers material non-cooperation, non-performance, or non-compliance by Customer, NaphCare shall inform Customer in writing and Customer shall have sixty (60) days from the date notification is received to cure the stated issues raised by NaphCare.
- 13.26. The commitment for the completion and go-live of the overall EHR project shall be determined by both parties. NaphCare shall not be liable for any project delay(s) unless such delay(s) is (are) due to NaphCare's fault. Customer shall provide written confirmation to NaphCare of go-live start date two (2) weeks in advance of agreed upon date. Should Customer change go-live date within two (2) weeks preceding start date, Customer shall be solely responsible for all non-refundable costs incurred by NaphCare related to go-live activities. Such activities include but are not limited to: hotel accommodations, transportation costs, and personnel back-fill costs related to those individuals involved in the go-live training and implementation activities provided by NaphCare. Go-live start date shall not occur within seven (7) days of a national holiday.
- 13.27. California Consumer Privacy Act – To the extent applicable, if NaphCare is a business that collects the personal information of a consumer(s) in performing Services pursuant to the Agreement, NaphCare must comply with the provisions of the California Consumer Privacy Act ("CCPA"). (Civ. Code, § 1798.100 et seq.)

For purposes of this provision, “business,” “consumer,” and “personal information” shall have the same meanings as set forth at Civil Code section 1798.140. NaphCare must contact the Customer immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the Customer, including but not limited to, providing a list of disclosures or deleting personal information. NaphCare must not sell, market, or otherwise disclose personal information of a consumer provided by the Customer unless specifically authorized pursuant to terms of the Agreement. NaphCare must immediately provide to the Customer any notice provided by a consumer to NaphCare pursuant to Civil Code section 1798.150, subdivision (b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to the Agreement. NaphCare must immediately notify the Customer if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155, subdivision (b).

- 13.28. Executive Order N-6-22 Russia Sanctions – On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (“EO”) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that NaphCare is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. NaphCare shall be provided advance written notice of such termination, allowing NaphCare at least thirty (30) calendar days to provide a written response. Termination shall be at the sole discretion of the Customer.
- 13.29. Levine Act - Campaign Contribution Disclosure (SB 1439) – NaphCare has disclosed to the Customer using Exhibit I – Levine Act - Campaign Contribution Disclosure (SB 1439) (formerly referred to as Senate Bill 1439), whether it has made any campaign contributions of more than \$500 to any member of the San Bernardino County Board of Supervisors or other County elected officer (Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney) within the earlier of: (1) the date of the submission of NaphCare’s proposal to the Customer, or (2) 12 months before the date the Agreement was approved by the Board of Supervisors. NaphCare acknowledges that under Government Code section 84308, NaphCare is prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer for 12 months after the County’s consideration of the Agreement.

In the event of a proposed amendment to the Agreement, NaphCare will provide the Customer a written statement disclosing any campaign contribution(s) of more than \$500 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of NaphCare or by a parent, subsidiary, or otherwise related business entity of NaphCare.

## **Exhibit B – Business Associate Agreement**

This Business Associate Agreement (“BAA”) dated January 28, 2025 (the “Effective Date”), is entered into by and between San Bernardino County, including all agencies, districts, special districts, and departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, and representatives (“Covered Entity”) and NaphCare, Inc. (“Business Associate”), for the purposes of complying with the privacy and security regulations issued by the United States Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”) and the privacy and security provisions of the American Recovery and Reinvestment Act of 2009 and its implementing regulations (“ARRA”). Covered Entity and Business Associate may be individually referred to as “Party,” and collectively referred to as the “Parties.”

**WHEREAS**, Covered Entity has been authorized to enter into Business Associate Agreements on behalf of its affiliates.

**WHEREAS**, Covered Entity and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the “Business Arrangements”) pursuant to which Business Associate may provide services for Covered Entity that require Business Associate to access, receive, maintain, use or transmit health information that is protected by state and/or federal law; and

**WHEREAS**, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the U.S. Department of Health & Human Services (“HHS”) promulgated the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Standards”), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (including, but not limited to, parties meeting the definition of “covered entity” or “business associate”) to protect the privacy of certain individually identifiable health information (“Protected Health Information,” or “PHI”); and

**WHEREAS**, pursuant to HIPAA, HHS has issued the Security Standards (the “Security Standards”), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information (“EPHI”); and

**WHEREAS**, in order to protect the privacy and security of PHI, including EPHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a “business associate agreement” with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or EPHI; and

**WHEREAS**, Business Associate and Covered Entity desire to enter into this Business Associate Agreement.

**NOW THEREFORE**, in consideration of the mutual promises set forth in this BAA and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the Parties agree as follows:

1. Business Associate Obligations.

- 1.1. Business Associate may receive from Covered Entity, or create, receive, maintain or transmit on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this BAA shall have the meanings set forth in HIPAA or ARRA, as applicable, and all references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards or Security Standards (as of the compliance deadline for such standards) if the PHI were used or disclosed by Covered Entity in the same manner. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this BAA.
- 1.2. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate covenants that such safeguards shall include, without limitation, implementing written policies and procedures in compliance with HIPAA and ARRA, conducting a security risk assessment, and training Business Associate employees who will have access to PHI with respect to the policies and procedures required by HIPAA and ARRA.
- 1.3. In the event of a Breach (as hereinafter defined) of any Unsecured PHI or EPHI that Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses on behalf of Covered Entity in connection with the Business Arrangements, Business Associate shall provide notice of such Breach to Covered Entity within ten (10) calendar days. "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information. "Unsecured PHI or EPHI" shall mean PHI or EPHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary.
- 1.4. Notice of a Breach to Covered Entity shall include the identification of each individual whose PHI or EPHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach. At the request of Covered Entity, Business Associate shall identify: the date of the Breach, the date the Breach was discovered by the Business Associate, or, by the exercise of reasonable diligence should have been known, the scope of the Breach, the Business Associate's response to the Breach, the identification of the party responsible for causing the Breach, if known, and any other available information that the Covered Entity is required to include in any notification to the individual(s) affected.
- 1.5. In the event of a Breach, Business Associate shall, in consultation with Covered Entity, mitigate, to the extent practicable, any harmful effect of such Breach that is known to Business Associate.
2. Use of PHI. Except as otherwise permitted herein or required by law, Business Associate shall use PHI only for the following purposes: (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and

administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein. Use, creation and disclosure of de-identified health information by Business Associate is not permitted unless expressly authorized in writing by Covered Entity.

3. Disclosure of PHI. Subject to any limitations in this BAA, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangements and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided either that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it will be held confidentially and further used and disclosed only as required by law or for the purposes for which it was disclosed to the third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this BAA or for a purpose not expressly permitted by the Privacy Standards; and (c) ensures that all disclosures of PHI by Business Associate and the third party comply with the principle of “minimum necessary use and disclosure,” i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed. Business Associate may disclose PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, “Recipients”) and may allow Recipients to create or receive PHI on its behalf only if Recipients agree in writing to the same restrictions and conditions that apply to the Business Associate under this BAA, including, but not limited to, the requirement that the Recipients will: (i) comply with all requirements of the Privacy and Security Standards that apply to the Business Associate, (ii) appropriately safeguard all PHI that is either created or received, and (iii) comply with the Breach notification and mitigation requirements under this BAA. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate’s own acts, failures or omissions. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this BAA, of which it becomes aware, such report to be made within five (5) calendar days of the Business Associate becoming aware of such use or disclosure. Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this BAA.
4. Individual Rights Regarding Designated Record Sets. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity, an individual who is the subject of the PHI under conditions and limitations required under 45 C.F.R. § 164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as directed or agreed to by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) calendar days of such request and shall make any amendment requested by Covered Entity within ten (10) calendar days of such request. The information shall be provided (i) in the form and format requested, if it is readily producible in such form and format; or, if not, in a readable form and format as agreed to by the

Covered Entity and the individual, or (ii) in summary, if the individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying PHI may be charged. Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

5. Accounting of Disclosures. Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 C.F.R. § 164.528, as it may be amended from time to time, incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the Privacy Standards. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of Covered Entity's request. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this BAA and shall continue as long as Business Associate maintains PHI.
6. Withdrawal of Authorization. If the use or disclosure of PHI in this BAA is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.
7. Records and Audit. Business Associate shall make available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's or Business Associate's compliance with the Privacy Standards and Security Standards, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests by or on behalf of any and all government authorities served upon Business Associate for PHI.
8. Confidentiality.
  - 8.1. Business Associate shall take any steps reasonably required to (i) protect PHI from unauthorized uses or disclosures, and (ii) maintain the confidentiality and integrity of PHI.

- 8.2. The Parties shall comply with all applicable federal and state laws governing the confidentiality and privacy of health information, respectively, including, without limitation, HIPAA and the regulations promulgated thereunder, and ARRA and the regulations promulgated thereunder.

9. Term and Termination.

- 9.1. This BAA shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 9, provided, however, that any termination shall not affect the respective obligations or rights of the Parties arising under this BAA prior to the effective date of termination, all of which shall continue in accordance with their terms.
- 9.2. Covered Entity shall have the right to terminate this BAA for any reason upon thirty (30) days written notice to Business Associate.
- 9.3. Covered Entity, at its sole discretion, may immediately terminate this BAA and shall have no further obligations to Business Associate hereunder if any of the following events shall have occurred and be continuing:
- 9.3.1. Business Associate shall fail to observe or perform any material covenant or obligation contained in this BAA for ten (10) calendar days after written notice thereof has been given to Business Associate by Covered Entity; or
- 9.3.2. A violation by Business Associate of any provision of HIPAA or ARRA or applicable laws or regulations relating to the obligations of Business Associate under this BAA.
- 9.4. Termination of this BAA for either of the two reasons set forth in Subsection 9.3 above shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.
- 9.5. Upon the termination of all Business Arrangements, either Party may terminate this BAA by providing written notice to the other Party.
- 9.6. Upon termination of this BAA for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to “return or destroy,” Business Associate shall retain only that PHI which is necessary for the Business Associate to continue its proper management and administration or to carry out its legal responsibilities, and will extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal laws, which may require a specific period of retention, redaction, or other treatment of such PHI.



10. No Warranty. PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN “AS IS” BASIS. FACILITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
11. Ineligible Persons. Business Associate represents and warrants to Covered Entity 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 BAA, 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 BAA immediately for cause.
12. Indemnification. Business Associate shall indemnify and hold harmless Covered Entity for and from all claims, demands, lawsuits, losses, damages, liabilities, penalties, fines, or expenses, including reasonable attorneys' fees, asserted by persons or entities against Covered Entity, or incurred by Covered Entity as a result thereof, relating to PHI maintained, used, or disclosed by Business Associate, or by its agents or subcontractors, or arising in any way from Business Associate's, or its agents' or subcontractors', obligations or performance under this BAA or violations of applicable Federal or state laws, rules or regulations.
13. Insurance. In addition to any general and/or professional liability insurance coverage required of Business Associate under the BAA for services, Business Associate shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of Business Associate, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E. Business Associate shall make itself, and any subcontractors, employees, or agents assisting the Business Associate in the performance of its obligations under the BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party. .
14. Miscellaneous.
  - 14.1. Notices. All notices, requests, demands and other communications required or permitted to be given or made under this BAA shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither Party shall refuse delivery of any notice hereunder.

If to Covered Entity: As set forth on Cover Page

If to Business Associate: NaphCare, Inc.  
2090 Columbiana Road, Ste 4000  
Birmingham, AL 35216  
Attention: Legal Department

- 14.2. Waiver. No provision of this Business Associate Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- 14.3. Assignment. Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Business Associate Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.
- 14.4. Severability. Any provision of this Business Associate Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
- 14.5. Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of HIPAA and ARRA, including the Privacy Rule, the Security Rule, and the HITECH Act. If any applicable law and/or the regulations promulgated under HIPAA or ARRA are amended, or interpreted by governmental authorities, in a manner that renders this BAA inconsistent therewith, the Parties shall amend this BAA to the extent necessary to comply with such amendments or interpretations. Notwithstanding the foregoing, if Covered Entity and Business Associate have not amended this BAA to address a law or final regulation that becomes effective after the Effective Date and that is applicable to this BAA, then upon the effective date of such law or regulation (or any portion thereof) this Agreement shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this BAA to be consistent with such law or regulation and for Covered Entity and Business Associate to be and remain in compliance with all applicable laws and regulations. Except as provided in this Section 14.5., no amendment to this BAA shall be effective unless it is in writing and signed on behalf of Covered Entity and Business Associate.
- 14.6. Entire Agreement. This BAA constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this BAA, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this BAA and the terms of the Business Arrangements or any such later agreement(s), the terms of this BAA shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Privacy

Standards and/or Security Standards, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this BAA shall be binding on either Party. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this BAA. This BAA is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this BAA, nor shall any third party have any rights as a result of this BAA.

- 14.7. **Governing Law.** This BAA shall be governed by and interpreted in accordance with the laws of the state in which Covered Entity is located, excluding its conflicts of laws provisions. Jurisdiction and Venue for any dispute relating to this BAA shall exclusively rest with the state and federal courts in the county in which Covered Entity is located.
- 14.8. **Equitable Relief.** Business Associate understands and acknowledges that any disclosure or misappropriation of any PHI in violation of this BAA will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.
- 14.9. **Nature of Agreement.** Nothing in this BAA 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, not an agent, to Covered Entity and nothing contained herein shall be intended to expand the scope or nature of the relationship. This BAA does not express or imply any commitment to purchase or sell goods or services.
- 14.10. **Counterparts.** This BAA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this BAA, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this BAA is sought.
15. **Overseas Data and Cloud Computing.** Business Associate agrees not to create, receive, maintain, transmit, use, disclose, access, store or otherwise outsource PHI physically outside of the United States of America. Business Associate agrees not to use cloud computing models, without executing with the cloud vendor a HIPAA-compliant Business Associate Agreement/Addendum containing substantially the same terms as this BAA.
16. **Survival.** The respective rights and obligations and rights of Covered Entity and Business Associate relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this BAA.

**IN WITNESS WHEREOF**, the Parties have executed this Business Associate Agreement as of the Effective Date.

**COVERED ENTITY:**

**SAN BERNARDINO COUNTY**

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

Dawn Rowe  
(Print or Type Name)

Chair, Board of Supervisors  
(Title)

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

**BUSINESS ASSOCIATE:**

**NAPHCARE, INC.**

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

Byron P. Harrison  
(Print or Type Name)

CIO  
(Title)

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

## Exhibit C – Implementation and Training Services

1. NaphCare Obligations. Subject to terms and conditions of this Agreement and provided Customer is not in material breach of its obligations hereunder, NaphCare shall provide the following Implementation and Training Services during the Term:
  - 1.1. Software Implementation. The Customer currently utilizes NaphCare’s TechCare EHR v4.5 (client-server application). In order to provide an Electronic Health Record to Customer via a web-based platform, NaphCare will implement TechCare v5.0 (web-based). NaphCare shall plan, customize, configure, integrate, test, document, migrate, and deploy the System and provide to Customer all deliverables in accordance with the requirements of this Agreement and the Deliverables Chart set forth in Exhibit E. Without limiting the generality of the foregoing, NaphCare shall provide all its personnel, equipment, accessories, tools, and other items and do all work required for the Project where the same are not expressly identified in this Agreement as being provided by Customer.
  - 1.2. Server Infrastructure Services. Server Infrastructure services will be provided as defined in Exhibit D.
  - 1.3. Network Connectivity Services. Network Connectivity services will be provided as defined in Exhibit D.
  - 1.4. Implementation.
    - 1.4.1 Planning and Project Start. Within thirty (30) days following the execution of this Agreement, NaphCare will provide for Customer review a phased, milestone-based detailed **Project Plan**. The Plan will be comprehensive, providing detailed timelines and milestones for the Services outlined herein and will be utilized to provide the Services defined herein.
    - 1.4.2 Requirements and Design. NaphCare is responsible for the configuration and/or customization of existing functionality of the System in order to meet the needs of the Customer. NaphCare will analyze and review all existing customization to the customer-specific version of TechCare in use today and will develop the requirements necessary for changes to the v5 application. Note that many customizations in v4.5 are handled by newly developed modules/tools in v5 further simplifying the need to “customize” the application. A **Software Requirements Document**, defined in paragraph 1.3.2 of Exhibit E, shall be jointly prepared by the parties and will include all required modifications to the System.

In the event a new required customization is identified which does not already exist within the current customer-specific v4.5 application, NaphCare shall have the right to propose an additional one-time cost for development and implementation of such new customization in v5 of the application. Following Go Live, all revisions to previous customizations and/or new customizations shall be treated as Feature Requests.

- 1.4.3 Development and Delivery. NaphCare will complete customization of the TechCare v5 application to meet the defined requirements established. The hosted production and test environments will be fully deployed in preparation for migration activities.
- 1.4.4 Testing and Migration. NaphCare and the Customer will conduct testing activities as defined herein. NaphCare QA staff will review all customizations made to v5 and thoroughly test via manual and automated routines. Customer will review all customizations made to TechCare v5 following the Software Requirements Document and thoroughly test via manual and automated routines. NaphCare will migrate the existing data storage, integration endpoints, and Customer access endpoints to the cloud service provider. Impact to application availability will be discussed and planned with Customer.
- 1.4.5 Hosting Services Deployment. NaphCare is responsible for configuration and deployment of the Server Infrastructure Services and Network Connectivity Services, including primary and failover capabilities at the server and network layer supporting the System as defined in Exhibit D. NaphCare will deploy the hosting environment on the schedule defined in the Project Plan and in accordance with a Hosting Design Document that is jointly developed by Customer and NaphCare and includes all aspects of the configuration of the hosting environment.
- 1.4.6 Training and Go Live. NaphCare is responsible for pre-Go-Live and Go-Live training/support for all Authorized Users in order to support the management of and ongoing productive use of the System within the Customer's environment. Training will be provided via the following methods and be fully defined within a Training and Go-Live Plan that is jointly created by NaphCare and the Customer.
- i. Introductory Remote Training via Online Meetings
  - ii. Pre-Go-Live Onsite Classroom Training
  - iii. Go-Live Onsite Training and Support

The commitment for the completion and Go Live of the overall EHR project shall be determined by both parties. NaphCare shall not be liable for any project delay(s) unless such delay(s) is (are) due to NaphCare's fault. Customer shall provide written confirmation to NaphCare of Go Live start date two (2) weeks in advance of agreed upon date.

- iv. Readiness. At such time as all Deliverables required by the Project Plan for Go-Live are delivered to Customer, and NaphCare determines that the System and Services are completed, installed, and operational, then NaphCare shall provide Customer with written notice that the System is ready for Go-Live. Upon receipt of such notice, Customer will perform User Acceptance Testing in order to verify that (i) all required Deliverables have been delivered and accepted (ii) all reported material Malfunctions identified during User Acceptance Testing have been corrected or otherwise resolved and (iii) the

System and Services are completed, installed, and operational. Upon successful completion of Pre-Live Acceptance, Customer shall provide written confirmation to NaphCare of the Go Live start date two (2) weeks in advance of the date. The Go Live start date shall not occur within seven (7) days of a national or Customer-observed holiday.

- 1.5. Documentation. NaphCare is responsible for the provision and ongoing updating of end-user and technical Documentation of the System in the form of a User's Manual, Data Dictionary, and Knowledge Base online repository.
  - 1.6. Minor Deviations. NaphCare may make Minor Deviations from the Project Plan, Data Migration Plan, and Training Plan without obtaining prior written consent of Customer and shall give Customer prior written notification of any such planned deviation through the delivery of an updated status report (including a revised applicable Plan) which shows the impact, if any, of such deviations on the remainder of the Project.
  - 1.7. Reporting and Status. NaphCare is responsible for providing Customer a detailed status report for each calendar month during the Project. The report will describe the progress of the Project, including, (i) an updated Project Plan reflecting any mutually agreed changes to the Project Plan or any changes resulting from Minor Deviations, (ii) a report updating the status of each Deliverable under development and Services being performed, (iii) a detailed description of the tasks and schedules as required to implement the System for the interim period until the next monthly status report, including the level of compliance with the Project Plan, (iv) a listing of the resources Customer is required to provide, in accordance with the Project Plan, during the subsequent calendar month, (v) a general updated description of the tasks and schedules required to implement the System for the remainder of the Project Plan, (vi) specific identification of all new tasks commenced by NaphCare, all ongoing tasks, and identifying any tasks which are overdue or behind schedule, and (vii) such other information as is customarily included in monthly status reports prepared by NaphCare, or which is reasonably requested by Customer.
2. Customer Obligations. Subject to terms and conditions of this Agreement and provided NaphCare is not in material breach of its obligations hereunder, Customer shall provide the following services during the Implementation and Training service delivery:
    - 2.1. Facilities and Access. Customer shall provide sufficient access and facilities and/or working space within a facility for NaphCare to complete its obligations pursuant to the terms of the Agreement.
    - 2.2. Human Resources. Customer shall provide access to sufficient Subject Matter Experts (SMEs) whose knowledge of existing and future workflows will drive the customization of the Application to fit Customer's environment. Required SMEs include, but are not limited, to the following roles:
    - 2.3. Remote Access. Customer shall provide reasonable access to the existing system environment and support additional connectivity to aid in the migration to the Hosted environment.

- 2.4. Interface Vendor Management. Customer shall initiate communication with interface vendor partners in support of integration end-point migrations to the Hosted environment.



## **Exhibit D – Hosted Server and Network Services**

### **1. NaphCare Responsibilities.**

- 1.1. Server Infrastructure. NaphCare will provide a cloud hosted environment in order to remotely host the Application. All necessary network infrastructure, computer hardware, data storage, third party software (such as database software), technology, operating systems, and remote access software needed to remotely host the Application and the Customer Data will be provided by NaphCare. NaphCare will (i) monitor the infrastructure; (ii) provide backup and restoration services for the Application; (iii) coordinate preventative maintenance; and (iv) provide system management services including database maintenance (including database upgrade services), data archiving, system troubleshooting, production change control, and scheduled operational tasks. NaphCare shall be responsible for maintaining appropriate security measures, systems, and procedures designed to protect against anticipated threats or hazards to the availability, security, or integrity of the Customer Data.
- 1.2. Data Location. NaphCare shall provide its services to the Customer and its end users solely from data centers within the Continental United States. All storage, processing, and transmission of +-data shall be restricted to information technology systems within the Continental United States. NaphCare shall not allow its personnel or subcontractors to store Customer data on portable devices, including personal computers, except as specified and allowed by the Agreement, and then only on devices that are used and kept at its data centers within the Continental United States. NaphCare shall permit its personnel and NaphCare to access Customer data remotely only to provide technical support and as specified or required by the Agreement.
- 1.3. Server Environments.
  - 1.3.1 NaphCare will provide a System development environment (“Dev”) in order to support the implementation including (i) Dev Application environment, (ii) Dev database services and storage, (iii) Dev file storage, and (iv) Dev interface services within NaphCare’s infrastructure environment.
  - 1.3.2 NaphCare will provide a System test environment (“Test”) in order to support the ongoing productive use, including (i) Test Application environment, (ii) Test database services and storage, (iii) Test file storage, (iv) Test interface services.
  - 1.3.3 NaphCare will provide a System production environment (“Production”) in order to support the Go-Live (activation) and ongoing productive use, including (i) Production Application environment, (ii) Production database services and storage, (iii) Production file storage, (iv) Production interface services.
- 1.4. Network Infrastructure. NaphCare will provide Network Connectivity Services to support the connectivity of Customer to hosted Server Infrastructure as follows:

1.4.1 Internet. NaphCare will provide sufficient Internet services for the Hosted environment.

1.4.2 Static VPN over Internet. Network communication between NaphCare's datacenters and Customer's network via VPN in which Internet is provided by NaphCare at the Hosted environment and Internet is provided at Customer's Licensed Sites by Customer.

1.5. Service Level Agreement.

1.5.1 Availability Requirement. NaphCare shall make the System Available ninety-nine point sixty-seven (99.67%) percent of the time. Availability is measured on a 24x7 basis during any calendar-month period, excluding Excusable Outages. NaphCare cannot be held responsible for services, software, or equipment not provided hereunder. The Availability percentage during the month will be calculated as follows:

- (Total hours during the month) minus (Total hours related to Excusable Outages) equals Maximum Hours
- [(Maximum Hours) minus (Total hours of unplanned downtime)] divided by (Maximum Hours) equals Availability percentage

1.5.2 Response Time Requirement. In the event that Authorized Users at one or more Licensed Sites experience degraded System response time such that the affected Authorized Users are no longer able to effectively perform core workflows using the System, then Customer shall have the right to declare the period of such degraded System response time as unscheduled System downtime for the purpose of calculating monthly System Availability. NaphCare cannot be held responsible for services, software, or equipment not contracted-for hereunder.

1.5.3 Data Backups. NaphCare will backup Customer data with a one (1) hour Recovery Point Objective ("RPO") and a four (4) hour Recovery Time Objective ("RTO"). Retention of backups will include daily backups for one (1) week, weekly backups for one (1) month, monthly backups for eleven (11) months, and yearly backups for two (2) years.

1.5.4 Redundancy. NaphCare will maintain redundant Hosted environments for Customer's System. Application data will remain in synchronization between hosted environment within the one (1) hour RPO. Should the primary hosted environment become damaged, destroyed, or otherwise unavailable for any reason, the Application will fail-over to the backup datacenter for continued System access. Testing of the failover capability may occur at the Customer's request with no more than one test during a 365-day period.

1.5.5 Audit. NaphCare shall maintain complete and accurate records of all transactions and information necessary to calculate or measure the service levels described (the "Service Level Data"). All Service Level Data shall

be maintained by NaphCare throughout the Term of this Agreement. Not more than once in any twelve (12) month period during the Term of this Agreement, Customer or its designated representatives shall be entitled to (i) audit and inspect the Service Level Data during business hours upon reasonable notice to NaphCare and (ii) make copies and summaries of such Service Level Data.

## 2. Customer Responsibilities.

2.1. Network Infrastructure. Customer will provide Network Connectivity Services to support the connectivity of Customer endpoints to hosted Server Infrastructure as follows:

- 2.1.1. Customer shall provide sufficient internal LAN network connectivity and WAN infrastructure for Customer's Licensed Sites. Customer LAN and WAN networks will support at least 0.12Mbps per concurrent session with <40ms latency.
- 2.1.2. Customer shall provide sufficient Internet connectivity to support Customer endpoints accessing the Hosted environment. Customer Internet services will support at least 0.12Mbps per concurrent session with <40ms latency.
- 2.1.3. Customer will provide and support any network equipment which resides within Customer facilities which is required for implementation of connectivity.
- 2.1.4. Customer shall provide access to the use of enterprise network management services including, but not limited to, Domain Name Services (DNS) and Shared/Network Printing Services in order for proper Application functionality.
- 2.1.5. Customer shall provide and support a Static VPN over Internet in order to provide offline mode functionality (if applicable).
- 2.1.6. Customer shall allow communication across the following ports within the before mentioned connections:
  - TCP 1433, 1434 – SQL
  - TCP 445 - SMB Windows File Share
  - ICMP – Ping
  - TCP 53
  - UDP 53
- 2.1.7. Customer is responsible for providing and supporting software that may complement the System, but not be a part of it. Such supporting software includes, but is not limited to, the following:
  - Office Productivity Software
  - Dictation Software
  - Clinical Reference Software
  - Identity Management Services

- 2-Factor Authentication Services
- Operating System Patching
- Security of Network, Infrastructure
- Interface Vendor Services from 3rd Parties
- Computer Workstations (Desktop, Laptops, Tablets)
- Peripheral Printing Devices
- Peripheral Signature Capture Devices

## Exhibit E – TechCare EHR Customization for CalAIM Implementation

1. NaphCare Obligations. Subject to terms and conditions of this Agreement and provided Customer is not in material breach of its obligations hereunder, NaphCare shall provide the following Implementation and Training Services during the Term:
  - 1.1 Software Customization. In order to provide necessary application customizations to support updated clinical workflows and work queues that will allow the capture of charges within TechCare (the “Project”), NaphCare will implement updates to the existing System designed for the Waiver 1115 Justice-Involved Initiative. NaphCare shall plan, customize, configure, integrate, test, document, and deploy the customizations and modules and provide to Customer all deliverables in accordance with the requirements of this Agreement and the Deliverables set forth in Exhibit F. Without limiting the generality of the foregoing, NaphCare shall provide all its personnel, equipment, accessories, tools, and other items and do all work required for the Project where the same are not expressly identified in this Agreement as being provided by Customer. This section solely focuses on the implementation of the Waiver 1115 Justice-Involved Reentry Initiative and includes the implementation of a Medi-Cal eligibility and application workflow, screening workflow, reporting workflow, encounter workflow, orders workflow, and medical billing/claims workflow.
  - 1.2 Third Party Products. NaphCare will install the following Third Party Products for testing and use with the Application:
    - 1.2.1 MediSpan Drug Database
    - 1.2.2 ICD10 Database
    - 1.2.3 Medi-Cal’s Contract Drug List
  - 1.3 Implementation.
    - 1.3.1 Project Plan. Within thirty (30) days following the execution of this Agreement, NaphCare will provide for Customer review a phased, milestone-based detailed Project Plan. The Plan will be comprehensive, providing detailed timelines and milestones for the Services outlined herein and will be utilized to provide the Services defined herein. The Project Plan must be approved by Customer following the Deliverable acceptance procedure set forth in Exhibit F.
    - 1.3.2 Software Customization. A **Software Requirements Document** shall be jointly prepared by the parties and will include all required modifications to the System related to Waiver 1115 Justice-Involved Reentry Initiative including, but not limited to, the following functions and workflows:
      - 1.3.2.1 Medi-Cal Eligibility Workflow. NaphCare will implement software customizations to assist with the process of

eligibility determination. NaphCare bears no responsibility for submitting applications on behalf of customer.

1.3.2.2 Screening Workflow. NaphCare will implement software customizations to assist with the screening of the justice-involved population to ensure compliance with Medi-Cal eligibility requirements for pre-release services.

1.3.2.3 Reporting Workflow. NaphCare will provide standard data and information to assist customer with Waiver 1115 Justice Involved Reentry initiative reporting. Any specialized reports will require additional development beyond the scope of this agreement.

1.3.2.4 Encounter Workflow. NaphCare will assist with compliance with the minimum documentation requirements to satisfy billing requirements, to include bundled billing and non-bundled billing.

1.3.2.5 Medical Billing/Claim Workflow. NaphCare will implement software customization to allow charge capture and export data to be billed. TechCare will not submit directly to the payor and/or a clearinghouse.

In the event a new required customization is identified prior to Final System Acceptance, NaphCare shall have the right to propose an additional one-time cost for development and implementation of such new customization. Following Final System Acceptance, all revisions to previous customizations and/or new customizations shall be treated as Feature Requests.

1.3.3 Interface Development. NaphCare is responsible for the development of interfaces by which the System sends and receives data from outside computer systems in order to meet the needs of the Customer. An **Interface Requirements Document** shall be jointly prepared by the parties and will include all technical definitions of, and specifications for, all required interfaces including, but not limited to, the following:

1.3.3.1 NaphCare will provide an interface with Medi-Cal directly or through an approved EDI (Electronic Data Interchange) clearinghouse to provide eligibility status.

1.3.3.2 NaphCare may augment existing integration with the offender management systems as a part of this project as it relates to information needed to verify the incarcerated individuals Medi-Cal status, projected release date, and when possible, confirmed release date.

1.3.3.3 NaphCare will provide communication methods that meet Waiver 1115 requirements with enhanced care management (ECM) providers for the purposes of transition of care, sharing needs assessments, discharge summaries, connecting the individual to a community-based care manager and follow up post-release for any missed appointments. If the Customer requires a specific communication method, e.g. a specific interface, export, referral letters, emails, etc., it will require additional development beyond the scope of this agreement.

1.3.3.5 Contingent upon being granted access by California Department of Health Care Services (DHCS), NaphCare will provide an export/interface to export data to DHCS Screening / ECM Portal.

1.3.4 Acceptance Testing and Quality Assurance. NaphCare is responsible for the initial testing and quality assurance of the System based on the Software Requirements Document and Interface Requirements Document. NaphCare shall develop and deliver to Customer by the dates set forth in the Project Plan suggested User Acceptance Tests by which the Customer will, with NaphCare's assistance, accurately determine whether the System and each deliverable conforms to the applicable Documentation. Each such Acceptance Test shall set forth in adequate detail the expected results thereof and will focus on changes and customizations to the base Application. In addition, the Customer at its option may define certain additional acceptance criteria that it wishes to have included in the System Acceptance Test. Customer will document any Malfunctions identified during Acceptance Testing using a Problem Report. NaphCare will promptly correct any material Malfunctions and notify Customer when re-testing may be conducted. All Acceptance Tests must be approved by Customer following the Deliverable acceptance procedure set forth in Exhibit F.

1.3.5 Training Plan. NaphCare is responsible for unlimited pre-Go-Live and Go-Live training/support for all Authorized Users in order to support the management of and ongoing productive use of the System within the Customer's environment. Such training/support will include 24x7 coverage as needed. Training will be provided via the following methods and be fully defined within a Training and Go-Live Plan that is jointly created by NaphCare and the Customer.

- a. Introductory Remote Training via Online Meetings
- b. Pre-Go-Live Onsite Classroom Training
- c. Go-Live Onsite Training and Support

The Training and Go-Live Plan must be approved by Customer following the Deliverable acceptance procedure set forth in Exhibit F.

1.3.6 Application Delivery and Installation. NaphCare is responsible for providing the customized Application, specific to the Customer. Customer is responsible for initial Application deployment for devices. Following initial deployment, Customer is responsible for ongoing deployment of the Application, including Updates, to all end-user devices, including the Hardware Devices.

1.3.7 Go-Live. NaphCare is responsible for supporting Go-Live activities for use of the System within the Customer's Production environment. Go-Live scheduling will be defined in the Training and Go-Live Plan jointly created by NaphCare and the Customer.

NaphCare shall not be liable for any project delay(s) unless such delay(s) is (are) due to NaphCare's fault. Customer shall provide written confirmation to NaphCare of Go Live start date two (2) weeks in advance of agreed upon date. Go Live start date shall not occur within seven (7) days of a national holiday.

1.3.7.1 Readiness. At such time as all Deliverables required by the Project Plan for Go-Live are delivered to Customer, and NaphCare determines that the System and Services are completed, installed, and operational, then NaphCare shall provide Customer with written notice that the System is ready for Go-Live. Upon receipt of such notice, Customer will perform Pre-Live Acceptance in order to verify that (i) all required Deliverables have been delivered and accepted (ii) all reported material Malfunctions identified during Acceptance testing have been corrected or otherwise resolved and (iii) the System and Services are completed, installed, and operational. Upon successful completion of Pre-Live Acceptance, Customer shall provide written confirmation to NaphCare of the Go Live start date two (2) weeks in advance of the date. The Go Live start date shall not occur within seven (7) days of a national or Customer-observed holiday.

1.4 Documentation. NaphCare is responsible for the provision and ongoing updating of end-user and technical Documentation of the System in the form of a User's Manual, Data Dictionary, and Knowledge Base online repository.

1.5 Minor Deviations. NaphCare may make Minor Deviations from the Project Plan, Data Migration Plan and Training Plan without obtaining prior written consent of Customer and shall give Customer prior written notification of any such planned deviation through the delivery of an updated status report (including a revised applicable Plan) which shows the impact, if any, of such deviations on the remainder of the Project.

1.6 Reporting and Status. NaphCare is responsible for providing Customer a detailed status report for each calendar month during the Project until Final



System Acceptance. The report will describe the progress of the Project, including, (i) an updated Project Plan reflecting any mutually agreed changes to the Project Plan or any changes resulting from Minor Deviations, (ii) a report updating the status of each Deliverable under development and Services being performed, (iii) a detailed description of the tasks and schedules as required to implement the System for the interim period until the next monthly status report, including the level of compliance with the Project Plan, (iv) a listing of the resources Customer is required to provide, in accordance with the Project Plan, during the subsequent calendar month, (v) a general updated description of the tasks and schedules required to implement the System for the remainder of the Project Plan, (vi) specific identification of all new tasks commenced by NaphCare, all ongoing tasks, and identifying any tasks which are overdue or behind schedule, and (vii) such other information as is customarily included in monthly status reports prepared by NaphCare, or which is reasonably requested by Customer.

- 1.7 Customizations and Limitations. NaphCare is responsible for providing tools to assist with Waiver 1115 Justice Involved Reentry Initiative and billing claims within the TechCare environment. Any specialized requests will require additional development beyond the scope of this agreement.
- 1.8 Unanticipated Expenditures. Due to the nature of the ever-evolving Justice Involved Reentry Initiative, there may be unanticipated expenditures related to implementation and ongoing claims management and billing. Because the Justice Involved Reentry Initiative has numerous unknowns at this time, NaphCare and customer agree to meet and confer on any unanticipated expenditures. NaphCare nor customer is under any duty to engage in work or expense related to unanticipated expenditures until both parties agree to an equitable division of labor and expenses.
- 1.9 Customer Obligations. Subject to terms and conditions of this Agreement and provided NaphCare is not in material breach of its obligations hereunder, Customer shall provide the following services during the Term:
  - 1.9.1 Facilities and Access. Customer shall provide sufficient access and facilities and/or working space within a facility for NaphCare to complete its obligations pursuant to the terms of the Agreement.
  - 1.9.2 Information Sharing. Customer shall provide any information regarding an incarcerated individual necessary for compliance with the Justice Involved Reentry Initiative.
  - 1.9.3 Human Resources. Customer shall provide access to sufficient Subject Matter Experts (“SMEs”) whose knowledge of existing and future workflows will drive the customization of the Application to fit Customer’s environment.

## Exhibit F – Deliverables, Schedule and Fees

### 1. Implementation and Training Services Deliverables Schedule.

Phase	Deliverables	Deliverable Type	Proposed Delivery Date
1. Planning and Project Start	Project Kickoff Meeting	Non-Software	Week 1
	Learning Management System Access	Non-Software	Week 2
	Provision of Hosted Test Environment	Software	Week 3
	Delivery of Project Plan	Written	Week 5
2. Requirements and Design	Delivery of Software Requirements Document	Written	Week 8
	Delivery of Hosting Design Document	Written	Week 8
3. Development and System Delivery	Delivery of TechCare v5 EHR System	Software	Week 20
	Completion of Acceptance Testing	Non-Software	Week 24
	Delivery of Hosted Production Environment	Software	Week 20
	Delivery of Training and Go-Live Plan	Written	Week 20
4. Testing and Migration	Completion of Data Migration to Hosted Environment	Software	Week 16
	Verification of Hosted Network Connectivity	Non-Software	Week 24
	Go Live Readiness Acceptance	Non-Software	Week 24
5. Training & Go Live	Pre and Go-Live Training and Support	Non-Software	Week 28-30
6. Implementation Close-Out	Custom User's Manual and Knowledge Base online repository	Written	Week 30
	Final System Acceptance	Written	Week 32

- 1.1. Fee Schedule. As consideration for performance of the Customization Implementation Fee Schedule described herein, NaphCare shall invoice and Customer shall pay Implementation Fees of \$400,000 for the Sheriff's Department and \$150,000 for the Probation Department, as two (2) equal installments. The first

installment of \$200,000 for the Sheriff's Department and \$75,000 for the Probation department is payable on Agreement execution and the second installment of the same amounts is due on Go Live.

2. Additional Interfaces:

Component	Inclusions
SureScripts	For Sheriff Only <ul style="list-style-type: none"> <li>Real Time Medication History Reconciliation</li> <li>Direct Integration with TechCare</li> <li>Unlimited Queries</li> </ul>
Electronic Prescription of Controlled Substances	For Sheriff Only <ul style="list-style-type: none"> <li>Integration of EPCS services for providers</li> <li>20 providers max</li> </ul>
Direct Secure Messaging	For both, Sheriff and Probation: <ul style="list-style-type: none"> <li>On-Demand Clinical Messaging Queue</li> <li>Direct Integration into System</li> <li>Unlimited DSM Addresses</li> <li>Unlimited</li> </ul>

2.1 Schedule. As consideration for provision of Services described herein, NaphCare shall invoice and Customer shall pay interface implementation fees of \$45,000 for the Sheriff's Department and \$25,000 for the Probation Department, for initial implementation at Agreement signing. Additionally, NaphCare shall invoice and Customer shall pay due on Go Live for the interface service provision \$85,000 for the Sheriff's Department and \$25,000 for the Probation Department, and annually in advance thereafter.

3. Post Go-Live Software Customization:

Component	Inclusions
Hours Pool	<ul style="list-style-type: none"> <li>250 Pre-Purchased Development Hours for the Sheriff's Department</li> </ul>
	<ul style="list-style-type: none"> <li>100 Pre-Purchased Development Hours for the Probation Department</li> </ul>

3.1 Schedule. As consideration for performance of the Services described herein, NaphCare shall invoice, and Customer shall pay, the one-time Hours Pool fee of \$45,000 for the Sheriff's Department and \$18,000 for the Probation Department at Agreement signing.

4. License, Maintenance and Support Fee Schedule.

4.1 Software License Fees will be added to and payable through existing Contract No. 15-886 between the parties as follows:

Phase (Date of Service/Invoice)	Deliverable	Cost
Year 10 (12-16-2024 to 12-15-2025)	Sheriff's Department	<b>\$450,000.00</b>
	Probation Department	<b>\$208,540.00</b>
Year 11 (12-16-2025 to 12-15-2026)	Sheriff's Department	<b>\$472,500.00</b>
	Probation Department	<b>\$218,967.00</b>
Year 12 (12-16-2026 to 12-17-2027)	Sheriff's Department	<b>\$496,125.00</b>
	Probation Department	<b>\$229,915.00</b>
<b>Total Operational Costs:</b>		<b>\$2,076,047.00</b>

5. The maximum amount of payment under this Agreement for Services described herein is \$793,000 (\$575,000 for the Sheriff's Department and \$218,000 for the Probation Department), which is federally funded and subject to the conditions in Exhibit H – Code of Federal Regulations, Appendix II to Part 200, Title 2 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

## **Exhibit G – Information Security Addendum**

### **1. General.**

- 1.1. This Information Security Addendum (the “Addendum”) outlines particular organizational, administrative, technical, and physical security requirements that NaphCare shall maintain as part of the provision of the Services (“Security Requirements”) to protect the availability, confidentiality, and integrity of the Customer Data and of NaphCare systems, applications, and platforms processing or accessing Customer Data (the “NaphCare Network”). These requirements are not intended to be exhaustive. NaphCare shall ensure that it maintains a comprehensive information security policy containing policies and procedures to protect Customer Data from unauthorized access, disclosure, or use in accordance with industry-wide best practices, including National Institute of Standards and Technology (“NIST Standards”), and applicable state and federal data protection and privacy laws. The Security Requirements shall apply to all access to, processing of, and maintenance of Customer Data.
- 1.2. If NaphCare subcontracts the provision of Hosting Services to a subcontractor, NaphCare shall ensure that such subcontractor complies with all Security Requirements applicable to the Hosting Services. However, NaphCare shall be responsible for the Services performed or provided by the subcontractor to the same extent that NaphCare would be if the Services were NaphCare’s own work.

### **2. Access Controls.**

- 2.1. Customer Data shall be physically or logically segmented from NaphCare’s other customers. NaphCare shall access Customer Data and Customer’s network or information technology system (the “Customer Network”) only in accordance with the Agreement or as otherwise instructed by Customer in writing. Individual, user-specific accounts must be used when accessing Customer Data (i.e., no common or shared accounts shall be permitted). Passwords for access to the NaphCare Network shall be stored securely, not in plain text, on a separate server or file from Customer Data that is not readily identifiable as the location of the passwords. After ten (10) minutes, NaphCare shall provide automatic logoff for applications that grant access to Customer Data.
- 2.2. With respect to NaphCare Personnel, NaphCare will restrict access to the NaphCare Network Systems that contain Customer Data only to those employees, subcontractors, and agents (“NaphCare Personnel”) with a need to access such systems or features in order to provide the Services, and only to the extent necessary to perform such Services. When any NaphCare Personnel no longer has a business need for the access privileges to Customer Data assigned to him/her (such as, for example, when an employee or subcontractor is transferred to a new assignment), the access privileges shall be revoked without unreasonable delay, but in any event within five (5) business days.
- 2.3. NaphCare shall maintain, in accordance with industry best practices, logs of all persons who have been granted access to Customer Data (and any features and functions of the NaphCare Network that contain Customer Data) and the activities

of such persons exercising those access privileges. Each log entry must include the following information about the logged event: date and time of event; type of event; event description; user associated with the event and network identifiers (IP address, etc.) or logical identifiers (system name, port, etc.). Upon Customer's request, NaphCare shall provide such logs to Customer. Access logs shall be retained for a minimum of two (2) years.

2.4. If granted access to the Customer Network, NaphCare shall only access those portions of the Customer Network expressly authorized by Customer in the manner specified by Customer, in each case in writing and in advance. NaphCare acknowledges and agrees that Customer may revoke its authorization or permission for NaphCare to access the Customer Network at any time without further obligation or liability to NaphCare.

2.5. Mobile Device Management. If Customer Data is accessed in any way by NaphCare Personnel using a mobile device (e.g., cell phone, laptop computer), then NaphCare will install a mobile device management solution on such devices to ensure at least the following standard security protocols are activated and maintained: (i) multi-factor authentication mechanism (i.e., password/pin and registered device); (ii) full disk encryption enforcement; (iii) anti-malware software; and (iv) firewall enabled.

### 3. NaphCare Personnel.

3.1. NaphCare shall provide the name(s) and contact information for its Privacy and Security Officers.

3.2. NaphCare shall maintain policies that require its Personnel to promptly (but in any event, within forty-eight (48) hours) report suspected security incidents and suspected violations of the confidentiality terms of the Agreement, the Security Requirements, and NaphCare's data security policies to NaphCare management for investigation and action.

3.3. NaphCare must ensure that all NaphCare Personnel who access Customer Data and the Customer Network: (i) attend IT security and awareness training at least once per year; (ii) are fully informed (at least annually) of, and monitored for adherence to, the Security Requirements and NaphCare's data security policies and standards, and (iii) are subject to disciplinary action (and/or legal action where appropriate) for violations of same.

3.4. NaphCare, or its agent(s), shall perform a local, state, and federal background investigation ("Background Investigation") on all NaphCare Personnel performing Services under the Agreement or otherwise having access to Customer Data. NaphCare shall contractually obligate all subcontractors performing Services to perform such Background Investigation on any subcontractor personnel performing Services under the Agreement. The Background Investigation shall include a detailed examination of: (i) criminal convictions involving a dishonest act (including but not limited to fraud, theft, and embezzlement); and (ii) injury or threatened injury to another person. NaphCare shall not permit any NaphCare

Personnel with a criminal record falling into categories (i) and (ii) above to perform Services under the Agreement or gain access to Customer Data.

- 3.5. NaphCare shall ensure immediate revocation of all access rights to Customer Data for any NaphCare Personnel who are terminated. Further, NaphCare shall obligate such terminated NaphCare Personnel to immediately return any Customer Data and destroy any copies of Customer Data within such Personnel's possession.
- 3.6. Customer Data may not be stored or accessed by NaphCare Personnel on personal accounts (e.g., individual email or cloud services accounts) or stored locally on personally-owned computers, devices, or media. NaphCare shall implement technical controls to prevent downloading of Customer Data onto personally-owned computers, devices, or media.
- 3.7. No NaphCare Services provided to Customer shall be performed using NaphCare Personnel who are located outside of the contiguous United States.

#### 4. Physical Security Requirements.

- 4.1. When present at a Customer facility, NaphCare Personnel shall abide by all Customer security policies (including required escort policies) and any additional Security Requirements that have been provided or made available by Customer to NaphCare. Additionally, all NaphCare Personnel visiting a Customer facility must possess (and present upon request) photo identification in the form of a state/country provided document (i.e., Passport or driver's license). NaphCare Personnel must wear a Customer-issued visitor ID badge while on Customer premises.
- 4.2. NaphCare must document and maintain adequate physical security controls and procedures over all facilities where Customer Data is received, processed, filed, or stored and the Customer Network is accessed including, at a minimum, appropriate alarm systems, access controls (including off-hours controls), visitor access and escort procedures, security guard force, fire suppression, environmental controls, video surveillance, and staff egress searches as deemed necessary by NaphCare under the circumstances. NaphCare shall maintain and monitor external logs of all persons who have been granted access to NaphCare's data center. Upon Customer's request related to a breach investigation or other security incident, NaphCare shall provide such logs to Customer. Access logs shall be retained for a minimum of two (2) years.
- 4.3. NaphCare shall securely store physical files, workstations, and devices that contain Customer Data. NaphCare shall maintain security standards for situations when Customer Data is in transit, including training of NaphCare Personnel regarding security practices and technical controls such as encryption of laptops, thumb drives, files, and disks to prevent access to Customer Data if physical media is lost. NaphCare Personnel will store or copy Customer Data to de-centralized devices (i.e., portable media or devices such as laptops or thumb drives) only when necessary to perform NaphCare's obligations under the Agreement. When de-centralized devices are authorized for use, such devices must be protected using encryption and access controls.

- 4.4. Without the prior written consent of Customer, NaphCare will not store, maintain, host, transmit to, or permit the presence of Customer Data outside of the contiguous United States.

5. System and Network Security.

- 5.1. NaphCare shall implement firewalls in accordance with industry best practices to manage and restrict network traffic and shall properly segment the NaphCare Network.
- 5.2. NaphCare shall implement industry best practices to protect Customer Data and/or the Customer Network from risks when the NaphCare Network and NaphCare Personnel connect to or access the Customer Network or process, store, or access Customer Data including, without limitation, (i) installing and maintaining a malware detection program and anti-virus software; and (ii) maintaining configuration management, access control, auditing and patch management policies and procedures. Details with respect to all such practices and policies shall be made available to Customer upon request.
- 5.3. NaphCare shall use industry best practices to protect Customer Data by implementing an intrusion detection and prevention system for the NaphCare Network to detect inappropriate, incorrect, or anomalous activity. NaphCare, through its third-party subcontractor, shall actively monitor system logs in real time for suspicious activity and take appropriate action to prevent and attempt to stop such activity. In the event of a breach or other security incident, NaphCare shall allow Customer access to system security logs that affect or relate to Customer Data. NaphCare shall cooperate with Customer as requested in providing information and assistance relating to Customer Data processed through the System and/or the NaphCare Network (e.g., data corruption and restoration, access/activity logs). NaphCare shall establish and follow operational procedures to stop or mitigate any real or reasonably foreseeable potential attack or attempted attack.
- 5.4. NaphCare shall report to Customer any data breach NaphCare discovers as soon as discovered and in no event later than two (2) days after discovery of the breach. At a minimum, any report to Customer shall contain, to the extent known: (i) date and time when the breach, incident, or failure occurred; (ii) the date and time when such breach, incident, or failure was discovered by NaphCare; (iii) identification of the systems, programs, networks, or aspects of the Customer Network and/or Customer Data impacted or otherwise affected by such breach; (iv) preliminary impact analysis regarding such breach; (v) a description of the scope of the breach; and (vi) all mitigation steps taken by NaphCare to prevent and reduce the potential harm, or re-occurrence, of such breach. Following the initial breach notification, as NaphCare learns additional details about the breach, NaphCare shall notify Customer promptly as such information becomes available. In assessing and mitigating any breach, NaphCare will use reasonable care to not destroy possible forensic evidence, where possible. NaphCare shall document any attempted but unsuccessful breach of which it becomes aware and promptly report the same to Customer; provided, however, that NaphCare shall not be obligated to report incidents that are trivial and do not result in unauthorized access, use, or disclosure



of Customer Data (such as pings and other broadcast attacks on NaphCare's Network, port scans, unsuccessful log-on attempts, and denials of service). NaphCare shall develop and maintain a documented breach response plan for promptly responding to a breach, security incident, and/or any circumstance which has a potential impact on (or has impacted or affected) the Customer Network or Customer Data, and such procedure shall comply with all applicable laws. Upon the request of Customer, NaphCare shall provide Customer with a copy of all incident response plans applicable to a breach or security incident. NaphCare shall designate in writing a contact person for Customer to contact in the event of a breach. This contact person should possess the requisite authority and knowledge to: (i) act as a liaison to communicate between NaphCare and Customer regarding the incident (including providing information requested by Customer); (ii) perform the reporting obligations of NaphCare under this Addendum, and (iii) develop a mitigation strategy to remedy or mitigate any damage to the Customer Network, Customer Data, or the System that may result from a breach.

6. Encryption.

NaphCare shall use encryption, where possible and appropriate, to secure Customer Data. NaphCare's encryption shall be consistent with validated cryptography standards as specified in NIST Standards.

- 6.1. NaphCare must use SSL/TLS with encryption consistent with industry best practices when transferring Customer Data over the Internet.

7. Backup, Business Continuity and Disaster Recovery.

- 7.1. NaphCare shall be responsible for developing and maintaining procedures for the timely backup of Customer Data and the recovery and restoration of destroyed, corrupted, lost, misused, or damaged Customer Data with respect to such data in the possession of NaphCare or NaphCare Personnel. NaphCare shall correct or recreate, to the extent possible and without cost to Customer, any destruction, corruption, loss, misuse, or damage of any Customer Data caused by NaphCare or any NaphCare Personnel or in the possession of or under the control of NaphCare or NaphCare Personnel.
- 7.2. NaphCare's business continuity and disaster recovery plan that encompasses NaphCare's Network and the System that processes and stores Customer Data shall be tested at least annually in accordance with industry best practices. NaphCare shall promptly notify Customer of a business interruption that activates NaphCare's business continuity and disaster recovery plan.

8. Software.

- 8.1. NaphCare shall ensure that the development and maintenance of the Software follows industry best practices for developing secure applications using an industry standard SDLC (systems development lifecycle) process and following secure coding practices (e.g., OWASPTop 10).

- 8.2. In connection with any software (i) licensed to or otherwise provided to Customer under the Agreement, or (ii) used by NaphCare in order to provide Services to Customer pursuant to the Agreement, NaphCare shall maintain vulnerability and patch management processes and tools to regularly assess the software for security vulnerabilities and to deploy software patches and updates. NaphCare shall apply software patches and updates at a time and in a manner commensurate with the level of security vulnerability (i.e., risk based on probability and impact).

9. Audits and Reporting.

- 9.1. NaphCare shall monitor the effectiveness of its security program by conducting self-audits and risk assessments no less frequently than annually of the NaphCare Network against the written policies and procedures maintained by NaphCare as required herein including, without limitation, confirming that Customer Data are located in the proper location(s).
- 9.2. Upon request, NaphCare shall complete a security assessment questionnaire provided by Customer ("Security Assessment"). To the extent that the Security Assessment identifies any material risks or deficiencies for which remediation is required, such remediation requirements or compensating controls (and the timeframes within which they must be successfully implemented) shall be mutually agreed upon by the parties and set forth in an attachment to this Addendum. NaphCare's failure to complete any remediation requirements set forth in an attachment to this Addendum within the required timeframe shall be deemed to be a material breach of the Agreement.
- 9.3. Compliance Audit. Customer shall have the right, at its expense, during normal business hours and with reasonable advance notice, to evaluate, test, and review at NaphCare's premises, services and network(s) to ensure compliance with the terms and conditions of this Addendum ("Compliance Audit"). If the Hosting Services are being provided by a NaphCare subcontractor, this audit right shall extend to such subcontractor. Customer shall have the right to conduct such audit by use of its own employees and internal audit staff, or by use of outside consultants and auditors at Customer's sole expense. NaphCare shall cooperate with and provide reasonable assistance to Customer and provide all pertinent books and records (including, but not limited to, system and facility maintenance records, product and service vulnerability reports, relevant Audit Log files, and NaphCare's internal information security assessment reports) and any other information reasonably requested by Customer in connection with such audit at no additional cost to Customer. To the extent that the Compliance Audit identifies any material risks or deficiencies for which remediation is required, such remediation requirements or compensating controls (and the timeframes within which they must be successfully implemented) shall be mutually agreed upon by the parties and set forth in an attachment to this Addendum. NaphCare's failure to complete any remediation requirements set forth in an attachment to this Addendum within the required timeframe shall be deemed to be a material breach of the Agreement.
- 9.4. From time to time NaphCare may be requested to respond to, inform on, and provide updates on the specific security gaps or exposures that exist for new or emerging security vulnerabilities that are made known for systems, applications,

hardware, or other information technology. In all instances, NaphCare will provide a response to any such inquiry within thirty (30) days and will provide specific details as to the questions asked to ensure that Customer can appropriately evaluate the risk or exposure to Customer Data and/or the Customer Network.

- 9.5. NaphCare shall, at NaphCare's expense, provide Customer with the most recent, general (i.e., not Customer-specific) SOC 2, Type II, AT section 101, report. At a minimum, the SOC 2 report shall include a review of controls relevant to the Security Trust Service Principle, with additional Trust Service Principles potentially required based on the nature of the Services. The SOC 2 report of the third-party auditors will be solely for the use of NaphCare and Customer, its regulators, and its independent accountants and will not be distributed or used by any other parties unless approved by NaphCare, such approval not to be unreasonably withheld.
- 9.6. NaphCare shall audit user access of NaphCare Personnel quarterly to ensure that only active, valid users have access to Customer Data and, as necessary, disable and/or delete non-active user accounts as soon as possible.
- 9.7. NaphCare shall engage a third party to conduct periodic (but in any event no less than once every eighteen (18) months) penetration tests of NaphCare's internal/external networks, systems, devices, and processes that are used to process, store, and transmit Customer Data to identify the strengths and weaknesses of NaphCare's existing security controls and to ensure NaphCare's compliance with the Agreement.

10. Secure Destruction of Data.

- 10.1 Upon expiration or termination of the Agreement or upon written request by Customer, NaphCare shall return to Customer (in the manner set forth in the Agreement or otherwise specified by Customer) any Customer Data in NaphCare's possession or control.
- 10.2 Upon successful return of Customer Data, NaphCare shall ensure the secure disposal of all production copies of Customer Data and any media or hardware containing Customer Data within twelve (12) months and NaphCare shall certify in writing to Customer that Customer Data has been destroyed. In the event NaphCare believes that certain Customer Data is infeasible to destroy, NaphCare shall notify Customer in writing and describe the circumstances which cause the Customer Data to be infeasible to destroy. Upon Customer's written consent, NaphCare shall extend the protections of this Addendum to such Customer Data for so long as NaphCare maintains such Customer Data. However, NaphCare's continued retention of Customer Data shall not obviate NaphCare's obligation to provide written certification when the Customer Data is eventually destroyed.

11. Miscellaneous.

- 11.1 A material breach of this Addendum by NaphCare shall be deemed a material breach under the Agreement, with the rights and remedies of the parties under the Agreements being applicable to any such breach. The provisions of this Addendum

shall survive the termination or expiration of the Agreement. In addition, at the sole option of Customer including, without limitation, when the underlying Agreement has expired or been terminated, Customer may bring action on this Addendum for all remedies available to Customer at law or in equity.

- 11.2 In addition to other insurance requirements set forth in the Agreement, NaphCare shall, at its own expense, procure and maintain in full force and effect during the term of this Addendum, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly qualified in those states (locations) where the Services are to be performed and Customer Data is to be stored, covering the operations of NaphCare, pursuant to this Addendum: cyber liability (\$5,000,000 per occurrence) covering network security and privacy risks including, but not limited to, unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of Customer Data, and including coverage for related regulatory defense and penalties. The policies of insurance shall be primary without right of contribution from any insurance by Customer. Such policies shall require that Customer be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. NaphCare shall provide Customer with certificates of insurance evidencing the above coverage, and shall provide Customer with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution.
- 11.3 The failure by either party to exercise any right provided hereunder shall not be deemed a waiver of such right. Any ambiguity in this Addendum shall not be interpreted against either party and shall be interpreted as if each party hereto had prepared this Addendum. This Addendum and the provisions in the Agreement, Customer policies, procedures, or guidelines addressing the subject matter hereof and/or referenced herein constitute the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the parties and/or subsidiaries of the parties. This Addendum may be amended, modified, or supplemented only by writing signed by the parties to this Agreement. NaphCare shall comply with all applicable federal, state, and local laws and regulations as it relates to the System and Services including, but not limited to, HIPAA and the HITECH Act, , and the implementing rules thereunder. In the event of any conflict between the BAA executed by the parties and this Addendum, the BAA shall control unless the provisions of this Addendum are more stringent.
- 11.4 As of the Effective Date of the Agreement, NaphCare represents and warrants that its hosting platform for Customer data (i) has not experienced a security incident which resulted in a breach of Customer data reportable under HIPAA; and (ii) has not experienced a successful ransomware attack.
- 11.5 Due to the continual development of new malicious techniques for intruding upon and attacking networks, NaphCare will use reasonable, industry-accepted procedures, methods, and hardware/software tools to protect against vulnerabilities to intrusion or attack, but cannot guarantee the System will be completely free of vulnerability to intrusion or attack.

## Exhibit H

Appendix II to Part 200, Title 2 (up to date as of 9/13/2024)  
Contract Provisions for Non-Federal Entity Contracts Under Federal Awards Appendix II to Part 200, Title 2 (Sept. 13, 2024)

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This content is from the eCFR and is authoritative but unofficial.

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### Title 2 — Grants and Agreements

#### Subtitle A — Office of Management and Budget Guidance for Grants and Agreements

#### Chapter II — Office of Management and Budget Guidance

#### Part 200 — Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Source: 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

Source: 85 FR 49539, Aug. 13, 2020, unless otherwise noted.

Authority: 31 U.S.C. 503

Source: 78 FR 78608, Dec. 26, 2013, unless otherwise noted.

#### Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part



3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any

other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

*[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]*



## Exhibit I Levine Act – Campaign Contribution Disclosure (formerly referred as Senate Bill 1439)

The following is a list of items that are not covered by the Levine Act. A Campaign Contribution Disclosure Form will not be required for the following:

- Contracts that are competitively bid and awarded as required by law or County policy
- Contracts with labor unions regarding employee salaries and benefits
- Personal employment contracts
- Contracts under \$50,000
- Contracts where no party receives financial compensation
- Contracts between two or more public agencies
- The review or renewal of development agreements unless there is a material modification or amendment to the agreement
- The review or renewal of competitively bid contracts unless there is a material modification or amendment to the agreement that is worth more than 10% of the value of the contract or \$50,000, whichever is less
- Any modification or amendment to a matter listed above, except for competitively bid contracts.

### **DEFINITIONS**

Actively supporting or opposing the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one



entity also is a controlling owner in the other entity.

For purposes of (2), “shared management and control” can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

**Parent-Subsidiary Relationship:** A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

**Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.**

1. Name of Contractor: NaphCare, Inc.
2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?  
  
Yes ☐ If yes, skip Question Nos. 3-4 and go to Question No. 5      No ☒
3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: N/A
4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded (“closed corporation”), identify the major shareholder(s):  
  
James S. McLane, Chairman of the Board
5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
NaphCare, U.S, Inc.	Holding company

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)
None		

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a

financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and/or Agent(s):
None		

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
None	

9. Was a campaign contribution, of more than \$500, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No ☒ If **no**, please skip Question No. 10.

Yes ☐ If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Agreement, NaphCare certifies that the statements made herein are true and correct. NaphCare understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer while award of the Agreement is being considered and for 12 months after a final decision by the County.

## **Exhibit J – Maintenance and Support Services**

1. NaphCare Obligations. Subject to terms and conditions of this Agreement and provided Customer is not in material breach of its obligations hereunder, NaphCare shall provide the following Services during the Term:

- 1.1. System Maintenance. NaphCare will maintain the System which operates as a fully contained Electronic Health Record designed for the corrections industry. NaphCare shall provide Application Updates to all modules of the System as a part this Agreement. Without limiting the generality of the foregoing, NaphCare shall provide all labor, facilities, equipment, accessories, tools and other items and do all work required for the maintenance and support of the System where the same are not expressly identified in this Agreement as being provided by Customer. Specifically, NaphCare shall:

- 1.1.1. Maintain the Application to provide the functionality defined in the Documentation.
- 1.1.2. Maintain compliance of the Application in all material respects with the warranties.
- 1.1.3. Provide all Application Updates along with updated user and operational Documentation. In consultation and coordination with Customer, install all Updates in the Test environment and, when Customer testing is completed, migrate all Updates to the Production environment.
- 1.1.4. Provide “first line support” for all incorporated Third Party Products. NaphCare will coordinate any required support and corrective action required from the third party vendors or suppliers that NaphCare cannot directly provide. NaphCare will apply all updates that the vendor of such Third Party Products provides to NaphCare. Finally, NaphCare will maintain compatibility and integration of the Application with the Third Party Products.
- 1.1.5. Maintain compatibility and integration with any third party outcome reporting tools, which have been implemented by Customer as part of the EHR Application. Should any of these packages be upgraded, Customer will notify NaphCare in advance, so that analysis and code changes can be implemented as quickly as possible.
- 1.1.6. Maintain comprehensive change control procedures to control software versions and releases. All changes to be implemented at Customer are at the discretion of the Customer Change Advisory Board (CAB).
- 1.1.7. Correct any Application Errors which are (i) reported by Customer or (ii) reported by other NaphCare clients, or (iii) identified by NaphCare, all within a reasonable period, depending upon the severity of the error. Application Error resolution is further described Section 1.2 below.

- 1.2. Application Error Resolution. During the Term, NaphCare will provide Application Error resolution services. Upon notification by Customer that a Severe Malfunction has occurred, NaphCare will, as soon as possible, diagnose the problem and determine if an Application Error is the cause. NaphCare will use continuous diligent effort to (i) correct the error or defect as soon as possible and provide an Application Update, or (ii) provide a reasonable workaround solution if the error or defect cannot be immediately corrected. NaphCare will provide periodic maintenance releases to distribute corrections to Application Errors (i) which have

caused other Malfunctions, or (ii) which have been identified by other NaphCare customers or by NaphCare.

For the purposes of this Exhibit J, a Severe Malfunction refers to an instance where (i) the System is rendered unusable; (ii) the performance of the System is severely degraded; or (iii) Customer's use of the System for its intended purpose is materially impaired.

### 1.3. Support.

1.6.1. Support Services. NaphCare will maintain a 24/7/365 Help Desk which includes live staffing by NaphCare employees with the required expertise to provide support for the System and associated deliverables as outlined herein. Help Desk services shall include, but not be limited to:

- i. Assistance with Application function questions.
- ii. Assistance in diagnosing and determining the cause(s) of and resolving System Malfunctions.
- iii. Assistance with report generation questions.
- iv. Assistance with general computer management, operating system software, or networking software questions related solely to the use of the Application.
- v. Assistance in testing Application Updates supplied by NaphCare.
- vi. Assistance using any non-production environments.

The term "assist" (or "assistance"), when used to describe Help Desk services, means a help that NaphCare will provide, including, without limitation, troubleshooting, providing advice, answering questions, providing diagnosis, and sharing information.

1.6.2. Service Level Agreement. NaphCare's Help Desk Services will be provided in accordance with the following Service Level Agreement (SLA).

In response to a Problem Report related to the System, NaphCare shall correct a reported Malfunction or provide a reasonable workaround sufficient to substantially mitigate the adverse effects of the problem on the normal use of the System. Customer agrees to reasonably assist NaphCare in its efforts to diagnose the problem and correct a Malfunction by making available information, documentation, access to personnel, and testing reasonably requested by NaphCare from time to time to assist NaphCare in identifying and correcting the problem. From time to time at its discretion, NaphCare also may (i) implement new releases of the System that contain changes, updates, patches, and fixes, and (ii) deliver to Customer new releases of the client Application Software that contain changes, updates, patches, and fixes.

In the event a Malfunction exists due to an error in the Documentation, NaphCare may correct such Malfunction by providing corrected

Documentation; provided, however, that no revision, modification, or update to Documentation shall eliminate or materially diminish any operational functionality of the Application previously described therein.

Customer's requests for support services shall be submitted by telephone (Critical Issues) or via NaphCare's online self service portal.

### 1.6.3. Service Level Agreement:

		IMPACT			
		All Deployments	Single Deployment	Business Unit	Individual User
Urgency	Critical	1	1	2	3
	High	1	2	3	3
	Medium	2	3	3	4
	Low	3	3	4	4

The above SLA and associated definitions below pertain only to those Services provided by NaphCare.

- Urgency
  - Critical - Mission critical service not available
    - System error/defect directly impacting patient care.
    - Application cannot be used.
    - No workaround, bypass or alternative is available.
  - High - Mission Critical module or portion of service not available
    - System error/defect directly impacting patient care.
    - A critical portion of the application cannot be used.
    - No workaround, bypass or alternative is available.
  - Medium - Unable to normally complete work, workaround is available
    - System error/defect negatively & substantially impacted operations, impact to patient care is manageable via workaround.
    - Application can be used.
    - Workaround, bypass or alternative is available.
  - Low - Able to work, would assist with completion of work.
    - System error/defect is not critical. Impact is limited & no risk to patient care.
    - Application can be used.
    - Workaround, bypass or alternative is available.
- Impact
  - All Deployments – All deployments of the System across all customers are impacted.
  - Single Deployment – A single deployment of the System to a single customer, with one or more locations, is impacted.

- Business Unit – A single business unit, or function, is impacted across one or many deployments.
- Individual User – A single user is impacted.

#### Response & Resolution SLA

	<b>Initial Acknowledgement</b>	<b>Response</b>	<b>Resolution</b>
<b>P1 Critical</b>	5 Minutes	30 Minutes	24 Hours
<b>P2 High</b>	5 Minutes	90 Minutes	3 Days
<b>P3 Medium</b>	5 Minutes	5 Days	8 Days
<b>P4 Low</b>	5 Minutes	10 Days	20 Days

- **Initial Acknowledgement** – This is an automated response confirming we have received your issue. This is performed 24 hours a day, 7 days a week, 365 days a year.
- **Response** – This is the time it takes for an agent from the NaphCare Help Desk to respond to the issue reported.
- **Resolution** – The time it will take to work and resolve your reported issue.

#### 1.6.4. Support Escalation Process

Tier	Responsibilities
Tier 0 - Super Users (Customer)	<ul style="list-style-type: none"> <li>• At each Licensed Site, Customer will identify a “Super User” who will be trained to have a good overall working knowledge of the Hardware Devices and the System. The Super Users will assist local Authorized Users with general Hardware Device and Application problems. and will be able to generally distinguish between hardware, operating system, network and application errors If Tier 0 support is unable to resolve the problem, it will be referred to the Tier 1 Help Desk.</li> </ul>
Tier 1 - Help Desk (Customer)	<ul style="list-style-type: none"> <li>• Responsibilities include but are not limited to: <ul style="list-style-type: none"> <li>• Resolving service tickets involving system access problems, passwords, System downtime and Malfunctions not directly related to the Application</li> <li>• Provide assistance in use of the Application and any related System component.</li> <li>• Refer unresolved problems to NaphCare’s Tier 2 Help Desk if related to NaphCare’s System or Services.</li> </ul> </li> </ul>
Tier 2 – Help Desk (NaphCare)	<ul style="list-style-type: none"> <li>• Functioning as an escalation point for unresolved Tier 1 problems. Responsibilities include but are not limited to: <ul style="list-style-type: none"> <li>• Troubleshoot hardware and network problems related to NaphCare provided System or Services.</li> <li>• Troubleshoot all database integrity and performance problems.</li> <li>• Routine maintenance, deployment of Updates.</li> <li>• Resolve operational problems with Production deployment.</li> <li>• Coordinate problem resolution with all third party vendors (e.g., suppliers of Third Party Products, vendors supporting interfaces applications/systems).</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• Refer unresolved problems to NaphCare Tier 3 Help Desk.</li> </ul>
Tier 3 – Help Desk (NaphCare)	<ul style="list-style-type: none"> <li>• Functioning as a final escalation point for unresolved Tier 2 problems. Responsibilities include but are not limited to: <ul style="list-style-type: none"> <li>• Provide "24 X 7" support to diagnose and resolve System Malfunctions.</li> <li>• Resolve problems with the EHR Application including all core functionality, interfaces and other middleware.</li> <li>• Resolve problems with any third party software which has been imbedded or integrated with the Application.</li> </ul> </li> </ul>

- 1.4. Conditions for Maintenance and Support Services. NaphCare's obligation to provide Maintenance and Support Services is conditioned upon (i) Customer's use of the Application in an information technology environment meeting the requirements set forth in the Documentation and (ii) Customer's having installed in accordance with NaphCare's instructions the latest (i.e., most current) version of the Application; provided, however, that NaphCare shall provide Maintenance and Support Services with respect to a prior version of an Application for at least three (3) months following delivery to Customer of an updated version of the Application. NaphCare shall extend support of a prior version of the Application beyond three (3) months if Customer, through its testing, is unable to accept the updated version of the Application.
- 1.5. Documentation. During the Term, NaphCare will update and maintain (i) an online User's Manual specific to the customizations made for Customer; (ii) a custom database Data Dictionary; and (iii) a Knowledge Base online repository. Online resources will be made available by an online Customer Portal.
- 1.6. Software Updates. NaphCare shall provide Updates to Customer as and when they become generally available, at no additional charge (including retrofit of all prior customizations and Feature Requests). NaphCare agrees to deploy any such Update, including any prior customizations and Feature Requests that are contained in the Production System, into the Test environment within ninety (90) days of release of the Update, unless otherwise directed by Customer. Upon successful testing of the new Update, Customer will provide notice of acceptance to NaphCare, and the parties will mutually agree on a scheduled date for the migration of the Update to the Production environment.
- 1.7. Post Go-Live Software Customization. Following the last Go-Live Wave and Final System Acceptance, Customer may, in its discretion, request that NaphCare develop certain enhancements to the System desired by the Customer. NaphCare agrees to develop and install such Customer-requested enhancements, following the below process:
- 1.11.1. Feature Requests will be submitted to NaphCare by Customer via the System Online Portal along with detailed business and functionality requirements.
- 1.11.2. NaphCare will review and estimate the work effort required to implement the feature and notify the Customer accordingly.

- 1.11.3. Customer designee shall allow implementation (approve) or deny implementation of each Feature Request and will provide the priority of each approved Feature Request.
  - 1.11.4. NaphCare shall commence work on all approved Feature Requests and shall provide updated information on a recurring basis including the Feature Request, its status, the hours worked to date and the estimated hours needed for completion of the Feature Request.
  - 1.11.5. NaphCare shall include the Feature Request in a future version of the Application for Customer testing and acceptance.
  - 1.11.6. Upon successful testing of the new Update (and completion of any required regression testing), Customer will provide notice of acceptance to NaphCare, and the parties will mutually agree on a scheduled date for the migration of the Update to the Production environment.
2. Customer Obligations. Subject to terms and conditions of this Agreement and provided NaphCare is not in material breach of its obligations hereunder, Customer shall provide the following services during the Term:
  - 2.1. Facilities and Access. Customer shall provide sufficient access and facilities and/or working space within a facility for NaphCare to complete its obligations pursuant to the terms of the Agreement.
  - 2.2. Human Resources. Customer shall provide reasonable access to sufficient Subject Matter Experts (SMEs) whose knowledge will assist with NaphCare providing the Services described herein. Examples of such SMEs include, but are not limited to, health care clinical and technical roles directly related to the use of the System in Customer's environment.
  - 2.3. Supporting Hardware, Software and Services. Customer is responsible for providing and supporting software that may complement the System, but not be a part of it. Such supporting software includes, but is not limited to, the following:
    - 2.7.1. Office Productivity Software
    - 2.7.2. Dictation Software
    - 2.7.3. Clinical Reference Software
    - 2.7.4. Identity Management Services
    - 2.7.5. 2-Factor Authentication Services
    - 2.7.6. Operating System Patching
    - 2.7.7. Security of Network, Infrastructure
    - 2.7.8. Interface Vendor Services from 3<sup>rd</sup> Parties
    - 2.7.9. Computer Workstations (Desktop, Laptops, Tablets)
    - 2.7.10. Peripheral Printing Devices
    - 2.7.11. Peripheral Signature Capture Devices