

## HEALTHSTAT INC., MANAGEMENT AGREEMENT

This HealthStat Inc., Management Agreement (“Agreement”) is made and entered into as of \_\_\_\_\_ (the “Effective Date”) by and between Healthstat, Inc., a North Carolina Corporation (“HS”) and County of Santa Barbara, (“County”), acting on behalf of County’s collective insured health plans (“Plan”). All references to County in this Agreement shall be deemed to refer to it as acting in its capacity as Plan Administrator or on behalf of the Plan.

### RECITALS

**WHEREAS**, HS has operated two health and wellness clinics for County employees and qualified dependents in Santa Barbara County since 2009; and

**WHEREAS**, as a result of these clinics, County has reduced health insurance costs and improved employee health; and

**WHEREAS**, County has determined that it is in the best interests of the Plan and County employees to continue the business relationship with HS for ongoing operation of the clinics;

**NOW, THEREFORE**, in consideration of the mutual premises, promises, covenants and conditions contained herein, and as hereinafter set forth, the parties agree as follows:

1. HS Services. HS shall provide the Plan the services set forth in this Agreement. County shall provide the assistance described hereafter to increase the Benefits achieved. County acknowledges that HS is not engaged in the practice of medicine.

For purposes of this Agreement the term “Clinic Participant” shall mean any County employee and qualified dependent that completes a Release of Health Information Form and subsequently submits to a health risk assessment (HRA) under Section 1.4.1 or visits the Clinic for health services at least one time in any consecutive 12-month period.

#### 1.1 *Establishment of NP Clinic(s).*

1.1.1 HS shall provide licensed and certified nurse practitioners (NP(s)) who are contracted by HS and are supervised and overseen as described in the Collaborative Practice Agreement between the NP(s) and licensed physicians or physician practices (hereinafter referred to as “Group” or “Groups” which term shall include an independent physician, sole physician practices, or practices with multiple physicians). The NP(s) shall provide services to eligible Clinic Participants consistent with reasonable and appropriate standards of community-based primary care providers. Each NP and the Group(s) shall be certified in their medical specialty and shall meet all state requirements for continuing education and peer review. Each NP and Group shall remain in good standing with the

state licensing authority governing the practice of medicine within the state where each Clinic is located. Each Group shall supervise and oversee each NP at every Clinic location in accordance with applicable state law. Every HS contract with a Group shall contain provisions requiring the Group to comply with all applicable state laws in the provision of professional medical services at the Clinic(s) and, shall contain an agreement to indemnify County against all claims, losses, and liability sought or determined in connection with the provision of medical services at the Clinic unless such indemnity is prohibited by law. HS shall further require that each Group carry medical malpractice insurance.

- 1.1.2 County shall be responsible for establishing clinic facilities for use by HS in the locations set forth in Exhibit A and according to the specifications provided in Exhibit D, attached hereto (referred to throughout this Agreement as the "Clinic(s)"). HS shall provide County with a design layout of the space to serve as the Clinic. All costs associated with renovating or preparing the physical space for the Clinic shall be borne by County.
- 1.1.3 The services to be provided under this Agreement, and therefore, the success of HS in improving Benefits is initially dependent upon HS being able to locate and staff each Clinic(s). HS shall use its best efforts to locate and coordinate NPs in order to provide hours of service at the Clinic(s) as mutually agreed to by the parties and set forth in Exhibit A attached hereto, which may be amended from time to time.
- 1.1.4 HS shall provide NP(s) backup coverage for NP(s) absences based on the following schedule:
  - 1.1.4.1 Unplanned NP(s) Absence(s) – in the event of an unplanned NP(s) absence, HS shall make a good faith effort to provide a fill-in NP upon immediate notice of the absence. HS Clinic shall be closed no more than 2 consecutive business days due to an unplanned absence. HS shall provide a back-up NP (including the use of a physician at no extra charge to County). HS reserves the right to modify the regular Clinic schedule to accommodate the back-up coverage based on approval by County.
  - 1.1.4.2 Planned NP(s) Absence(s) – in the event of a planned NP absence where HS is given at least 10 business days' notice, HS shall provide a back-up NP (including the use of a physician at no extra charge to County). HS reserves the right to modify the regular Clinic schedule based on approval by County.

1.2 *Education of workforce about HS Services.* In each education session, HS shall provide education to County's employees about the services offered by HS

and the benefits which employees, and eligible spouses and dependents, if included at a future date, may derive from using the services provided by HS. At County's request, HS shall participate in an employee health fair and such other wellness activities as may be sponsored by County (at an additional cost to County for such services as agreed).

1.3 *Periodic Reports.* HS shall produce the following reports for County, Clinic Participants and County's group health insurance carriers as well as such other reports as County may request and HS has the programming capabilities to prepare. The form and substance of additional requested reports shall be as mutually agreed to by HS and County. All reports shall be HIPAA compliant.

- 1.3.1 Provided the County's Plan and health insurer furnishes historical claims data in accordance with County's instruction pursuant to Section 2 of this Agreement, HS shall provide insurance cost claims impact statements four (4) times per twelve (12) month period.
- 1.3.2 HS shall provide quarterly Clinic utilization and activity reports and data to the County related to the Clinic Participants.
- 1.3.3 Monthly activity reports summarizing the services furnished on-site at each Clinic in a de-identified format shall be provided to County.

**No Personal Health Information contained in reports generated by HS shall be released to County except in a de-identified format by HS, or the Group(s) and NP(s) without the prior written consent of the Clinic Participants or in accordance with HIPAA and the CA Confidentiality of Medical Information Act.**

1.4 *Clinical Health Risk Testing.* Each NP shall order test as deemed necessary including: a) the collection of certain baseline clinical data indices including cholesterol, triglycerides, and glucose; b) blood pressure evaluation and body weight indexing. In addition, HS shall collect the clinical indices for the Prostate Screening Antigen (PSA) if County has selected this service as evidenced on Exhibit B attached hereto. Reference Lab tests and Pathology Services shall be limited to those tests set forth in Exhibit F attached hereto.

1.4.1 *Optional Mass Health Risk Assessments (HRA(s)).* Should the County elect to conduct Mass Health Risk Assessments (HRA(s)), the services, cost and reporting shall be included as described in this section. Once an employee has completed a Release of Health Information Form, a NP shall complete an initial HRA on each Clinic Participant that will include those tests set forth in Section 1.4. In addition, HS shall collect the clinical indices for the Prostate Screening Antigen (PSA) if County has selected this service as evidenced on Exhibit B attached hereto. However, Reference Lab tests and Pathology Services shall be limited to those tests set forth in Exhibit F attached hereto. In a mass HRA Event the basic HRA blood analysis panel shall include a lipid panel and glucose test and will be billed at a rate of \$45.00 per HRA Participant within 30 days of the scheduled assessment. Additional blood tests may be included with County approval and the cost of such tests will be paid by County.

Subsequent HRAs shall be completed once every twelve (12) months thereafter. Protected Health Information (PHI) obtained during each assessment shall be collected in accordance with HS business practices designed to ensure its privacy and security in accordance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the CA Confidentiality of Medical Information Act. PHI, including Clinic Participant medical records, shall be stored electronically in HP’s medical record database.

*Additional Reporting in the Event of Mass HRA(s):*

- a. Individual health profiles for Clinic Participants shall be compiled and distributed to each Clinic Participant only after each HRA.
- b. Aggregate health risk report(s) for the entire Clinic Participant population on a de-identified basis shall be compiled and distributed to County after each mass HRA effort.

1.5 *Interventions.* The NP at each Clinic, or an HS representative, shall contact each Clinic Participant who is identified as having two (2) or more high healthcare risk factors as identified. Each Clinic Participant with any risk factor(s) at panic levels as defined below shall be contacted by the NP within four (4) weeks of the healthcare risk factors being identified or as soon as possible. The NP at each Clinic shall be available during regularly scheduled Clinic hours of operation to consult with and assist in the development of a program for each Clinic Participant contacted in accordance with this Section 1.5.

For purposes of this Agreement, the terms High Healthcare Risk Factors (HHRF) and Panic Values shall have the following meaning:

		<u>HHRF</u>	<u>Panic Value</u>
Blood Pressure greater than:	Systolic	140	180
	Diastolic	90	120
Blood Glucose equal to / greater than:		100	250
Cholesterol greater than:		240	350
	LDL	160	200
	HDL, Male less than:	40	25
	HDL, Female less than:	45	25
Triglycerides equal to / greater than:		200	700
Body Mass Index (BMI) greater than:		30	40
Prostate Specific Antigen (PSA) (Males only)		4.0	

1.6. *Appointment of Account Manager.* HS shall appoint an Account Manager and provide notice to County of the appointment within ten (10) days of the date this Agreement is executed. In addition to overseeing the program, the Account Manager shall be available to review and discuss the activities of and reports generated from each Clinic with County.

1.7 *Practitioner Selection.* HS shall present an NP who is trained and qualified to perform clinical services required in the Clinic. HS shall confer with the County regarding selection of the proposed NPs. However, HS shall make the final decision with respect to whether to contract with NP candidates. County understands that due to the limited availability of NP candidates in some geographic locations, the opening of the Clinic may be delayed if an NP candidate is rejected at County's request.

1.8 *Professional Conduct of NP.*

1.8.1 The professional conduct of the NP shall be governed by applicable state laws and the policies and procedures of the supervising Group. Neither HS nor the County shall control the professional judgment of the NP. Neither HS nor County shall intervene in any way or manner with the services provided by NP unless NP's actions are in violation of the policies, rules, or regulations of conduct governing employees at County's place of business. It is understood between the parties that the traditional, customary, usual and confidential relationship between a health care provider and a patient exist between NP and Clinic Participants and all authorized persons seeking the professional services of NP.

1.8.2 In the event County deems the performance of any NP disruptive to County's place of business, detrimental to the health or safety of members of County's workforce or any dependent family members, is in violation of the policies, rules or regulations of conduct governing employees of County, or County finds NP performance to be otherwise unsatisfactory, County may request that a NP be removed from the Clinic. When HS is notified of such a request by County, HS shall notify the NP and Group and HS shall place the NP on administrative leave with pay until a review of the matter is completed within ten (10) calendar days. If after a review of the matter complained about, County or HS desire that the NP not return to the Clinic, HS shall immediately commence actions to recruit another NP to provide services at the Clinic and advise County when a substitute NP may be placed at the Clinic.

1.10 *MEDai Services.* HS has contracted with MEDai, Inc. to provide certain data aggregation, data analysis, medical guideline gap, predictive modeling, reporting and other services which shall be used to improve the value of the Clinic(s) based upon claims data and clinic encounter data. As an additional benefit under this Agreement, HS shall provide the following information as compiled by the MEDai Predictive Modeling and Guideline Gaps Package:

- A Patient Profile report shall be provided to the NP on a monthly basis;
- A Risk Navigator Clinical Summary shall be provided to County on a quarterly basis;

- A Risk Navigator Financial Summary shall be provided to County on an annual basis.

2. Electronic Data Sharing. County agrees to provide HS a demographic file for all eligible employees. County will also provide HS with a base of health care information by directing its health insurers to supply the data mutually agreed to by HS and County in electronic format compatible with HS software systems for Clinic Participants. This delivery of data shall be monthly and HS shall enter into a HIPAA Business Associate Agreement, attached to this Agreement as Exhibit E, with County and its health claims processing or insurance vendor. County shall instruct each third-party administrator, insurance vendor or other party responsible for managing County's Plan claims system to provide HS all historical claims data, including but not limited to, healthcare claims, pharmaceutical claims, and medical claims for all Clinic Participants that have provided prior written consent. HS shall use the data provided to establish and track Clinic Participant utilization trends and insurance cost impacts which shall be provided in the periodic reports generated and supplied to County. All costs associated with the transfer of data to the HS database, including but not limited to implementation of a software interface, shall be borne by County. All data transmitted pursuant to this Section must be in electronic non-facsimile format, i.e. CD, floppy disk or direct electronic interface.

3. Premises and Support Services of County.

3.1 *Premises.* County shall provide HS access to the Clinic during County's normal business hours. County shall be responsible for maintaining and securing the safety and safekeeping of the Clinic and all the equipment therein. County shall provide heat and air conditioning, janitorial service, replace light bulbs as needed and maintain other supplies for the Clinic as described in Section II of Exhibit D attached hereto. County shall maintain the safe and proper operation of all equipment located within the Clinic.

3.2 *Clinic Area.* County shall dedicate no less than eighty (80) square feet to be used as the Clinic. The Clinic shall be in close proximity to toilet facilities and, to the extent reasonably practicable, shall be equipped with a sink. In the event County desires to offer NP services at the Clinic to spouses and dependents of employees, County shall, as practical, ensure access to the Clinic from the exterior of the facility through an administrative or otherwise convenient public access way. Privacy and accessibility for non-employee users offered the services of the Clinic is important for the overall success of its operation. The Benefits derived from HS services are partially dependent upon significant usage of the Clinic.

3.3 *Hours of Clinic Operation.* The weekly schedule for the hours of operation of the Clinic shall be mutually agreed upon by County and HS. Changes to the weekly schedule may be made only upon the mutual written consent of HS and County.

3.4 *Contact Person for Scheduling.* The NP and/or the Medical Office Assistant (MOA) shall be responsible for scheduling all Clinic Participant appointments at the Clinic. Scheduling of appointments for Clinic Participants shall be done in a manner compliant with HIPAA.

4. Term and Termination.

4.1 The term of this Agreement shall be for a period of two (2) years. Thereafter, this Agreement shall automatically renew for up to two (2) successive one (1) year terms ("Renewal Term") unless earlier terminated in accordance with the terms of this Agreement as set forth below, or unless either party gives sixty (60) days' prior written notice of non-renewal to the other party prior to the expiration of the initial two (2) year term or any subsequent Renewal Term.

4.2 If either party defaults in the performance of any of its obligations hereunder, and such condition of default is not cured within thirty (30) days after delivery of written notice of such condition, the non-defaulting party may, at its option, terminate this Agreement by delivery of written notice of its intention to terminate seven (7) days after the expiration of the thirty (30) day cure period.

4.3 In the event a NP resigns, quits, is terminated or is otherwise unable or unwilling to continue at any Clinic location and HS is unable to find a suitable replacement after employing reasonable commercial efforts, HS may terminate this Agreement.

4.4 Any outstanding invoices as of the date of termination shall be due and payable according to the terms set forth below. Termination of this Agreement shall not release or discharge either party from any obligation, debt or liability incurred hereunder nor shall termination release or excuse payment for services rendered.

5. Compensation.

5.1 HS shall be compensated for its services in accordance with Exhibit B attached hereto.

5.2 County shall remit payment within thirty (30) days of approval of each invoice issued by HS. In the event that payment is not received by HS within thirty (30) days of the approval of the invoice, a late payment penalty in the amount of one and one-half percent (1½ %) per month shall accrue on the unpaid balance for each month or fraction thereof that payment is late.

6. Confidentiality of Information. HS shall maintain the confidentiality of all data, information, and PHI gathered, delivered and/or exchanged during the term of this Agreement as further described in the HIPAA Business Associate Agreement attached as Exhibit E. Upon termination of this Agreement, HS shall contact each Clinic Participant and determine whether the Clinic Participant would like to have any information containing their PHI: a) returned to them at their home address; b) forwarded to a health care provider of their choosing; or c) destroyed and assurance of its destruction provided.

HS and County agree to return to the other all proprietary information of the other party, other than Clinic Participant PHI, in their possession including, without limitation, any

documentation evidencing County's or HS's policies and procedures, or, give written assurances of its destruction.

7. Business Associate. The County is considered to be a "Hybrid Entity" under the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d et seq. and its implementing regulations including but not limited to 45 Code of Federal Regulations parts 142, 160, 162, and 164, ("Privacy Rule and Security Rule"). HS is considered to be a "Business Associate" under the Privacy Rule. HS must also comply with the Security Rule as a Business Associate, if under this Agreement; it receives, maintains or transmits any health information in electronic form in connection with a transaction covered by part 162 of Title 45 of the Code of Federal Regulations.

The County and HS acknowledge that HIPAA mandates them to enter into a Business Associate Agreement in order to safeguard protected health information that may be accessed during the performance of this Agreement. Accordingly, the parties agree to the terms and conditions set forth in Exhibit E - HIPAA Business Associate Agreement.

8. Indemnification and Insurance. HS agrees to defend, indemnify and save harmless the County and to procure and maintain insurance in accordance with the provisions of Exhibit C attached hereto.

9. Independent Contractors. It is mutually understood and agreed that HS, each NP, and Group (including any and all of their respective officers, agents, and employees) shall perform all of the services contemplated by this Agreement as independent contractors of the County and not as officers, agents, servants, employees, joint ventures, partners or associates of County.

10. Consents. Any consent required or any discretion vested in a party to this Agreement shall not be unreasonably withheld or arbitrarily or capriciously exercised.

11. Governing Law. This Agreement shall be interpreted according to the laws of the State of California.

12. Notices. All notices and other communications required or permitted under this Agreement shall be effective upon receipt or rejection. Any notice shall be delivered to the parties as follows:

County: County of Santa Barbara  
Human Resources Department  
1226 Anacapa Street  
Santa Barbara, CA 93101  
Fax: 805-568-3272  
Attn: Andreas Pyper, Assistant Director: Human Resources

HS: HealthStat, Inc.  
4651 Charlotte Park Dr., Suite 300  
Charlotte, NC 28217  
Fax: 704-529-6572  
Attn: Warren A. Hutton, General Counsel



13. Severability Clause. In the event any term or provision of this Agreement is found to be unenforceable or void, in whole in part, as drafted, then the offending term or provision shall be construed as valid and enforceable to the maximum extent permitted by law, and the balance of this Agreement shall remain in full force and effect.

14. Amendments. Amendments may be made to this Agreement but only after the mutual approval in writing by County and HS.

15. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not unreasonably be withheld.

16. Nondiscrimination. County hereby notifies HS that County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and HS agrees to comply with said ordinance.

17. Successors and Assigns. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

18. Compliance with Law. HS shall, at his sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of HS in any action or proceeding against HS, whether County be a party thereto or not, that HS has violated any such ordinance or statute, shall be conclusive of that fact as between HS and County.

19. Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, HS hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which HS is obligated, which breach would have a material effect hereon.

20. Precedence. In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

21. Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any such party's rights with respect to any subsequent breach thereof.

22. Entire Agreement. This Agreement supersedes all previous contracts and constitutes the entire agreement between the parties. HS and County shall be entitled to no benefit other than those specified herein. No oral statements or prior written material not specifically incorporated herein shall be of any force and effect and no changes in or additions to this Agreement shall be recognized unless and until made in writing signed by all parties hereto.

23. Use of County Name. HS shall not release any information pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects without obtaining the prior written approval of County.

24. Nonappropriation. In the event that no funds, or insufficient funds, are appropriated, budgeted, or otherwise made available, County will immediately notify HS of such occurrence and the Agreement may be terminated by County. Subsequent to the termination of this Agreement under this provision, County shall have no obligation to make payments with regard to the remainder of the term, but County shall make payments for services invoiced up to the date of termination.

25. Records, Audit, and Review. HS shall keep those business records or documents created pursuant to this Agreement that would be kept by a reasonably prudent practitioner of HS's profession and shall maintain such records in a manner consistent with applicable Federal and State laws. All account records shall be kept in accordance with generally accepted accounting practices. County shall have the right to audit and review all such documents and records, either at any time during HS's regular business hours, or upon reasonable notice to HS. HS agrees to retain such records and documents for a period of not less than three (3) years, following the termination of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date set out above.

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk

**COUNTY OF SANTA BARBARA:**

By: \_\_\_\_\_  
Chair, Board of Supervisors

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

**RECOMMENDED FOR APPROVAL:**

Lori Gentles  
Human Resources Department

By: \_\_\_\_\_  
Department Head

**CONTRACTOR:**

HealthStat, Inc.

By: \_\_\_\_\_  
Authorized Representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

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

**APPROVED AS TO ACCOUNTING FORM:**

Theodore A. Fallati, CPA  
Auditor-Controller

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

**APPROVED AS TO FORM:**

Risk Management

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

**LIST OF EXHIBITS:**

**Exhibit “A”: NP Clinic**

**Exhibit “B”: Service Cost**

**Exhibit “C”: Indemnification and Insurance Requirements**

**Exhibit “D”: Premises**

**Exhibit “E”: HIPAA Business Associates Agreement**

**Exhibit “F”: List of Reference Laboratory and Pathology Tests allowed at NP Clinics**

**EXHIBIT A**

**NP CLINIC**

**Clinic:** County of Santa Barbara

**City and State:** Santa Barbara, CA. and Santa Maria, CA

**Weekly hours requested:**

**Santa Barbara, CA**           Forty (40) total Clinic hours per week.

**Santa Maria, CA:**           Forty (40) total Clinic hours per week.

The Clinic will be closed on the following days:

New Year's Day;

Martin Luther King's Birthday;

President's Day;

Memorial Day;

Independence Day;

Labor Day;

Veteran's Day

Thanksgiving Day and the day following; and

Christmas Day

Except as outlined in Section 1.1.4, the Clinic will be closed for the following periods in any given 52-week term: 2 Weeks for Vacation; and 1 Week for Continuing Medical Education.

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## **EXHIBIT B**

### **SERVICE COST**

***Service Cost Limit.*** For HealthStat services to be rendered under this contract, HealthStat shall be paid a total contract amount, including cost reimbursements which are estimated, to be approximately up to \$1.1 million in the first year of the contract, with a maximum possible increase in subsequent years limited to no more than 3% per contract year thereafter.

***Program Administration Fees.*** During the term of this Agreement, County shall pay HS a fee of \$6.95 per Clinic Participant per month to cover the cost of effective on-going operation of the program. This fee is calculated based on the actual number of Clinic Participants but will not be less than \$15,985.00, based on a minimum of 2300 monthly participants. After 12 months, 24 months, and 36 months each of clinic operation, under this agreement, the County and HS will review the clinic operations and discuss the appropriateness of an increase in the program administrative fees of not more than 4% in the first year of the contract and no more than 3% for any subsequent contract years.

**This Section shall apply only in the event County decides to purchase mass Health Risk Assessments.**

***Initial HRA including Blood Draw, & Analysis.*** The basic HRA blood analysis panel shall include a lipid panel and glucose test and will be billed at a rate of \$65.00 per HRA Participant within 30 days of the scheduled assessment with a guaranteed minimum of 1600 participants. Total cost for HRAs done in 2016 will be \$104,000.00. Additional blood tests may be included with County approval and the cost of such tests will be paid by County. Prior to June 1 of each year this contract is in effect, the County and HS will review and discuss the appropriateness of an increase of not more than 4%.

***Nurse Practitioner Hourly Fee.*** The hourly cost to staff the Clinic by a NP shall be paid by County as agreed. At the beginning of each subsequent year, upon review by County and HS this fee may increase by up to 4% in the first year of the contract and no more than 3% each year for any subsequent contract years. Santa Barbara NP rate will increase by no more than 4% to \$119.44 and Santa Maria NP rate will increase by no more than 4% to \$119.33 upon execution of the contract and no more than 3% each year for any subsequent contract years

***Medical Office Assistant (MOA) Hourly Fee.*** The hourly cost to staff the Clinic by a MOA shall be paid by County as agreed. At the beginning of each subsequent year, upon review by County and HS this fee may increase by up to 4% in the first year of the contract and no more than 3% each year for any subsequent contract years. Santa Barbara rate will increase by no more than 4% to \$30.12 and Santa Maria rate will increase 4% to \$28.96 upon execution of the contract and no more than 3% each year for any subsequent contract years

***Medical & Administrative Supplies.*** HS shall order and County shall be billed the cost of the initial supplies and minor equipment required for the establishment of each Clinic including the cost of obtaining required Clinical Laboratory Improvement Amendments (CLIA) waivers and medical waste disposal services unless provided by

the County Public Health Department. All supplies and equipment required for the on-going operation of the Clinic(s) shall be ordered and paid for by County. County shall have the option to utilize the HealthStat Master Contract or contracts negotiated by County independently for medical and administrative supplies purchased for the Clinics.

***Reference Lab, Pathology Services and Medical Records.*** County shall pay HS based on a consolidated monthly Invoice for any reference laboratory and pathology services furnished to Clinic Participants. All lab services will be itemized by accession numbers and totaled each month and submitted to County on one invoice for payment. HS will not perform any Reference Lab and Pathology Service beyond the agreed scope of Reference Lab and Pathology Services as stated in Exhibit F.

## EXHIBIT C

### Indemnification and Insurance Requirements

#### INDEMNIFICATION

HealthStat (HS) agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. HS's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

#### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

HS shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

#### INSURANCE

HS shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the HS, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if HS has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the HS's profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.



If the HS maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the HS. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

**B. Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the HS including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the HS's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the HS's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the HS's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – HS hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said HS may acquire against the COUNTY by virtue of the payment of any loss under such insurance. HS agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the HS to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – HS shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences.

However, failure to obtain the required documents prior to the work beginning shall not waive the HS's obligation to provide them. The HS shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – HS shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and HS shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the HS must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. HS agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

## **EXHIBIT D**

### **Premises**

#### **Client Check List Room Specs & Supplies for the HealthStat Clinic (only applicable if a 3<sup>rd</sup> or subsequent clinic is set-up)**

##### **I. Room Specifications:**

- Private Room with Lock (windows must be covered), preferably with access through a non-production facility
- Sound and vibration proofing
- 8' x 10' minimum
- Electrical Outlets
- Heated/air conditioned
- Sink, or in very close proximity
- Restrooms in very close proximity
- Telephone
- High Speed Internet Connection with all Firewall and connectivity issues being the responsibility of the County

##### **II. Clinic Supplies**

- Examination table
- Cabinet (preferably with doors for Medical Supplies)
- Table for Blood Drawing Station & Supplies
- Mini-Refrigerator with freezer
- Desk
- Rolling Chair for NP/PA
- Chair for counseling Clinic Participant
- Locking File Cabinet
- Secure Shredder dedicated to the Clinic
- Secure Fax/Printer/Scanner Machine (preferably in the Clinic or a secure area that is HIPAA compliant)
- Phone list w/ extensions
- Access to a copy machine
- Paper towels
- Anti-bacterial Soap for NP/PA

\*\*\*\*\*County will be responsible for ALL Clinic office supplies, Clinic lab/medical supplies for the initial set-up\*\*\*\*\*

## EXHIBIT E

### HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

This Business Associate Agreement (“BAA”) supplements and is made a part of the Agreement between COUNTY (referred to herein as “Covered Entity”) and CONTRACTOR (referred to herein as “Business Associate”).

#### RECITALS

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“HITECH Act”), and 45 CFR Parts 160 and 164, Subpart C (the “Security Rule”), Subpart D (the “Data Breach Notification Rule”) and Subpart E (the “Privacy Rule”) (collectively, the “HIPAA Regulations”).

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (C.F.R.) and contained in this BAA.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

#### A. Definitions

1. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
2. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
3. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
4. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
5. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
6. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.

7. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
8. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
9. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
10. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
11. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
12. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
13. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

#### B. Obligations of Business Associate

1. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
2. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the

Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent the third party has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

3. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement, the BAA, or the HIPAA Regulations.
4. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
5. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA, and any Breach of Unsecured PHI, as required by the Data Breach Notification Rule, of which it becomes aware without unreasonable delay and in no case later than 60 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
6. **Business Associate's Subcontractors and Agents.** Business Associate shall ensure that any agents and subcontractors to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply

to Business Associate with respect to such PHI and implement the safeguards required by paragraph (c) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

7. **Access to Protected Information.** To the extent that the Covered Entity keeps a designated record set then Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within five (5) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
8. **Amendment of PHI for Business Associate who is Required to Maintain a Record Set.** If Business Associate is required to maintain a designated record set on behalf of the Covered Entity the Business Associate shall within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
9. **Accounting Rights.** Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an electronic health record and is subject to

this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Section B.2 of this BAA [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph shall survive the termination of this Agreement.

10. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (Secretary) for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
11. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
12. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.
13. **Business Associate's Insurance.** Business Associate represents and warrants that it purchases commercial insurance to cover its exposure for any claims, damages or losses arising as a result of a breach of the terms of this BAA.
14. **Notification of Possible Breach.** During the term of the Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual breach of security, or any access, use or disclosure of Protected Information not permitted by the Agreement or this BAA or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]



15. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
16. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this BAA, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Agreement or this BAA, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

### C. Termination

1. **Material Breach.** A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].
2. **Judicial or Administrative Proceedings.** Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or

stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

3. **Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section B of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

#### D. Indemnification

If Business Associate fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth in this BAA or if there is a Breach of PHI in Business Associate's possession and, as a result, PHI or any other confidential information is unlawfully accessed, used or disclosed, Business Associate agrees to reimburse Covered Entity for any and all costs, direct or indirect, incurred by Covered Entity associated with any Breach notification obligations. Business Associate also agrees to pay for any and all fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting if it fails to notify the Covered Entity of the Breach as required by this BAA.

#### E. Disclaimer

Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

#### F. Certification

To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this BAA.

#### G. Amendment to Comply with Law

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Covered Entity may terminate the Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Agreement or this BAA when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### H. Assistance in Litigation of Administrative Proceedings

Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or this 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 named adverse party.

#### I. No Third-Party Beneficiaries

Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

#### J. Effect on Agreement

Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

#### K. Entire Agreement of the Parties

This BAA supersedes any and all prior and contemporaneous business associate agreements between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Covered Entity and Business

Associate acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

#### L. Interpretation

The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

## **EXHIBIT F**

### **List of Reference Laboratory and Pathology Tests allowed at NP Clinics**

1. Hepatic Function Panel
2. Basic Metabolic Panel (BMP)
3. Comprehensive Metabolic Panel (CMP)
4. Lipid Panel
5. CBC
6. CBC, w/diff
7. PT with INR
8. PTT, activated
9. Amylase
10. ANA w/Reflex Titer
11. C-Reactive Protein
12. Cardio CRP
13. Creatinine w/EGFR
14. Digoxin
15. Ferritin
16. Folic Acid
17. FSH
18. Glucose
19. Hemoglobin A1c
20. Hepatitis A, AB, IGM
21. Hepatitis B, Core AB, IGM
22. Hepatitis B Surface AB w/reflex confirm
23. Hepatitis C AB
24. HIV1/HIV2 Screen, w/Reflexes
25. Iron Total, IBC %, Sat
26. Lithium
27. Magnesium
28. Micro-albumin, Random Urine w/Creatinine
29. Phenytoin
30. Progesterone
31. Prolactin
32. PSA< Total
33. Rheumatoid Factor
34. Sed Rate

35. TSH
36. TSH w/Reflex T-4, free
37. T-3 Total
38. T-3 Uptake
39. T-4 (Thyroxin) Total
40. T-4 (Thyroxin) Free
41. UA, dipstick (reflex to microscope)
42. UA complete (Reflex to Culture)
43. Uric Acid
44. Valproic Acid
45. Vitamin B12
46. Group B Strep Culture
47. Genital Culture
48. Throat Culture
49. Urine Culture
50. Chlamydia & N. gonorrhoea DNA Urine
51. Iron, Total
52. TIBC
53. H. pylori
54. Vitamin D
55. Mono spot
56. Estradiol
57. Testosterone, Total
58. Affirm test
59. Lipase
60. Serum HCG Qua
61. Micro-albumin
62. LH 615