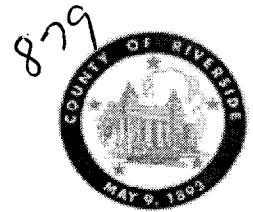


**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Office on Aging

SUBMITTAL DATE:
August 11, 2009

SUBJECT: Annual CareAccess Portal Access and Q-Continuum Software Maintenance License Fee

RECOMMENDED MOTION: That the Board of Supervisors approves and authorizes the CareAccess annual portal and maintenance fee to be renewable on an annual basis.

BACKGROUND: In August 2003, the Office on Aging and Care Access Silicon Valley entered into an Application Service Provider Agreement known as "CareAccess". CareAccess as part of its mission demonstrates new approaches in the use of technology for the elderly and persons with disabilities, and provides Internet technology solutions and independent software, for service of the health and human services industry through the CareAccess Virtual Private Portal (VPP), an Internet portal to a community of Human Services Software Applications created specially for the Aging Network.

The approval of this action will allow for the continuance of the CareAccess software also referred to as "Q" which is a highly secured website accessible to licensed operators through the internet. It is a comprehensive, multi-functional system used for data collection for care management clients and services units. It supports services for Area Agency on Aging, Older Americans Act and Older Californians Act programs & services, which includes in-house programs such as the Multi-purpose Senior Services Program (MSSP) and Contracted Services.

E. F. Walsh

Edward F. Walsh, Director
Office on Aging

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 26,910	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 1,380	Budget Adjustment:	No
	Annual Net County Cost:	\$ 1,380	For Fiscal Year:	09/10

SOURCE OF FUNDS: 88% Federal; 7% State; 5% County	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Lani Sioson*
Lani Sioson

County Executive Office Signature

- Dep't Recomm.: Consent Policy
- Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.:

District: ALL

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.87

FISCAL PROCEDURES APPROVED
 ROBERT E. BYRD, AUDITOR-CONTROLLER
 BY: *Susana Garcia-Bocanegra* 8/18/09
 SUSANA GARCIA-BOCANEGRA
 Departmental Concurrence
 FORM APPROVED COUNTY COUNSEL
 BY: *Neal R. Kipnis* DATE



CareAccess Silicon Valley Application Service Provider Agreement

This Application Service Provider, Subscription and Support Agreement; ("Agreement") is made as of the Effective Date by and between CareAccess Silicon Valley hereafter known as "CareAccess", a California Non-Profit corporation with its office located at 2115 the Alameda, San Jose, California, and Riverside County Area Agency on Aging, as defined hereinafter.

BACKGROUND:

WHEREAS, CareAccess as part of its mission demonstrates new approaches in the use of technology for the elderly and persons with disabilities, and provides Internet technology solutions and independent software, for services of the health and human/social services industry through the CareAccess Virtual Private Portal (VPP), an Internet portal to a community of Human Services Software Applications created specially for the Aging Network.

WHEREAS, Where its hardware is located at the AT&T Hosted Site in San Jose California, where AT&T provides the network infrastructure, and where these software applications are made accessible to various organizations. Software provided are HIPAA compliant software tools which includes functions for the same services and;

WHEREAS, CareAccess in furtherance of the project that began under the Governors Aging with Digital Challenge Grant contracts with AT&T to provide the network infrastructure to the VPP, AT&T E-Services will provide to CareAccess managed hosted service to the VPP community from San Jose California, CareAccess will oversee services to this virtual community to ensure that best industry standards of service are provided by AT&T; and

WHEREAS, CareAccess provides third party software vendors like CH Mack, Inc, developers of Q Continuum and MMTG developers of AACTS, RTM Designs, developers of ReferNET in the VPP for use by Health and Human Services organizations, and

WHEREAS, Customer desires to engage the services of CareAccess to provide Internet technology solutions through its third party software vendors, and human services software applications created specifically for the Aging Network to Customer.

NOW THEREFORE, CareAccess and Customer hereby agree as follows:

ARTICLE I: DEFINITIONS

1.01 Recitals: The above recitals and identification of parties are true and correct.

1.02 Definitions: The following definitions shall apply:

- (1) **Acceptance Date:** The term "Acceptance Date" shall mean the date the Third Party Software is deemed accepted by Customer as provided under Section 3.05.
- (2) **Access:** The term "Access" and variants thereof (including, but not limited to, the terms "access", "accessible " and "accessing") shall mean to store data in, retrieve data from or otherwise approach, display, reproduce, frame, establish a Link to, or make use of (directly or indirectly) through electronic means or otherwise.

- (3) Associate: The term "Associate" shall mean an employee of CareAccess or an independent contractor hired by CareAccess
- (4) Authorized Person: The term "Authorized Persons" shall mean (i) employees and legal counsel of the Receiving Party with a need to know Confidential Information disclosed to Receiving Party by Disclosing Party and (ii) persons or organizations with a need to know Confidential Information and who agree in writing to maintain the confidentiality of such Confidential Information.
- (5) Portal Fee: The term "Portal Fee" shall mean the fees for providing Internet access and other usage requirements of Customer as set forth in the Fee Schedule.
- (6) Coding: The term "Coding" shall mean software, programming codes, models, processes, events, methods, properties, scripts or statements for developing Associate software as written in a programming language, including (without limitations) Visual Basic (VB), Active Script (ASP), C++, VBScript programming languages.
- (7) Configuration: The term "Configuration" shall mean the computer hardware, operating system, and Internet access software and browser configuration requirements for entry to CareAccess
- (8) Confidential Information: The term "Confidential Information" shall mean all information identified in writing as confidential information and which is not: (a) already know to the Receiving Party from a source other than the Disclosing Party; (b) conveyed to the Receiving Party by a third party without any restriction as to confidentiality or use; (c) independently developed without reference to the confidential information or (d) in the public domain.
- (9) Consulting Services: The term "Consulting Services" shall mean Independent Services and those certain consulting, programming, conversion, analysis, training and ad hoc services provided by CareAccess Associates – or third party vendors to Customer as set forth in Section 2.02.
- (10) Content: The term "Content" shall mean information, including (without limitation) provider information and consumer names provided by Customer to CareAccess Case histories, User information, and any Technology uploaded, posted or submitted by User on Third Party Software.
- (11) Customer: The term "Customer" shall mean the individual or entity identified as "Customer" on the signature page of this Agreement.
- (12) Customer Materials: The term "Customer Materials" shall mean the Content and Technology disclosed or provided to CareAccess for the purposes of developing the database conversions to Third Party software.
- (13) Defect: The term "Defect" shall mean programming errors and other defects in the CareAccess System, Third Party software, or otherwise which substantially impair the performance of the Third Party software.
- (14) Defect Notice: The term "Defect Notice" shall mean that written notice from Customer to CareAccess identifying Defects.
- (15) Deposit Materials: The term "Deposit Materials" shall mean only the source code for the CareAccess Technology developed in connection with Third Party Software (excluding Tools), delivered by CareAccess to a safe and secure location.
- (16) Developer: The term "Developer" shall mean the owner, authorized distributor, or licensee of the Tools or Customer Materials (as applicable).
- (17) Disclosing Party: The term "Disclosing Party" shall mean a party to this Agreement who reveals Confidential Information to the other party to this Agreement.
- (18) Documentation: The term "Documentation" shall mean the Third Party software guide describing the functions of the Third Party software as provided, or CareAccess respective, in printed or electronic form.
- (19) Domain Name: The term "Domain Name" shall mean that certain alphanumeric name by which a Web Site is known on the Internet.

- (20) Effective Date: The term "Effective Date" shall mean the date this Agreement is signed by CareAccess and Customer (whichever is later).
- (21) Fee Schedule: The term "Fee Schedule" shall mean that certain schedule of fees, published by CareAccess from time to time, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference.
- (22) Graphics: The term "Graphics" shall mean graphics used in connection with the Third Party software, including (without limitations) illustrations, pictorials, animation, pictures, diagrams, representations, graphics, screen displays, letters, fonts, icons, flow-charts, and drawings.
- (23) Hardware Fee: The term "Hardware Fee" shall mean the fees for providing servers or other hardware to Customer as set forth in the Fee Schedule.
- (24) Implement: The term "Implement" and variants thereof (including, but not limited to, the terms "implementation", "implementing", and "implemented") shall mean to load and make available for User access and use.
- (25) Implementation Date: The term "Implementation Date" shall mean the date the Third Party software is implemented by CareAccess on the CareAccess Portal.
- (26) Implementation Fee: The term "Implementation Fee" shall mean the amount of money to be paid by the Customer to CareAccess for implementation of the Third Party Software as set forth in Exhibit B.
- (27) Internet: The term "Internet" shall mean that certain global network of computers and devices commonly referred to as the "Internet", including (without limitation) the World Wide Web.
- (28) CareAccess Legend: The term "CareAccess Legend" shall mean a logo, written disclaimer, and written notice that credits CareAccess or a Developer in connection with the Third Party Software and a Link to the CareAccess Web Site, including. CareAccess disclaims and user hereby waives all responsibility in connection with the product and the accuracy of the information and content offered through this Web Site. Use of this Web Site is subject to the Web Site Terms of Use and any notices."
- (29) CareAccess System: The term "CareAccess System" shall mean computer systems and communication equipment designated and controlled by CareAccess and used for hosting the Third Party Software, and CareAccess Web Site and providing Users access to the CareAccess Web Site.
- (30) CareAccess Technology: The term "CareAccess Technology" shall mean any and all Technology developed by or for CareAccess including (without limitation) the CareAccess Web Site.
- (31) CareAccess Web Site: The term "CareAccess Web Site" shall mean that certain CareAccess Web Site, which is located on the Internet at <https://www.CareAccess-ca.com>, as may be relocated from time to time, including any and all CareAccess Technology used, incorporated, stored or accessible therein, as implemented on the CareAccess System and made accessible to Users through the Internet.
- (32) License Fee: The term "License Fee" shall mean the fees for making certain software modules available to Customer as set forth in the Fee Schedule.
- (33) Link: The term "Link" shall mean text, icons or graphic symbols in web pages (visible or transparent) that upon search, selection or activation link or associate to, execute, access or retrieve an off-screen Web Site or Technology.
- (34) Maintenance Fee: The term "Maintenance Fee" shall mean the fees for maintenance and database administration services as set forth in the Fee Schedule.
- (35) Nonpayment Notice: The term "Nonpayment Notice" shall mean that written notice from CareAccess to Customer alleging nonpayment under this Agreement and seeking to cancel this Agreement or a Service Order unless payment is rendered by Customer, as provided hereunder.

- (36) Password: The term "Password" shall mean that certain password and user name assigned to Users for accessing the Third Party Software according to the Policy Statement and CareAccess guidelines and practices.
- (37) Policy Statement: The term "Policy Statement" shall mean those certain written statements of policies, terms of use and legal notices concerning access to the Third Party Software as may be adopted by CareAccess and as modified by CareAccess from time to time.
- (38) Receiving Party: The term "Receiving Party" shall mean a party to this Agreement who receives Confidential Information from the other party to this Agreement.
- (39) Registered User Fee: The term "Registered User Fee" shall mean the fees for maintaining User registration information on the CareAccess System as set forth in the Fee Schedule.
- (40) Registration Company: The term "Registration Company" shall mean an entity that administers the registration and maintenance of Domain Names, including (without limitations) Network Solutions, Inc.
- (41) Restatements: The term "Restatements" shall mean Section 757 of the Restatement of Torts, Section 39 of the Restatement (Third) of Unfair Competition, 18 U.S.C. §1839 and Section 1 of the Uniform Trade Secrets Act.
- (42) Scoping Document: The term "Scoping Document" shall mean a document specifying and describing desirable functional and technical specifications for the Third Party Software.
- (43) Services: The term "Services" shall mean the Third Party Vendor Services, the Consulting Services, and the Promotion Services (as applicable).
- (44) Q Continuum Software: The term "Q Continuum" shall mean those certain electronic software applications developed and made available by CH Mack to Customer and identified as the Q Continuum Software, including (i) any and all CareAccess Technology used, incorporated, stored or accessible therein; and (iii) any and all Technology provided to CareAccess or created by Customer in connection therewith, all as implemented on the CareAccess System and made accessible to Users through the Internet, as listed in Exhibit A and incorporated herein, as third party software, by this reference.
- (45) AACTS Software: The term "AACTS" shall mean those certain electronic software applications developed and made available by MMTG to Customer and identified as the AACTS Software.
- (46) ReferNET software: The term "ReferNet" shall mean those certain electronic software applications developed and made available by RTM Design to Customer and identified as Refer Software.
- (47) AACTS: The term "AACTS" shall mean that certain third party software published by CareAccess as listed in Exhibit A and incorporated herein by this reference.
- (48) Technology: The term "Technology" shall mean (i) evaluation, technical, scientific, engineering, marketing, catalog, financial and business reports, plans, studies, diagrams, or flow charts; (ii) all forms and types of scientific, technical, economic, or engineering information; and (iii) information, data, ideas, works of authorship, computer software, source code, object code, executable code, software libraries, documentation, databases, database designs, data dictionaries, data models, fields, records, scripts, texts, list server email logs, interface designs, protocols, screen displays, Web Sites, web pages, Links, Coding, Documentation, patterns, compilations, formulas, methodologies, techniques, processes, procedures, adaptations, derivative works, computers, machines, articles of manufacture, improvements, hardware, peripherals, components and networks, whether tangible or intangible, and whether stored, compiled, or memorialized (without limitation) physically, electronically, graphically, photographically, or in writing.
- (49) Term: The term "Term" shall mean a period of time starting on the Effective Date and continuing until this Agreement is terminated or canceled as provided hereunder.

(50)Tools: The term "Tools" shall mean third party Technology incorporated in whole or in part into the Third Party software.

(51)Upgrade Services: The term "Upgrade Services" those certain services provided to Customer for adding information to the Third Party software, or modifying the Third Party software to improve the features, performance or functionality of the Third Party software.

(52)Users: The term "Users" shall mean Customer, individuals or entities accessing the Third Party software to the terms and conditions of this Agreement.

ARTICLE II: SCOPE OF SERVICES

Section 2.01 – CareAccess Services: CareAccess shall implement the Third Party Software pursuant to Article III of this Agreement. CareAccess shall provide Services to Customer pursuant to Article III of this Agreement.

Section 2.02 – Scope: The scope of this Agreement shall include the Third Party software Schedule, the terms of which are incorporated herein and made a part hereof. In the event of any conflict between the terms of this Agreement and the terms of any Third Party software Schedule, the terms of this Agreement shall govern.

Section 2.03 – Entire Agreement: The Third Party software Schedule, together with any schedules, appendices, and other attachment thereto or other agreements (including this Agreement) which are specifically incorporated therein as part of the Third Party software Schedule, shall constitute the entire agreement between Customer and CareAccess with respect to the matters, referred to therein and shall supersede all proposals, oral and written, and all other communications between the parties in relation to the subject matter of such Third Party software Schedule which have not otherwise been incorporated in writing as a part of such Third Party software Schedule.

Section 2.04 – Personnel: The personnel assigned to perform Services shall be determined by Third Party Vendor and CareAccess. Customer hereby acknowledges and agrees that CareAccess may engage independent contractors to perform the Services on behalf of CareAccess.

Section 2.05 – Access: Customer hereby authorizes CareAccess to access Customer's portal software data for purpose of performing this Agreement. Customer shall allow one CareAccess administration profile to exist on Customer database for the purpose of technical support. Such access shall be subject to the confidentiality provisions hereunder and independent contractors shall sign confidentiality agreements.

Section 2.06 – Customer Cooperation: Customer hereby acknowledges that successful performance by CareAccess of the Services shall require Customer to cooperate with CareAccess in good faith and to provide information as may be requested by CareAccess from time to time. Customer hereby agrees to provide such good faith cooperation and information.

Section 2.07 – Schedule: The Services shall be offered – Monday through Friday, from 8:00 am to 5:00 pm, (excluding holidays).

Section 2.08 – Facilities: The Services shall be performed at the facilities of AT&T Communications, located in San Jose California, unless otherwise reasonably required.

ARTICLE III: SOFTWARE SERVICES

Section 3.01 - Backup and Usage Information: CareAccess shall backup the Third Party software using commercially reasonable backup procedures. CareAccess shall manage the recordation of monthly reports detailing:

- (i) All information reflecting access and usage of the Third Party software including, but not limited to, audited and unaudited visits; and

- (ii) All available information about users of the Third Party software shall maintain strict confidentiality and adhere to all privacy and data protection laws applicable to the gathering, processing, storing and transmitting of such information.

Section 3.02 – Security Certificate: CareAccess Services may include issuance to Customer of a Secure Sockets Layer (SSL) certificate or other equivalent security certificate to enable secure and encrypted communications between Users and the Third Party software. Customer hereby acknowledges that all such security certificates are provided by third party certificate authorities. CareAccess shall not be responsible for any errors or omissions of third parties in connection with security certificates.

Section 3.03 – Passwords: Customer hereby acknowledges and agrees that access to certain areas of Third Party software (as determined by CareAccess) shall be subject to use of a Password mutually agreeable to Customer and CareAccess. Customer hereby acknowledges that CareAccess shall not provide full or administrative access to the Third Party software or the hosting equipment. Access to the Third Party software shall be determined in the exclusive discretion of CareAccess. Modification of Customer Password shall be subject to approval of CareAccess. In the event Customer is enabled to issue passwords to Users ("User Passwords") for accessing the Third Party software, CareAccess shall have the right to access such User Passwords and Customer shall cooperate with CareAccess in providing information to in connection with such User Passwords for purposes of operating and maintaining the Third Party software. CareAccess shall maintain all password information in strict confidence. Customer hereby accepts responsibility for, and shall be liable for, all access to the Third Party software in connection with User and Customer Passwords. Customer shall be responsible for the confidentiality of the Customer Password. Customer shall be responsible for maintenance of User Passwords.

Section 3.04 – Access: Customer hereby acknowledges and agrees that access to the Third Party Software may be affected by local market telecommunication network activity, capacity and compatibility with third party communication equipment, Internet access software and browser. CareAccess hereby disclaims and Customer hereby waives any and all CareAccess responsibility for any Defect or service interruption in connection with local market telecommunication network activity, capacity and compatibility with third party communication equipment, Internet access software and browsers.

Section 3.05 – Exclusivity: Customer hereby acknowledges and agrees that CareAccess shall be the exclusive provider of VPP access, hosting, for the Third Party Software. The Third Party Software shall be accessed exclusively by CareAccess for purposes of performing this Agreement. In no event shall Customer use third parties or permit third parties to access the Third Party Software for purposes of performing any services concerning the Third Party Software including (without limitation) third party Internet service providers, web designers, solution providers, or third-party advertising management services in connection with the Third Party Software vendors.

Section 3.06 - Contact Person: CareAccess and Customer shall each designate a principal contact person who shall act as a liaison between CareAccess and Customer and who shall have sufficient authority to grant or communicate the granting of all necessary approvals.

Section 3.07 - Current Technology: CareAccess represents and warrants that during the Term of this Agreement, and any renewals thereof, CareAccess shall continually use and integrate the most current and up to date technology utilized by other users of the same version of the Third Party Software into the Third Party Software.

ARTICLE IV: INTELLECTUAL PROPERTY

Section 4.01 – CareAccess Technology: Title to CareAccess Technology (excluding the Tools), including all ownership rights to patents, copyrights, trademarks and trade secrets in connection therewith shall be the exclusive property of CareAccess. Customer hereby acknowledges that the CareAccess Technology shall not be deemed "works made for hire" under the U.S. Copyright Act [17 U.S.C. § 101 et seq.]. Customer hereby assigns, transfers and conveys any and all rights, title and interests; Customer may have or accrue in connection with development or use of the CareAccess Technology, including (without limitation) any and all ownership rights to patents, trademarks, copyrights and trade secrets in connection therewith.

Section 4.02 – Customer Materials: Title to Customer Materials, data, including all ownership rights to patents, copyrights, trademarks and trade secrets in connection therewith shall be the exclusive property of Customer, and as such may only be accessible by customer or CareAccess, as outlined in Section 2.05.

Section 4.03 - Content License: All Content (except the User and Customer Password) uploaded, posted or submitted by User on the Third Party Software shall be deemed confidential. CareAccess will not use, reproduce, create derivative works, display, perform, release, distribute, sell, and disclose such Content, in whole or in part, in any manner and for any purpose, and will not allow Third Party Vendors to do so.

Section 4.04 – Authorization: Customer hereby represents and warrants that Customer has obtained all necessary authorizations, permissions or licenses from the State or local government to distribute and provide the Customer Data to CareAccess. Customer hereby represents and warrants that Customer has the authority to grant the license granted by Customer to CareAccess under this Agreement. Customer hereby represents and warrants that use, reproduction, display and performance of Customer data by CareAccess shall not infringe upon or violate any patent, copyright, trade secrets or trademark rights of any third party or violate any laws, including (without limitation) the United States export laws (Export Administration Act, 15 CFR 730-774) and import laws.

Section 4.05 – Confidentiality: The Receiving Party shall not disclose Confidential Information except to Authorized Persons. The Receiving Party shall hold Confidential Information in confidence and shall not duplicate, use or disclose Confidential Information except as permitted under this Agreement. Receiving Party shall require Authorized Persons who receive Confidential Information from Receiving Party to hold and maintain such Confidential Information in confidence and not use or reproduce such Confidential Information except as permitted under this Agreement. The CareAccess Technology (excluding the Tools and CareAccess Technology authorized by CareAccess for access through the Internet without a Password) shall be deemed Confidential Information of CareAccess. This Section 4.05 shall survive termination and cancellation of this Agreement.

Section 4.06 – Unauthorized Use: Customer shall not (directly or indirectly) copy or download the Third Party Software, or CareAccess Web Site without the prior written consent of CareAccess. Customer shall not modify, reverse engineer, reproduce, display, perform or distribute, establish a Link to, associate (directly or indirectly) itself with, or cause confusing, including (without limitation) by framing, metatags or similar means, the Third Party Software, or CareAccess Web Site and shall not allow the Third Party Software to be reverse engineered.

Section 4.07 - Unauthorized Access: Customer shall prevent any individual to access the Third Party Software except for individuals and employees of Users authorized to access the Third Party Software for the exclusive purpose of accessing the areas of the Third Party Software solely for purposes of viewing, browsing, retrieving, uploading and posting information on the Third Party Software according to the Documentation during the Term using a Password (as may be required) subject to the terms and conditions of this Agreement.

Section 4.08 – Non-compete: Customer hereby acknowledges and agrees that Customer will receive Confidential Information and trade secrets during the Term. Customer acknowledges that CareAccess has a legitimate business interest in placing reasonable limits on the use of such information. Accordingly, during the Term and for a two-year period following the Term, Customer shall not:

- (i) use the CareAccess Technology (directly or indirectly) to develop, promote, advertise, market, or provide any Web Site similar to or competitive with the Third Party Vendors.

Section 4.09 -- No Contest: Customer shall not contest or aid in contesting the ownership or validity of the copyrights, trademarks, service marks and trade secrets (as applicable) of CareAccess in connection with the Third Party Software.

Section 4.10 -- Trademarks: CareAccess shall retain all rights, title, and ownership interests in trademarks, trade names, service marks and trade dress of CareAccess and goodwill associated therewith. Customer acknowledges that, excepting the trademarks of CareAccess all other product, service and company names mentioned in the Third Party Software may be trademarks of their respective owners.

ARTICLE V: PAYMENTS

Section 5.01 – Subscription Fees: Customer hereby acknowledges and agrees to access of the selected Third Party Software as set forth in Exhibit A. Users shall not be enabled (excluding Customer) until Customer pays CareAccess the Subscription Fee. Customer shall pay CareAccess the Subscription Fee as follows:

- (i) \$35 per month, per named user, as provided by customer for portal access.
- (ii) \$22.50 per month, per named user, maintenance fee for Q Continuum Software.

Section 5.02 – Q Software License Fees: Customer shall pay CareAccess the fees for License of Q software of \$1,000, as set forth in Exhibit B, " Fees Schedule" attached here to

Section 5.03 – Q Software Training Fees: Customer shall pay CareAccess the fees for Training on Q software, if Customer elects to purchase training, on the terms and conditions set forth in Exhibit E, "Training Fees" attached here to.

Section 5.04 – Auditing: CareAccess shall have the right at a time and place reasonably acceptable to Customer and CareAccess but in no event more than once per year, to audit the Third Party Software, Customer, records, data and correspondence and any other information as reasonably necessary, related to the Third Party Software for purposes of validating the accuracy of fees due CareAccess under this Agreement. The audit shall be conducted at Care Access's sole cost and expense.

Section 5.05 – Expenses: Customer shall pay all reasonable direct costs, including (without limitation) postage, shipping, telephone, communications, fees charged by third parties, insurance, travel, per diem, material and reproduction costs incurred by Third Party Software Vendors in performing Services at rates and in amounts approved by Customer before such costs are incurred.

Section 5.06 – Invoice: Customer shall pay any invoices by CareAccess for fees and expenses in connection with the Services. Customer shall pay any such invoice in full on the due date thereof or within thirty (30) days of receiving such invoice (whichever is earlier).

ARTICLE VI: TERMINATION

Section 6.01 – Termination Limits: This Agreement shall only be terminated or canceled as provided under this Article VI.

Section 6.02 – Termination Without Cause: Either party may terminate this Agreement for convenience by providing ninety days advance written notice of termination to the other party.

Section 6.03 – Cancellation With Cure: If a party violates its obligations under this Agreement or a Service, the other party may cancel the Agreement or such Service because of breach by sending written notice of cancellation to the other party describing the noncompliance to the non-complying party. Upon receiving such cancellation notice, the non-complying party shall have thirty days from the date of such notice to cure any such noncompliance. If such noncompliance is not cured within the required thirty-day period, the party providing cancellation notice shall have the right to cancel this Agreement or the Service Order as of the thirty-first day after the date of such cancellation notice as specified in such cancellation notice.

Section 6.04 – Nonpayment: Notwithstanding Section 6.03, Customer failures to pay an invoice when due shall be sufficient cause for cancellation of this Agreement and any Service by CareAccess as provided hereunder. CareAccess shall exercise such right of cancellation by submitting Nonpayment Notice to Customer. Upon receipt of Nonpayment Notice, Customer shall have ten days to cure the nonpayment. If Customer fails to cure the nonpayment within the required ten-day period, CareAccess shall have the right to cancel the Agreement and any and all Service as of the eleventh day after the date of the Nonpayment Notice.

Section 6.05 – Effect of Termination: Termination or cancellation of this Agreement shall terminate or cancel (as the case may be) this Agreement and each Service Order. Termination or cancellation of a Service shall terminate or cancel (as the case may be) such Service only.

Section 6.06 – Access: Upon termination or cancellation of this Agreement by CareAccess Users shall immediately cease and desist any and all access to and attempt to access the Third Party Software. All Customer material (data) will be purged from CareAccess servers.

ARTICLE VII: WARRANTY

Section 7.01 – Services Warranty: The Services to be provided by CareAccess under this Agreement shall be performed using reasonable commercial efforts, shall conform to the standards generally observed in the industry for similar services and shall be subject to Sections 7.02, 7.03, 7.04, 7.05, 7.06 and 7.07.

Section 7.02 – Third Party Software Warranty: Subject to the terms and conditions of this Agreement, CareAccess represents and warrants that (i) the Third Party Software will appear and operate in substantial conformance with best industry standards, and the Third Party Software guidelines set forth herein; (ii) the Third Party Software will be accessible by users of the Internet twenty-four (24) hours per day, seven (7) days per week except for scheduled maintenance and up to a maximum of 2 hours per year of unscheduled unavailability which is not caused by Customer technology, information or equipment; (iii) CareAccess has full authority to enter into this Agreement; (iv) CareAccess is the owner of or otherwise has the right to use and distribute the CareAccess Technology and any other materials or methodologies used in connection with providing the Third Party Software and Services hereunder.

Section 7.03 - Performance Warranties: Subject to the terms and conditions of this Agreement, CareAccess represents and warrants the following:

- (i) Except as otherwise agreed in writing by the parties, the Third Party Software shall be accessible to Internet Users twenty four (24) hours per day, seven (7) days per week, with the exception of scheduled maintenance periods, which shall last no longer than 2 hours per day and which shall take place each evening between the hours of 1 a.m. and 3 a.m., Pacific Standard Time, and a maximum of 2 hours of unscheduled unavailability per year which is not caused by technology, information or equipment provided by Customer;
- (ii) If the server becomes unavailable to Users, other than for scheduled maintenance, CareAccess shall have qualified personnel respond in the form of a service call in person to the server location within 1 hour of notification of such unavailability and shall, to the extent reasonably practical, remedy such unavailability at such time
- (iii) CareAccess to meet the service levels set forth in the Service Level Agreement (“SLA”) in Exhibit D. CareAccess agrees that in the event of failure to adhere to the Service Levels set forth therein, Customer shall be entitled to receive, upon Customer’s request in accordance with this Agreement, a Service Credit to Customer’s account as described below. The Service Level Agreement shall not apply to performance issues (i) caused by factors outside of CareAccess’s reasonable control; (ii) that resulted from any actions or in actions of Customer or any third parties that are not under the sole control of CareAccess; or (iii) that resulted from Customer’s equipment and/or third party equipment (not within the sole control of CareAccess).
- (iv) CareAccess agrees to monitor detailed predictive reports daily, weekly and monthly through infrastructure web portal. CareAccess through its third party provider (AT&T) warrants 99.99% platform availability.
- (v) CareAccess will provide a copy of customer data upon request either through electronic format (FTP) or hard media.

The foregoing warranties in Section 7.01, 7.02, and this Section 7.03, do not cover or extend to Tools. Customer hereby accepts and adopts all third party license terms and conditions and assumes all of the rights and obligations of such licenses, including any and all warranties and limitations contained therein.

Section 7.04 – Express Warranties: Except for the CareAccess service warranty in Section 7.01, the Third Party Software warranty in Section 7.02, and the performance warranties in Section 7.03, Customer hereby acknowledges and agrees that CareAccess (including officers, directors, agents, and Associates of CareAccess has not made or granted any express warranties concerning the Services, the Third Party Software, or any products and services offered through the Third Party Software.

SECTION 7.05 – DISCLAIMER: THE WARRANTIES SET FORTH IN SECTIONS 7.01, 7.02 AND 7.03 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CAREACCESS (INCLUDING OFFICERS, DIRECTORS, AGENTS AND ASSOCIATES OF CAREACCESS) HEREBY DISCLAIMS AND USERS HEREBY WAIVE ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, EXCEPT AS SET FORTH HEREIN TO THE CONTRARY, CAREACCESS DOES NOT WARRANT AND USERS HEREBY WAIVE ANY WARRANTY THAT USE OF OR ACCESS TO THE THIRD PARTY SOFTWARE BY USERS WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS SET FORTH HEREIN TO THE CONTRARY, CAREACCESS DOES NOT MAKE ANY WARRANTY AND USERS HEREBY WAIVE ANY AND ALL WARRANTIES AS TO THE RESULTS OBTAINED FROM USE OF THE THIRD PARTY SOFTWARE OR AS TO THE ACCURACY, COMPLETENESS, TIMELINESS OR RELIABILITY OF THE THIRD PARTY SOFTWARE. USERS HEREBY ACKNOWLEDGE AND AGREE THAT USE OF THE INTERNET AND THIRD PARTY SOFTWARE SHALL BE AT THE SOLE AND EXCLUSIVE RISK OF USERS AND SUBJECT TO THE RESTRICTIONS, TERMS AND CONDITIONS, RULES, REGULATIONS, POLICIES, APPLICABLE LAWS AND CODES OF CONDUCT GOVENING THE INTERNET, THE THIRD PARTY SOFTWARE OR OTHERWISE APPLICABLE.

Section 7.06 – Limitation of Damages: CareAccess shall not be liable for any loss, consequential, exemplary, incidental or punitive damages in connection with or relating to (i) this Agreement, the Services and use, performance and operation of the Third Party Software, (ii) use, performance or operations of the Internet or use of the Internet by Users; (iii) loss of data; and (iv) Content, products and services offered through the Third Party Software) regardless of the form of action, whether in contract or in tort, including negligence, regardless of whether CareAccess has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable.

Section 7.07 – Remedies: The sole remedy of Users for any reason and for any cause of action whatsoever in connection with or relating to this Agreement and the Third Party Software regardless of the form of action, whether in contract or in tort, including negligence, shall be modification of the Third Party Software and CareAccess's policies and practices, as determined by CareAccess

Section 7.08 – Integrity: Customer hereby represents and warrants that Customer Materials and any and all media provided to CareAccess by Customer shall not contain any material defects, authorization code routines, viruses, disabling routines or Technology or defect causing failures in the Third Party Software.

Section 7.09 – Infringement: Customer shall release, defend, indemnify and hold harmless CareAccess (including officers, directors, agents and Associates of CareAccess) from and against any and all claims, damages, liability, expenses, fees, costs and attorney and paralegal fees arising in connection with or relating to any third party claims of infringement or violation of any ownership rights to patents, copyrights, trademarks or trade secrets in connection with any use of Customer Materials by CareAccess. Customer shall defend and settle at its sole expense all suits or proceeding arising in connection with any such third party claim. Customer shall not enter into any agreement, which impairs the right of CareAccess to use Customer Materials and Links in accordance with this Agreement. In all events, CareAccess shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. If use of Customer Materials or Links is disrupted as a result of a third party claim, CareAccess shall have the right to remove Customer Materials or Links as provided under Section 7.08. The foregoing remedy shall be non-exclusive and in addition to any other legal or equitable remedies CareAccess may have or accrue.

Section 7.10 – Indemnification: Customer shall defend, indemnify and hold harmless CareAccess and its officers, directors, employees and agents, from and against any and all losses, costs, claims, suits, obligations, demands, damages, liabilities, expenses and reasonable attorney and paralegal fees on account thereof resulting from or relating to (i) modification of the Third Party Software; (ii) injuries, including death to persons or damage to property, theft, emotional distress, which arise out of or result from the acts (or failure to act) of Users using the Software and any breach by Users of the obligations of Users, including (iii) the fault or negligence of Customer including Customer intentional wrongful acts.

Section 7.11 – Customer Indemnification: CareAccess warrants that it has the right to convey the licenses set forth in this Agreement and that Customer's use of the Software in accordance with the terms of this Agreement shall not infringe any third-party rights in patent, copyright or trade secret in the United States. Provided that Customer is not in default under this Agreement, and gives CareAccess prompt written notice of any such claim or action, CareAccess, agrees to answer and defend, or settle, at its option and sole expense, indemnify and hold harmless (including reasonable expenses, costs and attorneys' fees) Customer, from any action at law or in equity arising from a claim that use of the Software during the term of this Agreement infringes any United States patent or copyright. CareAccess may, at its option, promptly upon notice of such an infringement claim, (1) modify the CareAccess Technology to avoid the infringement without substantially eliminating the functional and performance capabilities of the CareAccess Technology; (2) obtain a license for use of the CareAccess Technology from the third party claiming infringement for use of the CareAccess Technology; or (3) return to Customer the total license fees paid by Customer hereunder:

(1) **Modification:** Modify the CareAccess Technology to avoid the infringement without substantially eliminating the functional and performance capabilities of the CareAccess Technology;

Obtain License: Obtain a license for use of the CareAccess Technology from the third party claiming infringement for use of the CareAccess Technology.

The foregoing remedy does not apply and CareAccess shall have no obligation in connection with or relating to any third party infringement claim resulting from (i) User's modification of the Third Party Software, (ii) User's failure to use the Third Party Software substantially in accordance with the Documentation in effect; (iii) User's failure to use the most current release or version of the Third Party Software; (iv) Users combination, interface, operation or use of the Third Party Software with the Content or third party Technology (excluding the Tools). The remedies set forth herein shall be the sole and exclusive remedies of Customer under this Agreement for any and all claims of indemnification relating to infringement.

Section 7.12 – Force Majeure: CareAccess shall not be liable for any failure to perform its obligations under this Agreement or any failure of the Third Party Software because of circumstances beyond the control of CareAccess which such circumstances shall include (without limitation) natural disaster, terrorism, riot, sabotage, labor disputes, war, any acts or omissions of any government or governmental authority, declarations of governments, laws, court orders, transportation delays, power failure, computer failure, failure of Customer computer system, CareAccess System reasonable downtime for routine maintenance, network problems, telecommunications failure, failure of Users to cooperate with the reasonable requests of CareAccess misuse of the Third Party Software by Users or a third party and User's breach of their obligations.

Section 7.13 – Compliance: Customer shall be solely responsible for (i) the truthfulness, accuracy, integrity, and lawfulness of Customer Materials; (ii) fulfillment of all orders placed by Users through the Third Party Software, (iii); (iv) the products and services made available to Users; and (v) compliance with applicable laws and regulations with respect to Customer's products and services.

Section 7.14 -- Laws: Customer represents and warrants that the products and services offered through the Third Party Software shall be lawful. Customer represents and warrants that the Third Party Software shall not be used (directly or indirectly) to conduct or solicit the performance of any business or activity which is tortious, prohibited by law or violates the Policy Statement, any restrictions, terms and conditions, rules, regulations, policies or laws of any state or federal governmental body or agency, and codes of conduct. Customer shall require Users to comply with the Policy Statement, any restrictions, terms and conditions, rules, regulations, policies, laws and codes of conduct.

Section 7.15 – Continuation: Excepting Sections 7.01, 7.02 and 7.03, the terms and provisions of this Article VII shall survive termination and cancellation of this Agreement.

Section 7.16 – Service Credit: shall mean an amount equal to the pro-rata recurring charges for one monthly billing statement for Services for one (1) day of Service. In the event Customer experiences Downtime, as defined in the SLA, Customer shall be eligible to receive from CareAccess a Service Credit for each Downtime period with a maximum aggregate Service Credit of one-month's billing charges for all Downtime for incidents occurring during such month.

- (i) Time related to Service Credit requests (including Downtime) will be measured from the issuance of a trouble ticket to trouble resolution. Trouble tickets will be issued upon Customer's call to CareAccess to report Downtime.

Customer Must Request Service Credit. In order to receive any of the Service Credits described in this Section, Customer must notify CareAccess within five (5) days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer's right to receive a Service Credit.

ARTICLE VIII: MISCELLANEOUS

Section 8.01 – Notice: Notices shall be in writing and shall be deemed delivered when delivered by Certified or Registered Mail – Return Receipt Requested – or by hand to the address set forth below for CareAccess and to the address set forth on the signature page of this Agreement for Customer. Notices shall be deemed given on the date of receipt - as evidenced in the case of Certified or Registered Mail by Return Receipt.

CareAccess Incorporated:

CareAccess Inc.
2115 The Alameda
San Jose, California 95126

Section 8.02 – Assignments: All assignments of rights under this Agreement by Customer without the prior written consent of CareAccess shall be void.

Section 8.03 – Entire Agreement: This Agreement contains the entire understanding of the parties and supersedes previous verbal and written agreements between the parties concerning the subject matter of this Agreement.

Section 8.04 – Equitable Remedies: The parties hereby acknowledge that damages at law may be an inadequate remedy. Therefore, each party shall have the right of specific performance, injunction or other equitable remedy in the event of a breach of this Agreement by the other party.

Section 8.05 – Amendment and Modifications: Alterations, modifications or amendments of provisions of this Agreement shall not be binding unless such alterations, modifications or amendments are in writing and signed by authorized representatives of CareAccess and Customer.

Section 8.06 – Severability: If a provision of this Agreement or a portion thereof is rendered invalid, void, unlawful, or unenforceable, the remaining provisions or portions thereof shall remain in full force and effect.

Section 8.07 – Captions: The headings and captions of this Agreement are inserted for convenience of reference and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph, or provision.

Section 8.08 – Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

Section 8.09 – Governing Law: This Agreement shall be governed by the laws of the State of California without regard to any rules of conflict or choice of laws which require the application of laws of another jurisdiction, and venue shall be proper in Santa Clara County, San Jose, California.

Section 8.10 – Pronouns/Gender: Pronouns and nouns shall refer to the masculine, feminine, neuter, singular or plural, as the context shall require.

Section 8.11 – Waiver: Waiver of breach of this Agreement shall not constitute waiver of another breach. Failing to enforce a provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision. Any waiver of a provision of this Agreement shall not be binding unless such waiver is in writing and signed by the party waiving such provision.

Section 8.12 – Relationship of the Parties: Nothing herein shall be construed as creating a partnership relationship, employment relationship, or agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party maintains its separate identity.

Section 8.13 – Assurances: Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to each other under this Agreement are true, correct and accurate to the best of their knowledge.

Section 8.14 – Litigation Expense: In the event of litigation or arbitration arising out of this Agreement, each party shall pay its own costs and expenses of litigation or arbitration.

IN WITNESS WHEREOF, this Agreement has been entered into as of the Effective Date.

CareAccess

CareAccess

By: Manuel Altamirano

Print Name: Manuel Altamirano

Title: Chief Operating Officer, Council on Aging Silicon Valley – Director CareAccess

Date: 8-4-2009

Address: 2115 The Alameda
San Jose, California 95126

CUSTOMER:

(Name of Customer)

By: _____

Print Name: _____

Title: _____

Date: _____

Address: _____

FORM APPROVED COUNTY COUNSEL
BY: Neal R. Kipnis DATE

**EXHIBIT A to the
APPLICATION SERVICE PROVIDER AGREEMENT**

Third Party Software SCHEDULE

This Exhibit A is executed and delivered pursuant to that certain Third Party Software Agreement between CareAccess ("CareAccess") and Customer, which is incorporated herein by this reference.

- (1) Third Party Software Services: The term "Third Party Software Services" could include the following Vendors and services *selected and initialed* by Customer:

	<i>Vendor</i>	<i>Description</i>
_____	CH Mack, Incorporated	Q Continuum System

CareAccess:

CareAccess

By: 

Print Name: Manuel Altamirano

Title: Director, CareAccess

Date: 2-4-2009

CUSTOMER:

By: _____

Print Name: _____

Title: _____

Date: _____

FORM APPROVED COUNTY COUNSEL


BY:  DATE _____

EXHIBIT B to the
FEE SCHEDULE

CAREACCESS FEE SCHEDULE

CareAccess Portal	<i>Amount</i>
Registered User Fee	\$35/ month/ per named user
	39 users = \$16,380 annual

MAINTENACE FEE SCHEDULE

Hosted Software	<i>Amount</i>
Registered User Fee	\$22.50/ month/ per named user
	39 users = \$10,530 annual

EXHIBIT D to the
APPLICATION SERVICE PROVIDER AGREEMENT

CareAccess Service Level Agreement

The Managed Hosting Solution provides a vault-like facility with abundant reliable bandwidth provided through a Cisco powered network and always-on power where CareAccess will house their mission-critical servers and databases. The Data Centers are staffed 24 X 7 X 365 by highly trained and certified engineers that monitor all security, network, and power systems to ensure maximum uptime. Customers get a solution that is optimized for their business needs. This document provides information regarding the Data Centers comprehensive service level commitments.

Definitions

For purposes of this Agreement, the following definitions shall apply:

- (i) "Ambient Room Temperature" shall mean the temperature as measured by ambient room probes mounted on the columns and walls of the IDC.
- (ii) "Core Network" – shall mean the network from port at the Data Centers serving switch to outbound port on the MegaPOP border router. The SLA will cover all links in between. In a private port scenario, core network is defined as server A's port on serving switch through the IDC network to Server B's port on serving switch. Redundant ports will have diverse paths and terminate on separate switches.
- (iii) "Customer Site Environment" – shall mean the platform from which Customer operates its applications within the Internet Data Center.
- (iv) "Downtime"-- shall mean failure to meet the standards set forth below with respect to latency, packet loss, core network, and power availability. Downtime shall not include any packet loss, power unavailability or network unavailability during AT&T's scheduled maintenance of the Internet Data Centers, network and Service(s), as described herein, or due to Force Majeure.
- (v) "End to End" shall mean from Customers' ports on serving switch to outbound ports on MegaPOP border routers.
- (vi) "Latency" shall mean transmission time between the Customer's port on serving switch to outbound port on the MegaPOP border router and back.
- (vii) "Packet Loss" shall mean a single packet of data that does not reach the router at the POP(s) designated by AT&T from the IDC, but shall not include intentionally dropped packets due to Customer's sending data faster than the Internet bandwidth that it has purchased.
- (viii) "Power Availability" shall mean Electrical Power to outbound port on Customer serving Power Distribution Unit.
- (ix) "Uptime" – sync port process access.

Service Levels

Dedicated Hosting:

- ❑ *Availability* – Customer's Site Environment will be available 99.9% (excluding exceptions).
- ❑ *Response Time* – Data Center will respond to any service impacting issue within **15** minutes.
- ❑ *Network Availability* – Core Network will be at **100%** availability.
- ❑ *Power Availability* – Power at the Data Center will be at **100%** availability.
- ❑ *HVAC Availability* - Ambient Room Temperature will not exceed 75 Degrees F in the server area. Relative humidity in the IDC will not exceed 55% in the server area.
- ❑ *Latency* - Average latency will not exceed 30 milliseconds roundtrip from end to end in any given 30-day period.

CareAccess is responsible for all content and applications that reside on the server. Downtime caused by content, applications or CareAccess are not expressly covered.

Exceptions

Although scheduled maintenance is not expected to impact the network, power or other service levels, the Service Level Agreement is not effective as to those periods, in conditions of Force Majeure, or for CareAccess enabled faults. CareAccess is responsible for all content and applications that reside on the server, therefore, any downtime or failure to meet an SLA that is directly or indirectly caused by content, applications, or CareAccess actions or inaction will not be covered by these SLAs.

Core Failure

Within 15 minutes of core IDC component failure, CareAccess will be notified via bulk email or public web site regarding any potential downtime. Core component failure is defined as a failure of any component of the IDC that has the potential of effecting more than one customer.

Individual Customer Failure

Any individual Customer failure will be notified via fax, pager, email, or phone within fifteen minutes of failure. Individual customer failure is defined as a failure of any component of the IDC that will only affect an individual Customer (cabling, port, etc). This will include any failure resulting in inability of IDC operations to "test" customer server via a ping watch (including reasons outside of IDC control, i.e. Customer server failure, etc)

Service Levels

Dedicated Hosting:

- ❑ *Availability* – Customer's Site Environment will be available 99.9% (excluding exceptions).
- ❑ *Response Time* – Data Center will respond to any service impacting issue within **15** minutes.
- ❑ *Network Availability* – Core Network will be at **100%** availability.
- ❑ *Power Availability* – Power at the Data Center will be at **100%** availability.
- ❑ *HVAC Availability* - Ambient Room Temperature will not exceed 75 Degrees F in the server area. Relative humidity in the IDC will not exceed 55% in the server area.
- ❑ *Latency* - Average latency will not exceed 30 milliseconds roundtrip from end to end in any given 30-day period.

CareAccess is responsible for all content and applications that reside on the server. Downtime caused by content, applications or CareAccess are not expressly covered.

Exceptions

Although scheduled maintenance is not expected to impact the network, power or other service levels, the Service Level Agreement is not effective as to those periods, in conditions of Force Majeure, or for CareAccess enabled faults. CareAccess is responsible for all content and applications that reside on the server, therefore, any downtime or failure to meet an SLA that is directly or indirectly caused by content, applications, or CareAccess actions or inaction will not be covered by these SLAs.

Core Failure

Within 15 minutes of core IDC component failure, CareAccess will be notified via bulk email or public web site regarding any potential downtime. Core component failure is defined as a failure of any component of the IDC that has the potential of effecting more than one customer.

Individual Customer Failure

Any individual Customer failure will be notified via fax, pager, email, or phone within fifteen minutes of failure. Individual customer failure is defined as a failure of any component of the IDC that will only affect an individual Customer (cabling, port, etc). This will include any failure resulting in inability of IDC operations to "test" customer server via a ping watch (including reasons outside of IDC control, i.e. Customer server failure, etc)

EXHIBIT E to the
APPLICATION SERVICE PROVIDER AGREEMENT

Product Support and Support Fees

Support:

Telephone Support

CareAccess shall make available reasonable telephone support to Licensee's personnel to assist them in utilizing the Q Licensed Software during the hours of 8:00 a.m. to 5:00 p.m. USA Pacific Time on weekdays (exclusive of holidays),

Development Support:

From time to time, Licensee may request additional enhancements, which are not included in the current public release version of the Licensed Software. CareAccess will coordinate its best efforts to include such enhancements under a separate Statement of Work to be developed and agreed between the portal members.

Support Fees:

Support Fees

Portal Fees includes Support Fees. Support Fee is defined as telephone support, and software updates. Portal Fee rate is \$35.00 per month, per Licensed End User.

Development Support Fees

A separate Statement of Work will be provided for each CareAccess development request, which outlines the deliverables, schedule, and cost.

ASP Program Services:

Application Service Provider Services will be provided through CareAccess.

Support Fees provided above are subject to change by advance written notice of 90 days prior to any such change.

EXHIBIT F
HIPAA Business Associate Agreement
Between the County of Riverside and

CAREACCESS

This HIPAA Business Associate Agreement Addendum ("Addendum") supplements, and is made part of the Agreement for Legal Services (the "Underlying Agreement") between the COUNTY OF RIVERSIDE ("County") and CAREACCESS ("Contractor") as of the date of approval by both parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which Contractor provides services to County, and in conjunction with the provision of such services certain Protected Health Information ("PHI") and/or certain electronic Protected Health Information (ePHI) may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 and 164 (the "Privacy Rule") and/or Part 162 (the "Security Rule"), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI and /or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor, when a recipient of PHI and/or ePHI from County, is a Business Associate as defined in the Privacy Rule; and,

WHEREAS, the parties agree that any disclosure or use of PHI and/or ePHI be in compliance with the Privacy Rule, Security Rule, or other applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Addendum, capitalized terms shall have the same meanings as set forth in the Privacy Rule and/or Security Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by Contractor of County Disclosed PHI and/or ePHI
 - A. Contractor shall be permitted to use PHI and/or ePHI disclosed to it by the County:
 - (1) On behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule and/or Security Rule;
 - (2) As necessary to perform any and all of its obligations under the Underlying Agreement.

- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, Contractor may:
- (1) Use the PHI and/or ePHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) Disclose the PHI and/or ePHI in its possession to a third party for the purpose of Contractor's proper management and administration or to fulfill any legal responsibilities of Contractor. Contractor may disclose PHI and/or ePHI as necessary for Contractor's operations only if:
 - (a) The disclosure is required by law; or
 - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI and/or ePHI that the person or organization will:
 - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as required by law; and,
 - (ii) The third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
 - (3) Aggregate the PHI and/or ePHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
 - (4) Not disclose PHI and/or ePHI disclosed to Contractor by County not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI as authorized in writing by County.
 - (5) De-identify any and all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Contractor agrees that it will neither use nor disclose PHI and/or ePHI it receives from County, or from another business associate of County, except as permitted or required by this Addendum, or as required by law, or as otherwise permitted by law.
- D. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are stricter in their requirements than the provisions of HIPAA and prohibit the disclosure of mental health, and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.
3. Obligations of County.
- A. County agrees that it will make its best efforts to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI and/or ePHI agreed to by

County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.

- B. County agrees that it will make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
 - C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use of disclosure of PHI and/or ePHI.
 - D. County shall not request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under the Privacy Rule and/or Security Rule.
 - E. County will obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or the Underlying Agreement.
4. Obligations of Contractor. In connection with its use of PHI and/or ePHI disclosed by County to Contractor, Contractor agrees to:
- A. Use or disclose PHI and/or ePHI only as permitted or required by this Addendum or as required by law.
 - B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
 - C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
 - D. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum of which Contractor becomes aware.
 - E. Require sub-contractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Addendum.
 - F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI and/or ePHI created or received for or from the County.
 - G. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
5. Access to PHI, Amendment and Disclosure Accounting. Contractor agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.
 - B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
 - C. To assist the County in meeting its disclosure accounting under HIPAA:

- (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (3) Contractor shall have available for the County the information required by this section for the six (6) years preceding the County's request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).
- D. Make available to the County, or to the Secretary of Health and Human Services, Contractor's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor's compliance with the Privacy Rule, subject to any applicable legal restrictions.
 - E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
 - F. Within thirty (30) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor's possession constitutes a Designated Record Set.
 - G. Not make any disclosure of PHI that County would be prohibited from making.
6. Access to ePHI, Amendment and Disclosure Accounting. In the event contractor needs to create or have access to County ePHI, Contractor agrees to:
- A. Implement and maintain reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality of, the integrity of, the availability of, and authorized persons' accessibility to, County ePHI as applicable under the terms and conditions of the Underlying Agreement. The ePHI shall include that which the Contractor may create, receive, maintain, or transmit on behalf of the County.
 - B. Ensure that any agent, including a subcontractor, to whom Contractor provides ePHI agrees to implement reasonable and appropriated safeguards.
 - C. Report to County any security incident of which Contractor becomes aware that concerns County ePHI.
7. Term and Termination.
- A. Term – this Addendum shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, except as terminated by County as provided herein.
 - B. Termination for Breach – County may terminate this Addendum, effective immediately, without cause, if County, in its sole discretion, determines that Contractor has breached a material provision of this Addendum. Alternatively, County may choose to provide Contractor with notice of the existence of an alleged

material breach and afford Contractor with an opportunity to cure the alleged material breach. In the event Contractor fails to cure the breach to the satisfaction of County in a timely manner, County reserves the right to immediately terminate this Addendum.

- C. Effect of Termination – upon termination of this Addendum, for any reason, Contractor shall return or destroy all PHI and/or ePHI received from the County, or created or received by Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which is in possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the PHI and/or ePHI.
- D. Destruction not Feasible – in the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions which make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

8. Hold Harmless/Indemnification

Contractor shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Addendum.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.

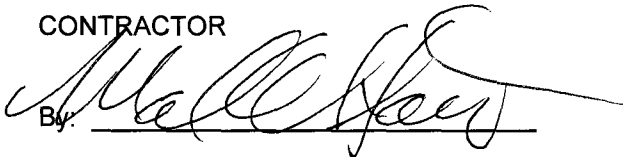
In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

9. General Provisions.

- A. Amendment – the parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with the Privacy Rule and HIPAA generally.
- B. Survival – the respective rights and obligations of this Addendum shall survive the termination or expiration of this Addendum.
- C. Regulatory References – a reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended.
- D. Conflicts – any ambiguity in this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- E. Interpretation of Addendum – this Addendum shall be construed to be a part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of HIPAA.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as set forth below:

CONTRACTOR

By: 

COUNTY OF RIVERSIDE

By: _____

Date: 04-2009

Date: _____