



July 18, 2023

The Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

**SUBJECT: APPROVE SECOND AMENDMENT WORK ORDER AGREEMENT FOR EPIDEMIOLOGY AND LABORATORY CAPACITY ENHANCING DETECTION WITH PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. DBA HELUNA HEALTH**

Dear Board Members:

**RECOMMENDATIONS**

- A. Approve Work Order Agreement Amendment No. 2 (Program No. 0187.0970) between Heluna Health and the Alameda County Public Health Department for administering COVID-19 Epidemiology and Laboratory Capacity Enhancing Detection grant funds to hire temporary and project staff across a range of COVID-19 response activities, assist Public Health Laboratory in rapid procurement of urgently needed supplies, and provide other support services, increasing the amount from \$1,799,217.53 to \$2,341,116.53 (an increase of \$541,899) with no change in the term of 7/1/21 - 7/31/24; and
- B. Delegate Authority to the Agency Director, or designee, to execute the agreement, subject to review and approval as to form by County Counsel, and submit an executed copy to the Clerk of the Board for filing.

**DISCUSSION/SUMMARY**

On July 20, 2021 (File No. 30669, Item No. 8.2), your Board approved the Work Order Agreement (WOA) related to Grant No. 6NU50CK000539-01-10 DHHS-CDC, with Public Health Foundation Enterprises, Inc. DBA Heluna Health ("Heluna" the bona fide agent of the State of California Department of Public Health for Alameda County Public Health Department) for the term of 7/1/21 – 11/17/22, in the amount of \$1,799,217.53. This WOA is funded by the Center for Disease Control and Prevention (CDC) Epidemiology and Laboratory Capacity Enhancing Detection (ELC 2) grant award that your Board accepted from the California Department of Public Health (CDPH) on February 9, 2021 (Item No. 21) to support the COVID-19 pandemic response in Alameda County. ELC 2 funding was provided to local health departments through the federal Paycheck Protection Program and Health Care Enhancement Act. The total ELC 2 grant award of \$11,069,905 was allocated to Alameda County and \$1,799,217.53 is being administered by Heluna on behalf of CDPH with this WOA. On November 8, 2022 (File No. 30907, Item No. 32), your Board approved the extension of the ELC 2 WOA No. 1 from 7/1/21 – 11/17/22 to 7/31/2024 (an increase of 20+ months). On July 11, 2023 (Item No. 36) your Board approved the

extension of the ELC 2 grant from 5/18/20 – 11/17/22 by more than 20 months to 07/31/2024, with no increase in the amount of \$11,069,905. All other terms and conditions remain unchanged.

For over 18 years, CDPH and Heluna Health have had a bona fide agent agreement, making Heluna Health the primary recipient of the Epidemiology and Laboratory Capacity (ELC) Funds (including ELC CARES, ELC Enhancing Detection, ELC Enhancing Detection Expansion, and other COVID funds). Heluna Health administers the funding on behalf of CDPH. The WOA Amendment 2 increases ACPHD's ELC 2 allocation to Heluna for continued services including hiring temporary and project staff; purchasing supplies and equipment; subcontracting with vendors for service agreements and additional services in correlation with funding from CDPH for Enhancing Detection. The ELC Project and its three grants, which includes ELC 2, collectively builds upon current investments identified and approved by your Board and help the County address COVID-19 response needs while prioritizing resources to those most vulnerable to the impacts of the disease. The WOA is aligned with these Public Health priorities. These include:

- Supporting testing
- Case investigation and contact tracing
- Surveillance
- Containment
- Vaccination
- Mitigation

All other terms and conditions remain unchanged. To expedite utilization of the funds, your Board is requested to accept the WOA increase and authorize the Agency Director or designee to execute the WOA documents.

### **FINANCING**

The funding for this recommendation is included in the FY 2023-24 Approved Budget; therefore, no budget adjustments are necessary to increase revenue and appropriation. There is no impact to net County cost as a result of approving the above recommendations.

### **VISION 2026 GOAL**

COVID-19 mitigation and control project meet the 10X goal pathway of **Healthcare for All** in support of our shared vision of **Thriving and Resilient Population**.

Sincerely,

DocuSigned by:  
  
CB284AE84C50405...

Colleen Chawla, Director  
Health Care Services Agency



**AMENDMENT BETWEEN  
HELUNA HEALTH  
AND  
ALAMEDA COUNTY PUBLIC HEALTH DEPARTMENT  
Work Order Agreement Amendment Number 2  
0187.0970 ELC ENHANCING DETECTION**

**III. SERVICES AND COMPENSATION**

**(b) Payment.** The \$1,799,217.53 budget from the original Agreement has increased by \$546,899. The new amended amount shall not exceed \$2,341,116.53. The amended budget, ATTACHMENT A – BUDGET to this Amendment 2, is incorporated into this Agreement by this reference.

**(c) Invoice.** Submission of invoices shall be submitted: Monthly, no later than 30 days after month end. The final invoice is due no later than August 30, 2024.

All other terms and conditions of the Work Order Agreement remain in full force and effect.

Authorized signatures completing the Work Order Agreement Amendment 2 are provided below:

**Heluna Health:**

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Signature & Date  
Peter Dale, Chief Program Officer

**Alameda County Public Health Department:**

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Signature & Date  
Kimi Watkins-Tartt, Public Health Director

Approved as to form:  
Donna R. Ziegler, County Counsel

DocuSigned by:  
*K. Joon Oh, Deputy County Counsel* 9/5/2023

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Signature & Date  
K. Joon Oh, Deputy County Counsel

# ATTACHMENT A – BUDGET

## Amendment 2

Expenditure Type	Expenditure Name	Employee Status	Max # of Hours (if hourly employee)	Monthly Salary/Hourly Range (per budget)	Salary/Hourly Rate	Total % Budgeted	Months Position Budgeted	New Revised Budget	
<b>Personnel</b>									
SW-Lab Technician	Dhawani Shah/Ruta G	0	2773	\$ 8,845.08	51.03	1.00	16	\$ 141,521.33	
Lab Info Management System Specialist	Christopher Katayanagi	0	2773	\$ 21,021.50	60.64	1.00	16	\$ 336,343.95	
Lab Technician	Bethelehm Melaku/VACANT	0	2773	\$ 6,264.33	36.14	1.00	16	\$ 100,229.33	
SW Epidemiologist II .5FTE	VACANT	0	0	\$ 4,154.84	-	-	0	\$ 49,858.13	
SW Epidemiologist II	VACANT	0	0	\$ 8,845.12	-	-	0	\$ 106,141.40	
SW Epidemiologist II	VACANT	0	0	\$ 8,845.12	-	-	0	\$ 106,141.40	
Management Analyst	Harveleen Bhatal	0	0	\$ 9,153.67	-	-	0	\$ 109,844.00	
<b>Total Salaries and Wages</b>								<b>\$ 950,079.54</b>	
<b>FB - Accrued Vacation Expense</b>						<b>3.87%</b>		<b>\$ 36,768.08</b>	
<b>FB - Accrual Vacation Benefits @ 27.5%</b>						<b>1.06%</b>		<b>\$ 10,111.22</b>	
<b>FB - Fringe Benefits (Full Benefits Personnel @27.5%; Limited Benefits Personnel @12.4%)</b>						<b>27.50%</b>		<b>\$ 261,271.87</b>	
<b>Total Fringe Benefits</b>						<b>32.43%</b>		<b>\$ 308,151.17</b>	
<b>Total Personnel</b>								<b>\$ 1,258,230.72</b>	
<b>Other Costs</b>									
OC - WO - Office Supplies								\$ 5,000.00	
OC - WO - Laboratory Supplies (General)								\$ 103,184.00	
OC - WO - Laboratory Supplies (Sequencing)								\$ 200,000.00	
OC - WO - Laboratory Supplies (PCR Supplies)								\$ 184,000.00	
OC - WO - Equipment - PCR/Sequencer/MaldiTOF instrument								\$ 122,271.37	
OC - WO - Equipment - Hamilton Liquid Handler								\$ 96,100.00	
OC - WO - Equipment - Nucleic Extraction Robot								\$ 54,000.00	
OC - WO - Service Agreement for EIA instrument with addition of LIS connectivity								\$ 17,000.00	
OC - WO - Service Agreement for Cepheid with addition of LIS connectivity								\$ 25,000.00	
OC - WO - Service Agreement (Bioinformatics Analysis)								\$ 62,014.91	
<b>Total Other Costs</b>								<b>\$ 868,570.28</b>	
<b>Total Direct Cost</b>								<b>\$ 2,126,801.00</b>	
<b>FA - Indirect</b>			12.1% Indirect Type						\$ 214,315.53
								<b>\$ 214,315.53</b>	
<b>Total Budget</b>								<b>\$ 2,341,116.53</b>	



**Heluna Health**  
EMPOWERING POPULATION  
HEALTH INITIATIVES SINCE 1969

13300 Crossroads Parkway North, Suite 450 | City of Industry, CA | 91746  
Phone: 800.201.7320 | Fax: 562.205.2453 | [www.helunahealth.org](http://www.helunahealth.org)

**AMENDMENT BETWEEN  
HELUNA HEALTH  
AND  
ALAMEDA COUNTY PUBLIC HEALTH DEPARTMENT  
Work Order Agreement Amendment Number 1  
0187.0970 ELC ENHANCING DETECTION**

**II. TERM.** Unless otherwise terminated or extended by written notice, the term of this agreement shall commence on 07/01/2021 and extended under a no cost extension to 07/31/2024.


**ATTACHMENT A – BUDGET**

Please see amended budget in Attachment A Amendment 1.

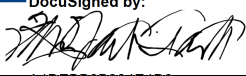
All other terms and conditions of the Work Order Agreement remain in full force and effect.

Authorized signatures completing the Work Order Agreement Amendment 1 are provided below:


**Heluna Health:**

DocuSigned by:  
 12/20/2022  
Signature & Date  
Rochelle McLaurin, Director, Contract and Grant Management

**Alameda County Public Health Department:**

DocuSigned by:  
 12/14/2022  
Signature & Date  
Name: Kimi Watkins-Tartt  
Title: public health Director

Approved as to form:  
Donna R. Ziegler, County Counsel

DocuSigned by:  
 Signature & Date  
K. Joon Oh, Deputy County Counsel

**ATTACHMENT A – BUDGET****Amendment 1**

Expenditure Type	Expenditure Name	Employee Status	Max # of Hours (if hourly employee)	Monthly Salary/Hourly Range (per budget)	Salary/Hourly Rate	Total % Budgeted	Months Position Budgeted	Approved Revised Budget	
<b>Personnel</b>									
SW-Lab Technician	Dhawani Shah/Vacant	0	2773	\$ 8,845.08	51.03	1.00	16	\$ 141,521.33	
Lab Info Management System Specialist	Christopher Katayanagi	0	2773	\$ 10,510.92	60.64	1.00	16	\$ 168,174.67	
Lab Technician	Bethelehm Melaku	0	2773	\$ 6,264.33	36.14	1.00	16	\$ 100,229.33	
<b>Total Salaries and Wages</b>								<b>\$ 409,925.33</b>	
<b>FB - Accrued Vacation Expense</b>						<b>3.87%</b>		<b>\$ 15,864.11</b>	
<b>FB - Accrual Vacation Benefits @ 27.5%</b>						<b>1.06%</b>		<b>\$ 4,362.63</b>	
<b>FB - Fringe Benefits (Full Benefits Personnel @27.5%; Limited Benefits Personnel @12.4%)</b>						<b>27.50%</b>		<b>\$ 112,729.47</b>	
<b>Total Fringe Benefits</b>						<b>32.43%</b>		<b>\$ 132,956.21</b>	
<b>Total Personnel</b>								<b>\$ 542,881.54</b>	
<b>Other Costs</b>									
OC - WO - Office Supplies								\$ 5,000.00	
OC - WO - Laboratory Supplies (General)								\$ 103,184.00	
OC - WO - Laboratory Supplies (Sequencing)								\$ 200,000.00	
OC - WO - Laboratory Supplies (PCR Supplies)								\$ 334,000.00	
OC - WO - Equipment - Fridge/Freezer Combo small x1								\$ 4,000.00	
OC - WO - Equipment - PCR/Sequencer/MaldiTOF instrument								\$ 150,000.00	
OC - WO - Equipment - Hamilton Liquid Handler								\$ 96,100.00	
OC - WO - Nucleic Extraction Robot								\$ 54,000.00	
OC - WO - Service Agreement for EIA instrument with addition of LIS connectivity								\$ 17,000.00	
OC - WO - Service Agreement for Cepheid with addition of LIS connectivity								\$ 25,000.00	
OC - WO - Service Agreement (Bioinformatics Analysis)								\$ 103,000.00	
<b>Total Other Costs</b>								<b>\$ 1,091,284.00</b>	
<b>Total Direct Cost</b>								<b>\$ 1,634,165.54</b>	
<b>FA - Indirect</b>			12.1% Indirect Type						\$ 165,051.99
<b>Total Budget</b>								<b>\$ 1,799,217.53</b>	



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## WORK ORDER AGREEMENT

THIS AGREEMENT IS HEREBY MADE by and between Public Health Foundation Enterprises, Inc. DBA Heluna Health, a 501(c)(3) California nonprofit corporation (hereafter "**HELUNA HEALTH**", or "**Client**"), and the Vendor (hereafter "**Vendor**") identified below and, sets forth the terms and conditions between Client and Vendor, for agreed services, as required by the Client, and as stated in this Agreement. This Agreement does not designate the Vendor as the agent or legal representative of HELUNA HEALTH for any purpose whatsoever.

### I. IDENTIFIED PARTIES

#### CLIENT

Heluna Health  
13300 Crossroads Parkway North, Suite 450  
City of Industry, CA 91746  
[www.helunahealth.org](http://www.helunahealth.org)  
ATTN: Rochelle McLaurin  
[RMclaurin@helunahealth.org](mailto:RMclaurin@helunahealth.org)  
(562) 222-7883

#### VENDOR

Alameda County Public Health Department  
1100 San Leandro Boulevard  
San Leandro, CA 94577  
ATTN: Kimi Watkins-Tartt, Public Health Director  
[Kimi.watkins-tartt@acgov.org](mailto:Kimi.watkins-tartt@acgov.org)  
(510) 267-8066

Grant#: 6NU50CK000539-01-10 DHHS-CDC CFDA#: 93.323

Program#: 0187.0970

II. **TERM.** Unless otherwise terminated or extended by written notice, Term of this Agreement shall commence on **7/1/2021** and term on **11/17/2022**.

III. **SERVICES AND COMPENSATION.** Vendor shall perform services described below, and as described in Attachment A, Statement of Work ("SOW"). Services will take place at the below identified location(s):

**Location #1:** Vendor Location

(a) **Services.** Vendor shall perform all services as stated in the agreed Invoice or Statement of Work, Attachment A. Vendor shall perform the Services in accordance with generally accepted professional standards and in an expeditious and economical manner consistent with sound professional practices, Vendor maintains and shall maintain during all relevant times under this Agreement all applicable federal, state and local business and other licenses, including any professional licenses or certificates, industrial permits and/or licenses, industry specific licenses, licenses required by the state(s) and/or locality(s) in which it does business, fictitious business names, federal tax identification numbers, insurance, and anything else required of Vendor as a business operator.

(b) **Payment.** HELUNA HEALTH agrees to compensate the Vendor on a **Cost-Reimbursable Contract. See Attachment B "Budget" for line item budget detail.** Vendor shall be compensated only for Services actually performed and required as set forth above, all services in excess, will not be compensated. The compensation described is an all-inclusive amount. The total compensation payable to the Vendor hereunder shall be as set forth below:

- The compensation shall be **\$0.00** per hour  
 The compensation shall consist of a fixed-fee in the aggregate, not to exceed **\$1,799,217.53**

All costs and expenses incurred by Vendor for equipment, tools, losses, risks, materials, supplies and travel are the responsibility of the Vendor and Vendor shall not be compensated or reimbursed by HELUNA HEALTH for any such costs and expenses. If for any reason Vendor receives any compensation in excess of the amount described above, Vendor shall repay said amount to HELUNA HEALTH within 10 days of demand for such repayment.

(c) **Invoice.** Submission of invoices shall be submitted: **Monthly, No Later than 30 Days after month end**

Payment for submitted invoices shall be paid no later than 30 days, after reception of the invoice. Vendor shall submit invoices to the attention of the HELUNA HEALTH Contact Person set forth above. All final invoices must be received within 30 days of the expiration or termination of this Agreement or within such earlier time period as HELUNA HEALTH may require. If any invoices are not submitted within such time periods, Vendor waives (in HELUNA HEALTH's discretion) all rights to payment under such invoices. The Vendor shall be solely responsible for the payment of all federal, state and local income taxes, social security taxes, federal and state unemployment insurance and similar taxes and all other assessments, taxes, contributions or sums payable with respect to Vendor or its employees as a result of or in connection with the Services performed by Vendor hereunder.

IV. **INSURANCE.** Vendor shall maintain:

**General Liability** \$1,000,000       **Workers' Compensation**       **Automobile Liability** \$1,000,000

V. **AUTHORIZED SIGNERS.** The undersigned certify their acknowledgment of the nature and scope of this agreement and support it in its entirety.

DocuSigned by:  
  
Peter Dale  
8/2/2021  
Date  
Client  
Heluna Health  
0CB6AFEE59C3427...

DocuSigned by:  
  
Kimi Watkins-Tartt  
8/2/2021  
Date  
Vendor  
Alameda County Public Health Department  
BDE94C5944814B9

1. **STATUS OF INDEPENDENT CONTRACTOR.** Nothing in Agreement is intended to place the parties in the relationship of employer-employee, partners, joint venturers, or in anything other than an independent contractor relationship. IC shall not be an employee of HELUNA HEALTH for any purposes, including, but not limited to, the application of the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Revenue and Taxation Code relating to income tax withholding at the source of income, the Workers' Compensation Insurance Code 401(k) and other benefit payments and third party liability claims.

VENDOR shall retain sole and absolute discretion and judgment in the manner and means of carrying out VENDOR's Services hereunder. IC is under the control of HELUNA HEALTH as to the results of VENDOR's Services only, and not as to the means by which such results are accomplished. VENDOR shall be responsible for completing the Services in a timely manner in accordance with this Agreement, but VENDOR will not be required to follow or establish a regular or daily work schedule.

HELUNA HEALTH shall not be liable for any obligations incurred by IC unless specifically authorized in writing by HELUNA HEALTH. VENDOR shall not act as an agent of HELUNA HEALTH, ostensibly or otherwise, nor bind HELUNA HEALTH in any manner, unless specifically authorized to do so in writing by HELUNA HEALTH.

Any advice given to VENDOR regarding the Services shall be considered a suggestion only, not an instruction. HELUNA HEALTH retains the right, but does not have the obligation, to inspect, stop, or alter the work of VENDOR to assure its conformity with this Agreement.

2. **FEDERAL, STATE, AND LOCAL PAYROLL TAXES.** Neither federal, nor state, nor local income tax nor payroll taxes of any kind shall be withheld or paid by HELUNA HEALTH on behalf of Vendor or the employees of the Vendor. Vendor shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes.

VENDOR understands that VENDOR is responsible to pay, according to law, VENDOR's income taxes. If VENDOR is not a corporation or other legal entity, VENDOR further understands that VENDOR may be liable for self-employment (social security) tax, to be paid by VENDOR according to law. VENDOR agrees to defend, indemnify and hold HELUNA HEALTH harmless from any and all claims made by federal, state and local taxing authorities on account of VENDOR's failure to pay any federal, state or local income and self-employment taxes or other assessments due as a result of VENDOR's Services hereunder. Furthermore, to avoid conflict with federal or state regulations, VENDOR will not be eligible for employment with HELUNA HEALTH within the same calendar year in which Vendor performed services for HELUNA HEALTH.

3. **FRINGE BENEFITS.** Because Vendor is engaged in Vendor's own independent business, Vendor is not eligible for, and shall not participate in, any HELUNA HEALTH pension, health, or other fringe or employee benefit plans.
4. **WORKERS' COMPENSATION.** No workers' compensation insurance shall be obtained by HELUNA HEALTH concerning Vendor or the employees of Vendor. All persons hired by Vendor to assist in performing the tasks and duties necessary to complete the Services shall be the employees of Vendor unless specifically indicated otherwise in an agreement signed by all parties. Vendor shall immediately provide proof of Workers' Compensation insurance and General Liability insurance covering said employees, upon request of HELUNA HEALTH.
5. **EQUIPMENT AND SUPPLIES.** Vendor shall provide all necessary equipment, materials and supplies required by Vendor to perform the Services. Vendor will not rely on the equipment or offices of HELUNA HEALTH or the Program for completion of tasks and duties set forth pursuant to this Agreement.
6. **TERMINATION.** Without cause, either party may terminate this agreement giving 30 days prior written notice to the other of intent to terminate without cause. With reasonable cause, either party may terminate this agreement effective immediately upon the giving of written notice of termination for cause. Reasonable cause shall include: (A) material violation or breach of this agreement, (B) Any act of the other party that exposes the terminating party to liability to others for personal injury or property damage or any other harm, damage or injury, and (C) Cancellation or reduction of funding affecting the Program affecting the Services.

Upon the expiration or termination of this Agreement, Vendor shall immediately promptly return to HELUNA HEALTH all computers, cell phones, smart phones, computer programs, files, documentation, user data, media, related material and any and all other Confidential Information of HELUNA HEALTH and all Work Product (as defined below). HELUNA HEALTH shall have the right to withhold final payment to Vendor until all such items are returned to HELUNA HEALTH.

These Terms and Conditions and any provisions of the main body of this Agreement that by their nature should or are intended to survive the expiration or termination of this Agreement shall survive and the parties shall continue to comply with the provisions of this Agreement that survive. Notwithstanding any termination that may

occur, each party shall continue to be responsible for carrying out all the terms and conditions required by law to ensure an orderly and proper conclusion.

7. **COMPLIANCE WITH LAWS.** Vendor shall comply with all state and federal statutes and regulations applicable to Vendor, the Services or the Program, in performing Vendor's obligations under this Agreement. Vendor represents and warrants that neither Vendor nor its principals or personnel are presently, nor will any of them be during the term of this Agreement, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or funding agency.
8. **HIPAA (if applicable).** If the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") is applicable to the Services, Vendor shall execute and deliver HELUNA HEALTH's standard Business Associate Agreement as required by HIPAA.
9. **NON-DISCLOSURE.** HELUNA HEALTH and Vendor agree that during the course of this agreement, Vendor may be exposed to and become aware of certain unique and confidential information and special knowledge (hereinafter "Confidential Information") provided to or developed by HELUNA HEALTH and/or Vendor. Said Confidential Information includes, but is not limited to, the identity of actual and potential clients of HELUNA HEALTH, client lists, particular needs of each client, the manner in which business is conducted with each client, addresses, telephone numbers, and specific characteristics of clients; financial information about HELUNA HEALTH and/or its clients; client information reports; mailing labels; various sales and marketing information; sales report forms; pricing information (such as price lists, quotation guides, previous or outstanding quotations, or billing information); pending projects or proposals; business plans and projections, including new product, facility or expansion plans; employee salaries; contracts and wage information; mailing plans and programs; technical know-how; designs; products ordered; business methods; processes; records; specifications; computer programs; accounting; and information disclosed to HELUNA HEALTH by any third party which HELUNA HEALTH is obligated to treat as confidential and/or proprietary. This Confidential Information derives independent actual or potential economic value from not being generally known to the public or to other persons, who can obtain economic value from its disclosure or use, is not readily available through any source other than HELUNA HEALTH and is the subject of reasonable efforts to maintain secrecy. Since Vendor may be exposed to and become aware of said Confidential Information and, because of its unique and confidential nature, the parties hereto desire to afford HELUNA HEALTH protection against its unauthorized use or its use in any manner detrimental to HELUNA HEALTH. Therefore, Vendor shall not disclose in any manner whatsoever any of the aforesaid Confidential Information, directly or indirectly, or use it in any way whatsoever, either during this agreement with HELUNA HEALTH or at any time thereafter, except as required in the course of his/her work with HELUNA HEALTH or except as otherwise provided in this Agreement. Further, Vendor shall develop and maintain procedures and take other reasonable steps in furtherance of HELUNA HEALTH's desire to maintain the confidentiality of its Confidential Information.

All documents and other items which might be deemed the subject of or related to Confidential Information of HELUNA HEALTH's business, whether prepared, conceived, originated, discovered, or developed by Vendor, in whole or in part, or otherwise coming into Vendor's possession, shall remain the exclusive property of HELUNA HEALTH and shall not be copied or removed from the premises of HELUNA HEALTH without the express written consent of HELUNA HEALTH. All such items, and any copies thereof, shall be immediately returned to HELUNA HEALTH by Vendor upon request at any time and upon termination of this agreement.

10. **NON-SOLICITATION OF EMPLOYEES.** During and for two years following the termination of this Agreement with HELUNA HEALTH, Vendor shall not induce, encourage, or advise any person who is employed by or is engaged as an agent or independent contractor by HELUNA HEALTH to leave the employment of HELUNA HEALTH or otherwise raid the employees of HELUNA HEALTH, without the express written consent of HELUNA HEALTH. Nothing contained in this paragraph shall constitute a waiver by HELUNA HEALTH of any rights it may have if Vendor engages in actionable conduct after the two-year period referred to above.

Notwithstanding any of provision in the Agreement, neither a job posting by County of Alameda, an automated response to a notification request for a job posting, nor a voluntary response or application to a job posting nor s resulting job offer or employment shall constitute a violation of this Section 10.

11. **WORKS FOR HIRE.** Vendor agrees that all discoveries, ideas, inventions, and information that Vendor may develop (either alone or in conjunction with others), information or work product developed wholly or partially by Vendor as part of or related to Vendor's retention by HELUNA HEALTH hereunder (including all intermediate and partial versions thereof) or the performance of the Services hereunder or which existence Vendor may discover while retained by HELUNA HEALTH, including any software, platforms, all ideas, designs, marks, logos, and



content relating thereto, whether or not subject to patent, copyright or trademark or other intellectual property protections including without limitation, any scripts, prototypes, other components (collectively the "Work Product"), shall be the sole property of HELUNA HEALTH upon its creation and (in the case of copyrightable works) upon its fixation in a tangible medium of expression.

Vendor hereby forever assigns to HELUNA HEALTH all right, title and interest in any Work Product designed and/or developed by Vendor or otherwise delivered to HELUNA HEALTH as part of or related to Vendor's retention with HELUNA HEALTH. The Work Product shall be the sole property of HELUNA HEALTH, and all copyrightable and patentable aspects of the Work Product are to be considered "works made for hire" within the meaning of the Copyright Act of 1976, as amended (the "Act"), of which HELUNA HEALTH is to be the "author" within the meaning of such Act. All such copyrightable and patentable works, as well as all copies of such works in whatever medium fixed or embodied, shall be owned exclusively by HELUNA HEALTH on their creation, and Vendor hereby expressly disclaims any interest in any of them. In the event (and to the extent) that any Work Product or any part or element of them, is found as a matter of law not to be a "Work Made For Hire" within the meaning of the Act, Vendor hereby assigns to HELUNA HEALTH the sole and exclusive right, title and interest in and to all such works, and all copies of any of them, without further consideration, and, if such assignment is invalid, Vendor hereby grants HELUNA HEALTH a non-exclusive, worldwide, perpetual, fully paid-up, irrevocable, right and license to use, reproduce, make, sell, perform and display (publicly or otherwise), and distribute, and modify and otherwise make derivative works of Vendor's Work Product and to authorize third parties to perform any or all of the foregoing on its behalf, including through multiple tiers of sublicenses. Vendor shall deliver all Work Product to HELUNA HEALTH free and clear of any and all claims, rights and encumbrances of third parties.

With HELUNA HEALTH's approval and at HELUNA HEALTH's expense, Vendor will execute such other documents of registration and recordation as may be necessary to perfect in HELUNA HEALTH, or protect, the rights assigned to HELUNA HEALTH hereunder in each country in which HELUNA HEALTH reasonably determines to be prudent. Vendor hereby grants HELUNA HEALTH the exclusive right, and appoints HELUNA HEALTH as attorney-in-fact, to execute and prosecute in Vendor's name as author or inventor or in HELUNA HEALTH's name as assignee, any application for registration or recordation of any copyright, trademark, patent or other right in or to the Work Product, and to undertake any enforcement action with respect to any Work Product.

All rights to the Work Product assigned or granted to HELUNA HEALTH hereunder shall be subject to any rights of the Program under HELUNA HEALTH's agreement with the Program and any rights of the United States Federal Government under applicable laws and regulations.

12. **INDEMNITY.** Vendor hereby agrees to indemnify, hold harmless and defend HELUNA HEALTH, its board of trustees, officers, directors, agents, contractors and employees from any and all claims, causes of action, costs, demands, expenses (including attorney's fees and costs), losses, damages, injuries, and liabilities arising from (i) any accident, death, or injury whatsoever or however caused to any person or property arising out of the intentional action or negligence of Vendor (or its agents, subcontractors or employees), (ii) Vendor's (or its agents', subcontractors' or employees') violation of any federal, state or local law or regulation, (iii) the breach by Vendor (or its agents, subcontractors or employees) of any of its representations, warranties or agreements under this Agreement or (iv) any claims that the Work Product, or any element thereof, infringes the intellectual, privacy or other rights of any party. This duty to indemnify and defend shall survive the termination of this agreement.
13. **RECORD RETENTION AND ACCESS TO RECORDS.** Vendor shall grant to HELUNA HEALTH, the Program and the U.S. Comptroller General and their respective authorized representatives upon demand, access to any books, documents, papers and records of Vendor relating to this Agreement or the Services for audit, examination, excerpt and transcription. Vendor shall retain

all such records for seven (7) years (or longer if required under HELUNA HEALTH's record retention policy, by the Program or by law, including under Circular A-110, Subpart C, Post-Award Requirements and FAR Subpart 4.7 Contractor Records Retention-4.703 Policy) after final payment is made under this Agreement and all pending matters are closed, unless extended by an audit, litigation, or other action involving the records, whichever is later.

14. **AMENDMENTS.** Amendments to this Agreement shall be in writing, signed by the party to be obligated by such amendment and attached to this Agreement.
15. **GOVERNING LAW; VENUE.** This Agreement shall be interpreted, construed and governed by, in accordance with and consistent with the laws of the State of California without giving effect to its conflicts of laws principals. The sole, exclusive and proper venue for any proceedings brought to interpret or enforce this Agreement or to obtain a declaration of the rights of the parties hereunder shall be Los Angeles County, California. Each of the parties hereto submits to the exclusive personal jurisdiction of the courts located in Los Angeles County, California and waives any defense of forum non conveniens.
16. **EQUITABLE RELIEF.** In light of the irreparable harm to HELUNA HEALTH that a breach by Vendor of Sections 9, 10 and 11 of these Terms and Conditions would cause, in addition to other remedies set forth in this Agreement and other relief for violations of this Agreement, HELUNA HEALTH shall be entitled to enjoin Vendor from any breach or threatened breach of such Sections, to the extent permitted by law and without bond.
17. **FAIR INTERPRETATION.** The language appearing in all parts of this Agreement shall be construed, in all cases, according to its fair meaning in the English language, and not strictly construed for or against any party hereto. This Agreement has been prepared jointly by the parties hereto after arm's length negotiations and any uncertainty or ambiguity contained in this Agreement, if any, shall not be interpreted or construed against any party, but according to its fair meaning applying the applicable rules of interpretation and construction of contracts.
18. **NO WAIVER.** No failure or delay by any party in exercising a right, power or remedy under the Agreement shall operate as a waiver of any such right or other right, power or remedy. No waiver of, or acquiescence in, any breach or default of any one or more of the terms, provisions or conditions contained in this Agreement shall be deemed to imply or constitute a waiver of any other or succeeding or repeated breach or default hereunder. The consent or approval by any party hereto to or of any act of the other party hereto requiring further consent or approval shall not be deemed to waive or render unnecessary any consent or approval to or of any subsequent similar acts.
19. **NOTICES.** Any notice given in connection with this agreement shall be in writing and shall be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address stated herein. Any party may change its address stated herein by giving notice of the change in accordance with this paragraph.
20. **REMEDIES NON-EXCLUSIVE.** Except where otherwise expressly set forth herein, all remedies provided by this Agreement shall be deemed to be cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the respective parties at law or in equity.
21. **SEVERABILITY.** If any term, provision, condition or other portion of this Agreement is determined to be invalid, void or unenforceable by a forum of competent jurisdiction, the same shall not affect any other term, provision, condition or other portion hereof, and the remainder of this Agreement shall remain in full force and effect, as if such invalid, void or unenforceable term, provision, condition or other portion of this Agreement did not appear herein.
22. **NON-ASSIGNABILITY.** This agreement shall not be assigned, in whole or in part, by Vendor without the prior written approval and consent of HELUNA HEALTH.

## ATTACHMENT A

### STATEMENT OF WORK (SOW), BUDGET, AND INVOICE

#### Statement of Work

Heluna Health will provide Alameda County Public Health Department with services to hire personnel; purchase supplies and equipment; subcontracting with vendors for service agreements and additional services in correlation with funding from CDPH for Enhancing Detection.

#### Budget

Expenditure Type	Expenditure Name	Employee Status	Max # of Hours (if hourly employee)	Monthly Salary/Hourly Range (per budget)	Salary/Hourly Rate	Total % Budgeted	Revised Total % Budgeted	Months Position Budgeted	Proposed Budget	
<b>Personnel</b>										
Epidemiologist II	Dhawani Shah	0	2773	\$ 8,845.08	51.03	1.00		16	\$ 141,521.33	
LIMS Manager	TBD	0	2773	\$ 10,510.92	60.64	1.00		16	\$ 168,174.67	
Lab Technician	TBD	0	2773	\$ 6,264.33	36.14	1.00		16	\$ 100,229.33	
<b>Total Salaries and Wages</b>									<b>\$ 409,925.33</b>	
<b>FB - Accrued Vacation Expense</b>						<b>3.87%</b>			<b>\$ 15,864.11</b>	
<b>FB - Accrual Vacation Benefits @ 27.5%</b>						<b>1.06%</b>			<b>\$ 4,362.63</b>	
<b>FB - Fringe Benefits (Full Benefits Personnel @27.5%; Limited Benefits Personnel @12.4%)</b>						<b>27.50%</b>			<b>\$ 112,729.47</b>	
<b>Total Fringe Benefits</b>						<b>32.43%</b>			<b>\$ 132,956.21</b>	
<b>Total Personnel</b>									<b>\$ 542,881.54</b>	
<b>Supplies</b>										
SP - Office Supplies									\$ 5,000.00	
SP - Laboratory Supplies (General)									\$ 103,184.00	
SP - Laboratory Supplies (Sequencing)									\$ 200,000.00	
SP - Laboratory Supplies (PCR Supplies)									\$ 334,000.00	
<b>Total Supplies</b>									<b>\$ 642,184.00</b>	
<b>Equipment</b>										
Equipment - 80 Freezer x1									\$ 14,000.00	
Equipment - Fridge/Freezer Combo small x1									\$ 10,000.00	
Equipment - PCR/Sequencer/MaldiTOF instrument									\$ 150,000.00	
Equipment - Hamilton Liquid Handler									\$ 96,100.00	
<b>Total Equipment</b>									<b>\$ 270,100.00</b>	
<b>Other Costs</b>										
OC - Service Agreement for EIA instrument with addition of LIS connectivity									\$ 17,000.00	
OC - Service Agreement for Cepheid with addition of LIS connectivity									\$ 25,000.00	
OC - Service Agreement (Bioinformatics Analysis)									\$ 103,000.00	
<b>Total Other Costs</b>									<b>\$ 145,000.00</b>	
<b>Consortium/Contractual Cost</b>										
CC - WO - Apollo LIS connection to Hospital EMRs									\$ 34,000.00	
<b>Total Consortium/Contractual Cost</b>									<b>\$ 34,000.00</b>	
<b>Total Direct Cost</b>									<b>\$ 1,634,165.54</b>	
<b>FA - Indirect</b>			12.1% Indirect Type							<b>\$ 165,051.99</b>
<b>Total Budget</b>									<b>\$ 1,799,217.53</b>	

**Total budget not to exceed \$1,799,217.53.**

#### Invoice

Please submit monthly invoices to Cheryl Starling at [CStarling@helunahealth.org](mailto:CStarling@helunahealth.org) and [ELCInvoices@HelunaHealth.org](mailto:ELCInvoices@HelunaHealth.org).

The final invoice must be marked FINAL.

## ATTACHMENT B

### HIPAA BUSINESS ASSOCIATE AGREEMENT

This Exhibit, the HIPAA Business Associate Agreement (“Exhibit”) supplements and is made a part of the underlying agreement (“Agreement”) by and between the County of Alameda, (“County” or “Covered Entity”) and **Public Health Foundation Enterprises, Inc. DBA Heluna Health**, (“Contractor” or “Business Associate”) to which this Exhibit is attached. This Exhibit is effective as of the effective date of the Agreement.

#### I. 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”); 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 (the “HITECH Act”), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), and other applicable laws; and The Privacy Rule and the Security Rule in the HIPAA Regulations 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 as contained in this Agreement.

#### II. STANDARD DEFINITIONS

Capitalized terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms are defined in the HIPAA Regulations. In the event of an inconsistency between the provisions of this Exhibit and the mandatory provisions of the HIPAA Regulations, as amended, the HIPAA Regulations shall control. Where provisions of this Exhibit are different than those mandated in the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this Exhibit shall control. All regulatory references in this Exhibit are to HIPAA Regulations unless otherwise specified.

The following terms used in this Exhibit shall have the same meaning as those terms in the HIPAA Regulations: Data Aggregation, Designated Record Set, Disclosure, Electronic Health Record, Health Care Operations, Health Plan, Individual, Limited Data Set, Marketing, Minimum Necessary, Minimum Necessary Rule, Protected Health Information, and Security Incident.

The following term used in this Exhibit shall have the same meaning as that term in the HITECH Act: Unsecured PHI.

#### III. SPECIFIC DEFINITIONS

*Agreement.* “Agreement” shall mean the underlying agreement between County and Contractor, to which this Exhibit, the HIPAA Business Associate Agreement, is attached.

*Business Associate.* “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. section 160.103, the HIPAA Regulations, and the HITECH Act, and in reference to a party to this Exhibit shall mean the Contractor identified above. “Business Associate” shall also mean any subcontractor that creates, receives, maintains, or transmits PHI in performing a function, activity, or service delegated by Contractor.

*Contractual Breach.* “Contractual Breach” shall mean a violation of the contractual obligations set forth in this Exhibit.

*Covered Entity.* “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. section 160.103, and in reference to the party to this Exhibit, shall mean any part of County subject to the HIPAA Regulations.

*Electronic Protected Health Information.* “Electronic Protected Health Information” or “Electronic PHI” means Protected Health Information that is maintained in or transmitted by electronic media.

*Exhibit.* “Exhibit” shall mean this HIPAA Business Associate Agreement.

*HIPAA.* “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

*HIPAA Breach.* “HIPAA Breach” shall mean a breach of Protected Health Information as defined in 45 C.F.R. 164.402, and includes the unauthorized acquisition, access, use, or Disclosure of Protected Health Information which compromises the security or privacy of such information.

*HIPAA Regulations.* “HIPAA Regulations” shall mean the regulations promulgated under HIPAA by the U.S. Department of Health and Human Services, including those set forth at 45 C.F.R. Parts 160 and 164, Subparts A, C, and E.

*HITECH Act.* “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH Act”).

*Privacy Rule and Privacy Regulations.* “Privacy Rule” and “Privacy Regulations” shall mean the standards for privacy of individually identifiable health information set forth in the HIPAA Regulations at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

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

*Security Rule and Security Regulations.* “Security Rule” and “Security Regulations” shall mean the standards for security of Electronic PHI set forth in the HIPAA Regulations at 45 C.F.R. Parts 160 and 164, Subparts A and C.

#### **IV. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE**

Business Associate may only use or disclose PHI:

- A. As necessary to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or Disclosure would not violate the Privacy Rule if done by Covered Entity;
- B. As required by law; and
- C. For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

## V. PROTECTION OF PHI BY BUSINESS ASSOCIATE

- A. *Scope of Exhibit.* Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display, by Covered Entity or its operating units to Business Associate, or is created or received by Business Associate on Covered Entity's behalf, shall be subject to this Exhibit.
- B. *PHI Disclosure Limits.* Business Associate agrees to not use or further disclose PHI other than as permitted or required by the HIPAA Regulations, this Exhibit, or as required by law. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA Regulations if done by Covered Entity.
- C. *Minimum Necessary Rule.* When the HIPAA Privacy Rule requires application of the Minimum Necessary Rule, Business Associate agrees to use, disclose, or request only the Limited Data Set, or if that is inadequate, the minimum PHI necessary to accomplish the intended purpose of that use, Disclosure, or request. Business Associate agrees to make uses, Disclosures, and requests for PHI consistent with any of Covered Entity's existing Minimum Necessary policies and procedures.
- D. *HIPAA Security Rule.* Business Associate agrees to use appropriate administrative, physical and technical safeguards, and comply with the Security Rule and HIPAA Security Regulations with respect to Electronic PHI, to prevent the use or Disclosure of the PHI other than as provided for by this Exhibit.
- E. *Mitigation.* Business Associate agrees to 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 the requirements of this Exhibit. Mitigation includes, but is not limited to, the taking of reasonable steps to ensure that the actions or omissions of employees or agents of Business Associate do not cause Business Associate to commit a Contractual Breach.
- F. *Notification of Breach.* During the term of the Agreement, Business Associate shall notify Covered Entity in writing within twenty-four (24) hours of any suspected or actual breach of security, intrusion, HIPAA Breach, and/or any actual or suspected use or Disclosure of data in violation of any applicable federal or state laws or regulations. This duty includes the reporting of any Security Incident, of which it becomes aware, affecting the Electronic PHI. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized use or Disclosure required by applicable federal and/or state laws and regulations. Business Associate shall investigate such breach of security, intrusion, and/or HIPAA Breach, and provide a written report of the investigation to Covered Entity's HIPAA Privacy Officer or other designee that is in compliance with 45 C.F.R. section 164.410 and that includes the identification of each individual whose PHI has been breached. The report shall be delivered within fifteen (15) working days of the discovery of the breach or unauthorized use or Disclosure. Business Associate shall be responsible for any obligations under the HIPAA Regulations to notify individuals of such breach, unless Covered Entity agrees otherwise.
- G. *Agents and Subcontractors.* Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions, conditions, and requirements that apply through this Exhibit to Business Associate with respect to such information. Business Associate shall obtain written contracts agreeing to such terms from

all agents and subcontractors. Any subcontractor who contracts for another company's services with regards to the PHI shall likewise obtain written contracts agreeing to such terms. Neither Business Associate nor any of its subcontractors may subcontract with respect to this Exhibit without the advanced written consent of Covered Entity.

- H. *Review of Records.* Business Associate agrees to make internal practices, books, and records relating to the use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Regulations. Business Associate agrees to make copies of its HIPAA training records and HIPAA business associate agreements with agents and subcontractors available to Covered Entity at the request of Covered Entity.
- I. *Performing Covered Entity's HIPAA Obligations.* To the extent Business Associate is required to carry out one or more of Covered Entity's obligations under the HIPAA Regulations, Business Associate must comply with the requirements of the HIPAA Regulations that apply to Covered Entity in the performance of such obligations.
- J. *Restricted Use of PHI for Marketing Purposes.* Business Associate shall not use or disclose PHI for fundraising or Marketing purposes unless Business Associate obtains an Individual's authorization. Business Associate agrees to comply with all rules governing Marketing communications as set forth in HIPAA Regulations and the HITECH Act, including, but not limited to, 45 C.F.R. section 164.508 and 42 U.S.C. section 17936.
- K. *Restricted Sale of PHI.* Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, 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.
- L. *De-Identification of PHI.* Unless otherwise agreed to in writing by both parties, Business Associate and its agents shall not have the right to de-identify the PHI. Any such de-identification shall be in compliance with 45 C.F.R. sections 164.502(d) and 164.514(a) and (b).
- M. *Material Contractual Breach.* Business Associate understands and agrees that, in accordance with the HITECH Act and the HIPAA Regulations, it will be held to the same standards as Covered Entity to rectify a pattern of activity or practice that constitutes a material Contractual Breach or violation of the HIPAA Regulations. Business Associate further understands and agrees that: (i) it will also be subject to the same penalties as a Covered Entity for any violation of the HIPAA Regulations, and (ii) it will be subject to periodic audits by the Secretary.

## **VI. INDIVIDUAL CONTROL OVER PHI**

- A. *Individual Access to PHI.* Business Associate agrees to make available PHI in a Designated Record Set to an Individual or Individual's designee, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.524. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.
- B. *Accounting of Disclosures.* Business Associate agrees to maintain and make available the information required to provide an accounting of Disclosures to an Individual as necessary to

satisfy Covered Entity's obligations under 45 C.F.R. section 164.528. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.

- C. *Amendment to PHI.* Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.526. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.

## VII. TERMINATION

- A. *Termination for Cause.* A Contractual Breach by Business Associate of any provision of this Exhibit, as determined by Covered Entity in its sole discretion, shall constitute a material Contractual Breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. Contracts between Business Associates and subcontractors are subject to the same requirement for Termination for Cause.
- B. *Termination due to Criminal Proceedings or Statutory Violations.* 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 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 Business Associate has been joined.
- C. *Return or Destruction of PHI.* In the event of termination for any reason, or upon the expiration of the Agreement, Business Associate shall return or, if agreed upon by Covered Entity, destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.  
If Business Associate determines that returning or destroying the PHI is infeasible under this section, Business Associate shall notify Covered Entity of the conditions making return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Exhibit to such PHI and limit further uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

## VIII. MISCELLANEOUS

- A. *Disclaimer.* Covered Entity makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA, the HIPAA Regulations, or the HITECH Act will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate is or will be secure from unauthorized use or Disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Regulatory References.* A reference in this Exhibit to a section in HIPAA, the HIPAA Regulations, or the HITECH Act means the section as in effect or as amended, and for which compliance is required.

- C. *Amendments.* The parties agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the HIPAA Regulations, and the HITECH Act.
- D. *Survival.* The respective rights and obligations of Business Associate with respect to PHI in the event of termination, cancellation or expiration of this Exhibit shall survive said termination, cancellation or expiration, and shall continue to bind Business Associate, its agents, employees, contractors and successors.
- E. *No Third Party Beneficiaries.* Except as expressly provided herein or expressly stated in the HIPAA Regulations, the parties to this Exhibit do not intend to create any rights in any third parties.
- F. *Governing Law.* The provisions of this Exhibit are intended to establish the minimum requirements regarding Business Associate's use and Disclosure of PHI under HIPAA, the HIPAA Regulations and the HITECH Act. The use and Disclosure of individually identified health information is also covered by applicable California law, including but not limited to the Confidentiality of Medical Information Act (California Civil Code section 56 et seq.). To the extent that California law is more stringent with respect to the protection of such information, applicable California law shall govern Business Associate's use and Disclosure of confidential information related to the performance of this Exhibit.
- G. *Interpretation.* Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the HIPAA Regulations, the HITECH Act, and in favor of the protection of PHI.

This EXHIBIT, the HIPAA Business Associate Agreement is hereby executed and agreed to by **CLIENT:**

**Name: Public Health Foundation Enterprises, Inc. DBA Heluna Health**

By (Signature): \_\_\_\_\_  
DocuSigned by:  
*Peter Dale*  
0CB6AFEE59C3427...

Print Name:   Peter Dale  

Title:   Chief Program Officer