

RFP #2020-181 VIDEO DIRECTLY OBSERVED THERAPY

CRITERIA	MAXIMUM POINTS	Emocha Mobile Health, Inc. Baltimore, MD HUB: No CO-OP: No
Qualifications and Experience	75	54
Specifications	225	153
Training and Mentoring	100	68
Project Management	75	48
Schedule and Deliverables	50	36
Testing Approach	75	51
References	100	67
Price	300	300
TOTAL SCORE	1000	777

No-Bid: SureAdhere



TARRANT COUNTY PUBLIC HEALTH
Accountability · Quality · Innovation

November 11, 2020

Elaine Johnson, Sr. Buyer
Tarrant County Purchasing Dept.

Elaine,

The Public Health Department has reviewed, and evaluated, the response for RFP No. 2020-181 Video Direct Observed Therapy and recommends that the award go to:

EMOCHA Mobile Health

Best Regards,

Millie McManus

Contract Specialist
Tarrant County Public Health

Standard Legal Terms and License

emocha Mobile Health Inc.

These emocha Mobile Health Inc. (**emocha**) Standard Legal Terms and License govern access and use of emocha software including emocha mobile and web applications.

emocha owns and operates emocha mobile applications and the emocha website (www.emocha.com or the “**Site**”). These Standard Legal Terms and License set forth the terms and conditions for a license to all emocha software. Please read these terms carefully. By accessing or using an emocha mobile application or the emocha website, however accessed, you (the “**Licensee**” or “**Customer**”) agree to be bound by these Standard Legal Terms and License, the Terms of Use provided at <https://www.emocha.com/terms-of-use> and the emocha Privacy Policy provided at <https://www.emocha.com/privacy-policy>. This Agreement affects your legal rights and obligations so please read it carefully. emocha reserves the right to revise the emocha Standard Legal Terms and Conditions, the emocha website Terms of Use and the emocha Privacy Policy, at any time from time to time. emocha will date and post the current version of the emocha Standard Legal Terms and Conditions, website Terms of Use and Privacy Policy on the emocha website and such version will be effective immediately when posted.

1. Products

emocha is the owner and/or developer of certain software and related user documentation and manuals (the “**Software**”). Licensee and emocha have entered into an Agreement for Licensee’s use of the Software (the “**Agreement**”) pursuant to the specific terms set forth on the emocha License Agreement executed by emocha and Licensee.

2. Description of emocha Products.

emocha products include a license to selected emocha software modules, the current description of which may be found at www.emocha.com.

emocha video DOT is a solution for video-based Directly Observed Therapy (DOT). Using the emocha video DOT application, patients report side effects and securely video record themselves taking medication at their own convenience. By using or visiting the emocha website, or the emocha mobile app, or using any emocha software, Licensee agrees to the Terms of Service, provided at <https://www.emocha.com/terms-of-use> and the emocha Privacy Policy provided at <https://www.emocha.com/privacy-policy>. Licensee is required to inform patients and other Users about required compliance with the emocha Terms of Service and the emocha Privacy Policy. It is also the responsibility of Licensee to obtain consent from patients regarding capture of video recordings of patients taking their medication using emocha video DOT and for training patients and other Users on the functioning and use of emocha video DOT. If Licensee does not agree to any of these terms or does not obtain such consent, Licensee cannot not use the emocha website or the emocha mobile app. Licensee is solely responsible for the content of video recordings and the consequences of submitting video recording content by way of emocha software.

3. License Grant

(a) General. Subject to Licensee’s agreement to the terms set forth in the emocha License Agreement and compliance with the emocha Standard Legal Terms and License set forth herein, emocha hereby grants, and Licensee accepts a limited, personal, revocable, non-transferable, non-

exclusive license during the term of the Agreement to use the emocha Software and Documentation for internal business purposes and to permit users authorized by Licensee (“**Users**”) to use the Software for internal business purposes, and for patients and participants authorized by Licensee (“**Participants**”) to use the software to report data. Licensee may use the Software for the functions for which it was designed, so long as Licensee does not allow any other third party the right to access or use the software, except as permitted by this Agreement, and does not commercialize or otherwise make any portion of the Software available to others. The Software will be made available to Licensee under the Agreement in object code only; no source code is provided to Licensee under the Agreement. No rights to sublicense or market the Software or Documentation are granted.

(b) License Term. The license term begins on the Effective Date and will continue for the term set forth on the emocha License Agreement.

C. Fees. Licensee shall pay emocha the fees set forth in the emocha License Agreement. emocha will not require Participants to pay emocha directly any charges or fees for use of the Service.

4. Software

(a) Remote Software. Some components of the Software may be housed and hosted on a server at a remote location selected by emocha (such components, the “**Remote Software**”). Licensee will be able to access and use the Remote Software and store data remotely in connection with the use of the Software. Licensee shall not take any action that jeopardizes the availability, functionality, or integrity of the Software or the server system on which it resides. Licensee shall ensure that only its authorized employees, customers, patients, and vendors are allowed to and can use the Software.

(b) Restrictions. Licensee may not, and will not permit or induce any third party (including, without limitation, any User) to: (i) decompile, reverse engineer, disassemble or otherwise attempt to reconstruct or discover the source code, underlying ideas or algorithms of any components of the Software; (ii) alter, modify, translate, adapt in any way, or prepare any derivative work based upon the Software; (iii) rent, lease, network, loan, pledge, encumber, sublicense, sell, distribute, disclose, assign or otherwise transfer the Software or any copy thereof; (iv) use the Software in commercial timesharing, rental or other sharing arrangements; or (v) remove any proprietary notices from the Software or any related documentation or other materials furnished or made available hereunder. Any modification or enhancement made in violation of the foregoing shall be deemed to be owned by emocha or emocha’s licensor and shall be required to be assigned to emocha or emocha’s licensor, which shall be in addition to all other remedies that emocha or emocha’s licensor will be entitled to pursue. In addition, Licensee agrees to comply with all applicable local, state, national, and international laws, rules and regulations applicable to Licensee’s use of the Software. Licensee shall ensure that its employees abide by all of emocha’s policies pertaining to the Software, as they have been posted on the Site and as may be updated from time to time, with or without prior notice. Licensee shall ensure that its use of the Software does not violate any confidentiality, privacy or other proprietary right of any party, and that it does not contain offensive, harassing, or defamatory content. It is the duty and responsibility of Licensee alone to ensure that all Licensee’s use of the Software complies with all privacy and other laws, including, without limitation, the U.S. Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”, as amended), and any comparable foreign law.

(c) Upgrades. All upgrades, updates, bug fixes, improvements, corrections, enhancements, and major and minor releases to the emocha Products will be delivered and installed, if applicable, at no additional cost to Licensee. emocha will provide sufficient testing instructions and description of the new functionality or features of all Upgrades to ensure successful implementation. Any

Upgrades shall be deemed to be emocha Products for purposes of this Agreement and are hereby automatically licensed to Licensee subject to the terms and conditions of this Agreement.

D. Delivery and Acceptance of Standard emocha Software. Following execution of this Agreement, Licensee shall complete the emocha Configuration Form. Within 10 days after Licensee submits the completed Configuration Form, and any other information emocha may require, emocha shall enable Licensee to download or access the Software from www.emocha.com or shall otherwise make the Software available to Licensee. The Software (and any future Software updates or upgrades that emocha may make available to Licensee from time to time and that are included in the defined term “**Software**”) will be deemed accepted upon emocha’s making the Software (or the relevant update or upgrade) available to Licensee. emocha shall provide such reasonable implementation services and support for the Software as the parties have mutually agreed to.

E. Delivery and Acceptance of Modified Version of emocha Software. Following execution of this Agreement, Licensee may submit a set of specifications and such other information as emocha may require to implement a Customized emocha Application (the “**Specifications**”). emocha shall review the Specifications and the parties shall come to a mutual agreement on the final Specifications, including any modifications agreed to by the parties. Within 90 days after Licensee submits the Specifications (with such time extensions as the parties may mutually agree to), emocha shall: (a) write and compile a modified version of the Software that materially conforms to the mutually agreed-upon Specifications, and (b) enable Licensee to download or access the modified Software from www.emocha.com, or shall otherwise make the Software available to Licensee. The Software (and any future Software updates or upgrades that emocha may make available to Licensee from time to time and that are included in the defined term “**Software**”) will be deemed accepted upon emocha’s making the Software (or the relevant update or upgrade) available to Licensee. emocha shall provide such reasonable implementation services and support for the Software as the parties have mutually agreed to.

5. Proprietary Rights: General

emocha or its licensors retain all right, title and interest in and to the Software and related documentation and materials, including, without limitation, all patent, copyright, trademark, and trade secret rights, embodied in or otherwise applicable to the Software, whether such rights are registered or unregistered, and wherever in the world those rights may exist. Licensee shall not commit any act or omission, or permit or induce any third party to commit any act or omission inconsistent with emocha’s or its licensors’ rights, title and interest in and to the Software and the intellectual property rights embodied therein or applicable thereto. All materials embodied in or constituting the Software, including, without limitation, graphics, user and visual interfaces, images, code, applications, and text, as well as the design, structure, selection, coordination, expression, “look and feel” and arrangement of the Software and its Content, and the trademarks, service marks, proprietary logos and other distinctive brand features found in the Software (“**emocha Marks**”), are all owned by emocha or its licensors. Regardless of inventorship, emocha shall exclusively own all inventions, discoveries, data, work product, results and information that are conceived, generated, discovered or made during the course of performing activities under the Agreement and that relate to the Software (collectively, “**Software Inventions**”), including any Patent Rights claiming such Software Inventions (the “**Software Invention Patent Rights**”). Licensee shall assign and hereby assigns to emocha, at no cost (or, where required by applicable law, for nominal consideration of One U.S. Dollar (\$1.00)), all of its right, title and interest in the Software Inventions, the Software Invention Patent Rights and any other intellectual property rights relating thereto, and shall cause its affiliates and sublicensees to do the same. Licensee shall execute and deliver, or cause to be executed and delivered, such instruments, and shall do and cause to be done such acts and things, including the filing of such assignments, agreements and

other documents, as may be necessary, or as emocha may reasonably request, to give full effect to these terms. The Agreement does not grant Licensee any license to use the emocha Marks. Title to the Software shall not pass from emocha to Licensee, and the Software and all copies thereof shall at all times remain the sole and exclusive property of emocha. There are no implied rights or licenses in the Agreement. All rights are expressly reserved by emocha.

(a) Third Party Software. emocha may in its sole discretion make available third party software ("**Third Party Software**") embedded in, or otherwise provided with, the Software. Third Party Software is expressly excluded from the defined term "**Software**" as used throughout the Agreement. Licensee's use of the Third Party Software is subject to the applicable third party license terms which can be viewed at each third party's website, and such Third Party Software is not licensed to Licensee under the terms of the Agreement. If Licensee does not agree to abide by the applicable license terms for the Third Party Software, then Licensee may not access or use the Software or the Third Party Software.

(b) Inspection. emocha shall have the right to review Licensee's use of the Software to verify Licensee's compliance with the terms of the Agreement.

(c) Use of Data. By entering into this Agreement and using the emocha software, you consent to emocha's use of the data obtained from your use of emocha software in accordance with this Agreement and to use the data to improve emocha software applications. emocha may collect, store and use data for research and other purposes, including but not limited to compilation, comparison, and analysis.

6. Confidentiality

(a) General. If a party (the "**Receiving Party**") obtains access to Confidential Information (as defined in below) of the other party (the "**Disclosing Party**") in connection with the negotiation or performance of the Agreement, the Receiving Party agrees: (a) not to directly or indirectly disclose the Confidential Information to any third party except as contemplated by the Agreement; and (b) to use the Confidential Information only to perform its obligations and exercise its rights under the Agreement. The Receiving Party shall use at least the same degree of care to protect the Confidential Information of the Disclosing Party from unauthorized disclosure or access that the Receiving Party uses to protect its own Confidential Information, but not less than reasonable care. The Receiving Party shall immediately notify the Disclosing Party of any actual or suspected loss or unauthorized use, disclosure of or access to the Disclosing Party's Confidential Information of which it becomes aware and take all steps reasonably requested by the Disclosing Party to limit, stop or otherwise prevent such loss or unauthorized use, disclosure or access.

(b) Confidential Information. "**Confidential Information**" shall mean: (a) all information about or belonging to the Disclosing Party or a third party that is disclosed or otherwise becomes known to the Receiving Party in connection with the Agreement and that is not a matter of public knowledge; (b) all trade secrets, customer information and intellectual property owned or licensed by the Disclosing Party; (c) all personal information about individuals contained in the Disclosing Party's records (including names, addresses, social security numbers, and credit card and other financial information); and (d) the Software. The terms of the Agreement are the Confidential Information of both parties, which may be disclosed by a party, only to the extent reasonably necessary, to its legal and financial advisers and to subcontractors or other third parties that will be providing services in connection with the Agreement and that are under an obligation to protect the confidentiality of the Confidential Information.

(c) Exclusions. Any particular information of the Disclosing Party shall not be considered Confidential Information if it: (a) was previously rightfully known by the Receiving Party free of any obligation to keep it confidential; (b) is or becomes publicly known through no wrongful act of the Receiving Party; (c) is independently developed by the Receiving Party without reference to the

Confidential Information of the Disclosing Party; or (d) is subject to disclosure pursuant to a subpoena, judicial or governmental requirement, or order, provided that the Receiving Party has given the Disclosing Party sufficient prior notice of such subpoena, requirement, or order, to permit the Disclosing Party a reasonable opportunity to object to the subpoena, requirement, or order and to allow the Disclosing Party the opportunity to seek a protective order or other appropriate remedy.

7. Warranties & Disclaimer of Warranties

(a) emocha's Warranty. emocha warrants that the Software, as accessed by an authorized User from a fully functioning device that complies with the Software's system requirements and such other instructions as emocha may promulgate from time to time, will substantially conform to the current Specifications mutually agreed upon by the parties. Licensee's sole and exclusive remedy for the breach of this warranty shall be to notify emocha thereof and for emocha to apply reasonable efforts to correct confirmed warranty breaches. If emocha provides Remote Software to Licensee on emocha's own servers, emocha agrees to use commercially reasonable methods to maintain the uptime of the Remote Software on its servers continuously, with the exception of periods of scheduled maintenance, of which emocha will give prior notice.

(b) Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH ABOVE: (I) THE SOFTWARE is PROVIDED TO LICENSEE ON AN "AS IS" BASIS, with any and all faults, and without any warranty of any kind; AND (II) emocha expressly disclaims all representations, warranties and conditions, whether express, implied, statutory or otherwise, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, SATISFACTORY QUALITY, and non-infringement of third party rights. EXCEPT AS EXPRESSLY SET FORTH ABOVE, emocha does not warrant that the SOFTWARE will meet LICENSEE'S or IT'S users' requirements, or that the operation of the SOFTWARE will be uninterrupted or error-free, or that defects in the SOFTWARE will be corrected. Licensee expressly acknowledges and agrees that the use of the SOFTWARE and all results of such use is solely at Licensee's and IT'S users' own risk. no oral or written information or advice given by emocha or its authorized representatives shall create a warranty or in any way increase the scope of ANY warranty.

8. Indemnification

(a) Indemnification by Licensee. Licensee hereby agrees, to the extent permitted by Texas Law, to indemnify, defend and hold harmless emocha and its parents, affiliates, subsidiaries, licensors and third party service providers, and its and their respective officers, directors, employees, agents, representatives, and contractors (each, an "**emocha Party**"), from and against any and all liability and costs (including, without limitation, attorneys' fees and costs) incurred by any emocha Party in connection with any actual or alleged claim arising out of, or relating to: (i) Licensee's breach of the Agreement, or violation of any applicable law, rule or regulation and (ii) Licensee's negligence, misrepresentation or willful misconduct.

(b) Procedure. Counsel Licensee selects for the defense or settlement of a claim must be consented to by emocha prior to counsel's being engaged to represent any emocha Party. Licensee and Licensee's counsel will cooperate with emocha as fully as reasonably required, and provide such information as reasonably requested, by emocha in the defense or settlement of any claim. emocha reserves the right, at its own expense, to assume the exclusive defense or settlement, and control of any matter otherwise subject to indemnification by Licensee. Licensee shall not in any event consent to any judgment, settlement, attachment or lien, or any other act adverse to the interests of any emocha Party without the prior written consent of each relevant emocha Party.

9. Limitation of Liability.

A. Consequential Damages Waiver. UNDER NO CIRCUMSTANCES SHALL ANY EMOCHA PARTY BE LIABLE TO LICENSEE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND THE LIKE) ARISING OUT OF OR RELATING TO THE USE AND/OR INABILITY TO USE THE SOFTWARE, REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED AND EVEN IF A EMOCHA PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

B. Limitation of Damages. WITHOUT LIMITING THE FOREGOING, In no event shall THE emocha PARTIES' total CUMULATIVE liability to Licensee for all damages, losses and causes of action (whether in contract, tort, including negligence AND STRICT LIABILITY, or otherwise) exceed THE TOTAL AMOUNT OF FEES PAID BY LICENSEE TO emocha DURING the twelve (12) MONTH PERIOD IMMEDIATELY PRECEDING the EVENT GIVING RISE TO THE emocha PARTIES' LIABILITY.

C. Failure of Essential Purpose. THE PARTIES AGREE THAT THESE LIMITATIONS SHALL APPLY EVEN IF THE AGREEMENT OR ANY LIMITED REMEDY SPECIFIED HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

D. Jurisdictional Issues. Some jurisdictions may not allow the exclusion or limitation of incidental, special, consequential or other damages, so the above limitations or exclusions may not apply to Licensee. In such event, the liability of the emocha Parties for such damages with respect to the Software will be limited to the greatest extent permitted by applicable law in such jurisdiction.

E. Export. Licensee acknowledges that the laws and regulations of the United States of America and foreign jurisdictions may restrict the export and re-export of certain commodities and technical data of United States of America origin, including the Software. Licensee agrees that it will not export or re-export the Software without the appropriate United States or foreign government licenses or permits.

10. Termination

(a) General. Either party may terminate this Agreement immediately without further notice if the other party breaches its obligations under this Agreement and does not remedy such breach within thirty (30) calendar days of the date on which the breaching party receives written notice of such breach from the non-breaching party.

(b) Termination by Either Party. Either party may terminate this Agreement upon written notice to the other party: (i) upon the institution by the other party of insolvency, receivership or bankruptcy proceedings or any other act of bankruptcy or proceedings for the settlement of its debts; (ii) upon the institution of bankruptcy proceedings against the other party, which are not dismissed or otherwise resolved in its favor within ninety (90) days thereafter; (iii) upon the other party's making a general assignment for the benefit of creditors, whether voluntary or involuntary, or calling a general meeting of the party's creditors for purposes of compromising any of the party's debts; or (iv) upon the other party's dissolving, liquidating, winding up, or ceasing to conduct business in the ordinary course.

(c) Termination by emocha. emocha may terminate this Agreement immediately, if Licensee willfully commits a material breach of Section 4B (Restrictions) or Article 5 (Proprietary Rights).

(d) Effects of Termination. Upon the termination of this Agreement for any reason: (i) the licenses granted under this Agreement in respect of the Software shall immediately terminate and Licensee shall cease to use Software and shall cease making the Software or any services available to Users; (ii) Licensee shall pay to emocha the full amount of any outstanding fees due hereunder; and (iii) within ten (10) calendar days of such termination, each party shall destroy or return all confidential

and/or proprietary information of the other party in its possession, and will not make or retain any copies of such information in any form, except that the receiving party may retain one (1) archival copy of such information solely for purposes of ensuring compliance with this Agreement. Notwithstanding the foregoing, the following terms shall survive the termination of this Agreement, together with any other terms which by their nature are intended to survive such termination: relevant sections of the emocha License Agreement, Articles 4 (Software), 5 (Proprietary Rights), 6 (Confidentiality), 9 (Limitations of Liability), 11 (Governing Law & Jurisdiction), 13 (General Provisions) and Section 10D (Effects of Termination).

11. Governing Law & Jurisdiction

This Agreement will be construed and enforced in all respects in accordance with the laws of the state of Texas, without reference to its choice of law rules. Licensee agrees that emocha will have, in addition to any other rights or remedies available to it at law or in equity, the right to seek injunctive relief in a court of competent jurisdiction to enjoin any such breach, and that doing so shall not be deemed to be an election of remedies precluding emocha from pursuing damages or other remedies. The United Nations Convention on Contracts for the International Sale of Goods in its entirety is expressly excluded from this Agreement, including, without limitation, application to the Software provided hereunder. Furthermore, this Agreement will not be governed or interpreted in any way by referring to any law based on the Uniform Computer Information Transactions Act ("UCITA") or any other act derived from or related to UCITA.

12. Notices

All notices permitted or required under the Agreement shall be in writing and shall be delivered by personal delivery; e-mail, or certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) business days after deposit in the U.S. mail, or upon confirmation of transmission if sent by e-mail. Notices shall be sent to each party at their respective addresses as set forth on the emocha License Agreement, as updated by each party from time to time.

13. General Provisions

(a) Assignment. Licensee shall not assign this Agreement or transfer any of its rights hereunder, or delegate the performance of any of its duties or obligations arising under this Agreement, whether by merger, acquisition, sale of assets, operation of law, or otherwise, without the prior written consent of emocha. Any purported assignment in violation of the preceding sentence is null and void.

(b) Amendment. Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed on behalf of both parties.

(c) No Waiver. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in a writing signed on behalf of the party against whom the waiver is asserted.

(d) Severability. If any term of this Agreement is found invalid or unenforceable, that term will be enforced to the maximum extent permitted by law, and the remainder of this Agreement will remain in full force.

(e) Independent Contractors. The parties are independent contractors, and nothing contained herein shall be construed as creating an agency, partnership or other form of joint enterprise between the parties.

(f) Entire Agreement. The entire agreement is represented by the Purchase Order and any other document made a part hereof, the order of precedence of the following documents shall control: RFP 2020-181 and Vendor proposal under said RFP, the Addendum, Service Level Agreement, and the Purchase Order of latest date.

(g) Force Majeure. Except for Licensee's payment obligations hereunder, neither party shall be liable to the other party or any third party for failure or delay in performing its obligations under this Agreement when such failure or delay is due to any cause beyond the control of the party concerned, including, without limitation, acts of God, governmental orders or restrictions, fire, or flood, provided that upon cessation of such events such party shall thereupon promptly perform or complete the performance of its obligations hereunder.

(h) Counterparts. Except as otherwise expressly provided in this Agreement, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise. This Agreement may be entered into in one or more counterparts, each of which will be deemed an original, and all of which taken together shall constitute one and the same instrument.

14. Amendment; Entire Agreement

This Agreement may not be modified except by a revised version of the emocha Standard Legal Terms and Conditions, emocha website Terms of Use or emocha Privacy Policy posted on emocha website or a written amendment signed by an authorized representative of emocha. A revised version of these emocha Standard Legal Terms and Conditions, the website Terms of Use and Privacy Policy is effective as of the date posted.

Schedule 1

Definitions

Certain terms used in this Agreement shall have the following meanings.

Certain terms used in this Agreement shall have the following meanings.

1. "Affiliate" means an entity controlling, controlled by, or under common control with a party, such control being exercised through ownership or control, directly or indirectly, of 50% or more of the voting power of the shares.
2. "Bug" means an inconsistency between emocha Product behavior and emocha Product Documentation.
3. "Content" means audio and visual information, documents, data and pictures contained in the Applications or made available to Licensee in the course of using emocha Products.

4. "Documentation" means the operational, functional and technical specifications in any standard materials, guides, manuals or other related materials which shall be provided to Licensee by emocha which assist Licensee in using the Software.
5. "Effective Date" shall mean the Effective Date set forth on the License Agreement.
6. "Interim Solution" means a short-term fix delivered as a hotfix or a patch or system configuration change from emocha to the Licensee.
7. "Permanent Solution" means, an Update of the emocha Product in which a particular problem has been resolved to conform to the emocha Product specification contained in the Documentation.
8. "Purchase Order" shall mean a document forwarded to emocha by Licensee which requests that emocha supply Licensee with specific Software, Documentation, Support or services and which references this Agreement.
9. "Software" means the emocha software modules listed and described of at the following link: www.emocha.com and any object code, functional and technical specification described in the Documentation and any Updates supplied by emocha to Licensee under this Agreement.
10. "Source Code" means the human-readable language form of the software code that comprises (in object code form) the emocha Products, together with any build tools (e.g., compilers, linkers and other related tools), compile/link scripts, logic diagrams, program comments, installation scripts and other documentation and tools necessary for an ordinarily skilled programmer to understand and be able to address errors in or create ports, updates or other modifications to such software code, or to recompile the same into fully functioning object code of the applicable emocha Products.
11. "Support" shall mean those services to be performed by emocha as set forth in Schedule 2.
12. "Update(s)" shall mean all new releases, new versions, updates, revisions, fixes, patches or other alterations of the Software, including those which are designed to improve the operation or functionality of the Software, intended to correct an error in the Software or required to correct a breach of warranty or other breach of this Agreement.
13. "Upgrades" means additions, modifications, upgrades or derivative works to the standard emocha Software or the custom emocha Software.
14. "User" is a single individual, computer, mobile device, analyzer, software license, or machine that initiates the execution of the emocha Software and/or interacts with the emocha Software in the performance of its functions.
15. "Work Around" means a temporary solution to a problem. A Work Around will be replaced with a Permanent Solution unless otherwise agreed to by Licensee.

Schedule 2

emocha STANDARD SUPPORT TERMS

1. Support

This Schedule sets forth the methodology between emocha Mobile Health Inc. (emocha) and Customer regarding the resolution of problems with an emocha Product. emocha will provide support materials and training to customer service and support staff, to be provided on-line or in-person at emocha's offices. emocha will provide up to two (2) training sessions (expected to be up to two (2) consecutive days) within the first two (2) years of the agreement, at no cost to Customer.

The Technology Fee(s) shall entitle the Customer to the maintenance services described in the Terms and Conditions as well as telephone, e-mail and web-based support as defined in this Schedule, for customers who purchase a Maintenance and Support Services Agreement.

2. Response

This section describes when and how emocha will respond to requests for Problem Resolution. A knowledgeable emocha Support Engineer will respond to Customer's request for problem resolution based on the case severity level, as described below:

Case Severity	Support Description
1	Within one (1) hours after logging the issue and calling the hot-line, provided the issue is reported between 9:00AM ET and 6:00PM ET Monday through Friday excluding holidays. Issues reported outside the above hours will be responded to the following business day.
2	Within two (2) working days after logging the issue.
3	Within one (1) week after logging the issue.

3. Problem Resolution. Resolution will consist of a Work Around, an Interim Solution or a Permanent Solution. Problems that require an Interim Solution will be considered resolved when the test used to reproduce the problem demonstrates the corrected behavior. Note: emocha is not responsible for resolving problems arising from errors in equipment or software not provided by emocha or errors made by individuals who are not emocha employees or contractors. Resolution objectives and timeframes are described in the table below:

Case Severity	Work Around	Interim Solution	Permanent Solution
1	Provided within five (5) working days.	Provided within two (2) working weeks if no Work Around is possible.	Included in next release.
2	Provided within two (2) weeks.	Provided within one (1) calendar month.	Included in next release.

Case Severity	Work Around	Interim Solution	Permanent Solution
3	Next release.	N/A	When deemed feasible by emocha.

4. Severity Definitions

Severity Level	Description
1	A Severity 1 problem exists if any emocha Product or major function thereof is (i) inoperative, or (ii) Customer is experiencing terminable/intermittent problems that is having a significant impact on the Customer's ability to use the emocha Product.
2	A Severity 2 problem exists if functionality of the emocha Product is found to be defective or absent, or contains a problem that renders emocha Product difficult, but not impossible to use
3	A Severity 3 problem exists if the Customer experiences a non-critical degradation of performance, or experiences minor problems that need correction in either emocha Product or the relevant emocha Product Documentation.

5. Escalation Within emocha. Once emocha Support Engineer is notified as above, the emocha support organization will be notified and will start verifying the problem. Once the problem is verified by the emocha support organization, the request will be handed over to emocha product development staff if no resolution is immediately available.

The assigned emocha Support Engineer will track all open issues and track as needed internally within emocha and will according to the Resolution Objectives set forth above attempt to affect.

SIGNED AND EXECUTED this ____ day of _____, 2020.

VENDOR
EMOCHA MOBILE HEALTH



Signature

COUNTY OF TARRANT COUNTY
STATE OF TEXAS

B. Glen Whitley
County Judge

APPROVED AS TO FORM:



Criminal District Attorney's Office*

*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.

STATE OF TEXAS §

§

BUSINESS ASSOCIATE AGREEMENT

COUNTY OF TARRANT §

This Business Associate Agreement ("BA Agreement") is between Tarrant County, Texas, ("COUNTY"), and emocha Mobile Health, Inc. ("Business Associate"), for the purpose of complying with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule"), and the Standards for Security of Electronic Protected Health Information (the "Security Rule") promulgated thereunder, and the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV, of the American Recovery and Reinvestment Act of 2009, Pub. L 111-5) (the "HITECH Act"), and the regulations implementing the HITECH Act and other applicable law with regard to the provision of services to Tarrant County Public Health.

Business Associate and COUNTY are engaged in a business relationship whereby Business Associate provides certain services to COUNTY ("Business Relationship").

As part of this Business Relationship, Business Associate performs or assists in performing a function or activity on behalf of COUNTY that involves the use and/or disclosure of Protected Health Information (as defined in 45 CFR § 164.501).

1. Definitions

"Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the party to this agreement shall mean the COUNTY.

"Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR § 160.103, and in reference to the party to this agreement, shall mean emocha Mobile Health, Inc.

Terms used but not otherwise defined in the BA Agreement shall have the same meaning given to such terms in HIPAA, the HITECH Act, or any implementing regulations promulgated thereunder, including but not limited to the Privacy Rule and the Security Rule.

2. Purpose

Business Associate has a legal and ethical responsibility to safeguard the privacy of individuals and protect the confidentiality of their health information. Business Associate may hear things that relate to Protected Health Information, or read or see computer or paper files containing confidential or Protected Health Information, even though Business Associate may not be directly involved in providing services. Business Associate may create documents containing Protected Health Information if directed to do so by COUNTY. Because Business Associate may have contact with Protected Health Information, COUNTY requests that Business Associate agrees to the following as a condition of Business Associate's assignment.

3. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in the Business Relationship or this BA Agreement, Business Associate may:

- 3.1** use and/or disclose Protected Health Information to perform functions, activities, or services for or on behalf of COUNTY, provided that such use and/or disclosure,
 - (a) would not violate the Privacy Rule if done by COUNTY;
 - (b) is reasonably limited to the minimum necessary information to accomplish the intended purpose of the use or disclosure;
 - (c) is in compliance with each applicable requirement of 45 CFR § 164.504(e);
 - (d) is in compliance with the HITECH Act and its implementing regulations;
- 3.2** use or disclose Protected Health Information as required by law;
- 3.3** use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;
- 3.4** use Protected Health Information to provide Data Aggregation services relating to the health care operations of COUNTY.

All other uses and/or disclosures not authorized by the Business Relationship or this BA Agreement are prohibited.

- 3.5** Business Associate agrees to use and disclose confidential information only in the following manner:
 - to perform the work detailed in the Services Agreement

4. Responsibilities of Business Associate

With regard to the use and/or disclosure of Protected Health Information, Business Associate agrees:

- 4.1** not to use and/or disclose Protected Health Information other than as permitted or required by the Business Relationship or this BA Agreement or as Required by Law;
- 4.2** to use appropriate safeguards to prevent the use and/or disclosure of Protected Health Information other than as provided for by the Business Relationship or this BA Agreement;
- 4.3** to protect any Protected Health Information taken off-site from COUNTY from disclosure to others, and to return all Protected Health Information in any form to COUNTY or destroy such Protected Health Information in a manner that renders it unreadable and unusable by anyone else, if COUNTY agrees to the destruction;

- 4.4 to comply with the Security Rule provisions set forth in 45 CFR Part 164, Subpart C, including provisions relating to Security Standards General Rules (45 CFR § 164.306), Administrative Safeguards (45 CFR § 164.308), Physical Safeguards (45 CFR § 164.310), Technical Safeguards (45 CFR § 164.312), Organizational Requirements (45 CFR § 164.314) and Policies and Documentation (45 CFR § 164.316), and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information Business Associate creates, receives, maintains, or transmits on behalf of COUNTY.
- 4.5 to report to COUNTY any Security Incident of which it becomes aware within 2 business days, and to report any potential Breach of Unsecured Protected Health Information within 2 business days of discovery. Any such report shall include the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during any such Security Incident or potential Breach. Any such report shall also include all other information known to Business Associate at the time of the report (such as the type of Protected Health Information involved in the event, the nature of the information, etc.) or promptly thereafter as such other information becomes available;
- 4.6 to notify COUNTY in writing within 2 business days of any use and/or disclosure of Protected Health Information that is not provided for by the Business Relationship or this BA Agreement;
- 4.7 to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BA Agreement, or as the result of any Security Incident or potential Breach, using mitigation actions that are disclosed to COUNTY in advance and authorized by COUNTY, all at the sole cost and expense of Business Associate;
- 4.8 to work cooperatively with COUNTY in connection with COUNTY's investigation of any potential Breach and in connection with any notices COUNTY determines are required as a result, and to refrain from giving any notice itself unless COUNTY expressly agrees in advance and in writing to Business Associate giving notice and to the form, content and method of delivery of such notice, all at the sole cost and expense of Business Associate;
- 4.9 to ensure that all agents and/or subcontractors that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such Protected Health Information;
- 4.10 to provide access (at the request of, and in the time and manner designated by COUNTY) to Protected Health Information in a Designated Record Set to COUNTY or, as directed by COUNTY, to an Individual in order to meet the

requirements under 45 CFR § 164.524 and to notify COUNTY of any requests for access it receives from an individual within 2 business days of receipt;

- 4.11 to make any amendment(s) (at the request of, and in the time and manner designated by COUNTY) to Protected Health Information in a Designated Record Set that COUNTY directs pursuant to 45 CFR § 164.526 and to notify COUNTY of any amendment requests it receives from an individual within 2 business days of receipt;
- 4.12 to document such disclosures of Protected Health Information and information related to such disclosures as would be required for COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528;
- 4.13 to provide to COUNTY, in a time and manner designated by COUNTY, information collected in accordance with 4.12 of this BA Agreement, to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 (and HITECH Act § 13405(c) when such requirements are effective as to COUNTY);
- 4.14 to the extent Business Associate is to carry out an obligation of COUNTY under the Privacy Rule provisions set forth at 45 CFR Part 164, Subpart E (any such obligation to be carried out only when so directed by COUNTY pursuant to the Business Relationship or this BA Agreement), to comply with the requirements of the Privacy Rule that apply to COUNTY in the performance of such obligation;
- 4.15 to make its internal practices, books, and records relating to the use and/or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of COUNTY available to COUNTY;
- 4.16 to cooperate with any investigation by the Secretary of Health and Human Services, or his agent, or an oversight agency, in a time and manner designated by COUNTY or the Secretary, for purposes of determining if COUNTY or Business Associate is in compliance with the Privacy Rule;
- 4.17 if Business Associate is aware of a pattern of activity or practice by COUNTY that constitutes a material breach or violation of COUNTY's obligations under this BA Agreement,
 - (a) to give written notice of such pattern or practice to COUNTY within 2 business days of its discovery and to take reasonable steps to cure the breach or end the violation,
 - (b) if Business Associate determines that such steps appear to have been unsuccessful, to give COUNTY written notice of such determination and to report the problem to the Secretary and provide COUNTY with a copy of any such report at least 2 business days in advance of its submission to the Secretary.

5. Responsibilities of COUNTY with Respect to Protected Health Information

If deemed applicable by COUNTY, COUNTY shall:

- 5.1** provide Business Associate with the notice of privacy practices that COUNTY produces in accordance with 45 CFR §164.520 as well as any changes to such notice;
- 5.2** provide Business Associate with any changes in, or revocation of, permission by Individual to the use and/or disclosure of Protected Health Information, if such changes affect Business Associate's permitted or required uses and/or disclosures;
- 5.3** notify Business Associate of any restriction to the use and/or disclosure of Protected Health Information that COUNTY has agreed to in accordance with 45 CFR § 164.522.

6. Sanctions

Business Associate understands that violation of this agreement may result in sanctions, including, but not limited to, termination of the ability to perform services on behalf of COUNTY.

7. Disclosures Required by Law

Nothing in this agreement prevents Business Associate from making a disclosure of Protected Health Information, if required by law to make such a disclosure.

8. Term and Termination

8.1 Term. This agreement will begin on the date that the Services Agreement is approved at Commissioner's Court, and will terminate when all of the Protected Health Information provided by COUNTY to Business Associate or created or received by Business Associate on behalf of COUNTY is destroyed or returned to COUNTY, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such Protected Health Information, in accordance with 8.3 below, or at termination of the Business Relationship between COUNTY and Business Associate.

8.2 Termination for Cause. COUNTY may immediately terminate the Business Relationship and/or this BA Agreement if COUNTY determines that Business Associate has breached a material term of this BA Agreement.

8.3 Effect of Termination. Upon termination of the Business Relationship and/or this BA Agreement, for any reason, Business Associate agrees to return or destroy all Protected Health Information received from COUNTY, or created or received by Business Associate on behalf of COUNTY. If permitted by COUNTY, Protected Health Information shall be destroyed in a manner that renders it unreadable and unusable by anyone else. Discharge or termination, whether voluntary or not, shall not affect Business Associate's ongoing obligation to safeguard the confidentiality of Protected Health Information and to return or destroy any such information in Business Associate's possession.

This Section 8.3 shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide in writing to COUNTY notification of the conditions that make return or destruction infeasible. Upon mutual written agreement of the Parties, Business Associate shall extend the protections of this BA Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information for as long as Business Associate maintains such Protected Health Information.

9. Miscellaneous

9.1 INDEMNIFICATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE UNDERLYING AGREEMENT(S), AT BUSINESS ASSOCIATE'S EXPENSE, BUSINESS ASSOCIATE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COVERED ENTITY AND COVERED ENTITY'S EMPLOYEES (THE "INDEMNITEES") AGAINST ALL DAMAGES, FINES, PENALTIES, COSTS OR EXPENSES (INCLUDING REASONABLE FEES OF ATTORNEYS AND EXPERTS) AND ALL LIABILITY TO THIRD PARTIES ARISING FROM ANY MATERIAL BREACH OF THIS AGREEMENT BY BUSINESS ASSOCIATE OR ITS EMPLOYEES, DIRECTORS, OFFICERS, SUBCONTRACTORS, AGENTS OR OTHER MEMBERS OF BUSINESS ASSOCIATE'S WORKFORCE. BUSINESS ASSOCIATE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

COUNTY MAY EMPLOY ATTORNEYS SELECTED BY IT TO DEFEND ANY SUCH ACTION, THE COSTS AND EXPENSES OF WHICH WILL REMAIN THE RESPONSIBILITY OF BUSINESS ASSOCIATE. COUNTY WILL PROVIDE BUSINESS ASSOCIATE WITH TIMELY NOTICE OF THE EXISTENCE OF SUCH PROCEEDINGS AND SUCH INFORMATION, DOCUMENTS AND OTHER COOPERATION AS REASONABLY NECESSARY TO ASSIST BUSINESS ASSOCIATE IN ESTABLISHING A DEFENSE TO SUCH ACTION.

THESE INDEMNITIES SURVIVE TERMINATION OF THIS BA AGREEMENT, AND COUNTY RESERVES THE RIGHT, AT ITS OPTION AND EXPENSE, TO PARTICIPATE IN THE DEFENSE OF ANY SUIT OR PROCEEDING THROUGH COUNSEL OF ITS OWN CHOOSING.

9.2 Survival. The respective rights and obligations of Business Associate survive the termination of the Business Relationship and/or this BA Agreement.

9.3 Notices. Any notices pertaining to this BA Agreement must be given in writing and will be deemed duly given when personally delivered to a Party or a Party's authorized representative, as listed below, or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Business Associate:
emocha Mobile Health, Inc.
916 North Charles Street, Suite 200
Baltimore, MD 21201

If to Covered Entity:
Tarrant County Public Health
1101 South Main Street, Suite 2500
Fort Worth, TX 76104

Attn:

Attn: Privacy Officer

with a copy to info@emocha.com

with a copy to klpearce@tarrantcounty.com

9.4 Amendments. This BA Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow COUNTY to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, the HITECH Act and its implementing regulations.

9.5 Interpretation. Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits COUNTY to comply with the Privacy Rule.

9.6 Third Parties. Nothing in this BA Agreement is intended, nor shall be deemed, to confer any benefits on any third party.

9.7 Assignments. Neither Party may assign its rights or obligations under this BA Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld.

9.8 Independent Contractor. This BA Agreement does not create any relationship between the Parties other than that of independent parties contracting with each other for the sole purpose of effecting the provisions of this BA Agreement and any other agreements between them evidencing their Business Relationship.

9.9 Governing Law and Venue. This BA Agreement will be interpreted under the laws of the State of Texas. The venue for any lawsuit arising out of this BA Agreement will be the Fort Worth Division of the Northern District of Texas, if the lawsuit arises in Federal Court, or Tarrant County, Texas, if the matter arises in State Court.

9.10 Third Party Interpretation. This agreement shall not be interpreted to inure to the benefit of a third party not a party to this contract. This agreement may not be interpreted to waive any statutory or common law defense, immunity, including governmental and sovereign immunity, or any limitation of liability, responsibility, or damage to any Party to this contract, Party's agent, or Party's employee, otherwise provided by law.

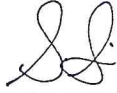
9.11 Form 1295 Compliance. emocha Mobile Health, Inc. acknowledges and agrees that it has fully, accurately, and completely disclosed all interested parties in the attached Form 1295, and has acknowledged the completeness of this disclosure by filing the Form 1295, attached as Exhibit A, with the Texas Ethics Commission online as required by law.

9.12 Required Attachments. This BA Agreement will be considered incomplete without the submission of the completed Form 1295 as referenced in section 9.10. COUNTY shall be responsible to include Form 1295, attached as Exhibit A, to this BA Agreement prior to Business Associate review and execution. For the purposes of this BA Agreement, the following statement applies in regard to Form 1295:

- ☒ Exhibit A is a required component of this BA Agreement. Form 1295 is attached and must be completed prior to approval of this BA Agreement by COUNTY.
- ☐ The Parties involved in this BA Agreement are governmental entities and are not required by the Texas Ethics Commission to complete their Form 1295.

SIGNED AND EXECUTED this _____ day of _____, 2020.

VENDOR
EMOCHA MOBILE HEALTH



Signature

COUNTY OF TARRANT COUNTY
STATE OF TEXAS

B. Glen Whitley
County Judge



TAKINGS IMPACT ASSESSMENT CHECKLIST

Complete this form for any County action that involves the adoption of a regulation, policy, guideline, court resolution or order.

Project/Regulation Name: RFP No. 2020-181 – Video Directly Observed Therapy (VDOT)

County Department: PURCHASING

Contact Person: JACK BEACHAM, C.P.M., A.P.P.

Phone Number for Contact Person: (817) 884-1133

Type of TIA Performed: SHORT TIA or FULL TIA. Circle one after answering the questions in Sections II and III below.

I. Stated Purpose

Attach to this checklist an explanation of the purpose of the regulation, policy, guideline, court resolution or order.

Note: The remainder of this Takings Impact Assessment Checklist should be completed in consultation with the Criminal District Attorney's Office.

II. Potential Effect on Private Real Property

1. Does the County action require a physical invasion, occupation or dedication of real property?

Yes _____ No ✓

2. Does the County action limit or restrict a real property right, even partially or temporarily?

Yes _____ No ✓

If you answered yes to either question, go to Section III. If you answered no to both, STOP HERE and circle SHORT TIA at the top of the form.
