

Memorandum of Understanding

This is a Memorandum of Understanding (“MOU”) dated as of _____, 20____ between [____], a [____] nonprofit corporation (“Client”), and _____, a _____ (“Partner”).

Background

A. Client uses communication technologies to improve the health of [____]. It has developed a [____] software toolkit (“Software”) that [____]. The Software runs on many types of devices, including feature phones, smartphones, tablets, and desktop computers. Health workers and families can use the Software to [____], among other things.

B. Partner’s mission is described in the Project Plan (“Project Plan”) attached as **Exhibit A**. Partner desires to deploy the Software and recruit users, which may include [____].

C. Client and Partner desire to work together on the basis set out in this MOU.

Client and Partner agree as follows:

1. Project Implementation

1.1. Consulting Services

Client will perform assessment, design, and evaluation services for Partner as set out in the Project Plan. Client may perform the services through its staff or through use of third-party contractors, who will work with Partner directly.

1.2. End User Identification

Partner will identify and recruit users of the Software (“End Users”) as set out in the Project Plan.

1.3. Access to Software

Client will give Partner access to the Software on the terms and conditions contained in this MOU. Partner understands that Client may update the Software at any time in its sole discretion. Client reserves the right to suspend or otherwise limit access to the Software to any End User and will promptly notify Partner if it takes such action.

1.4. Training

Client will provide training and training materials as described in the Project Plan. Client will work alongside End Users as needed to deploy the Software, and will conduct trainings in the form it determines in its sole discretion and at reasonable frequency and times.

1.5. Software Support

Client will provide technical support for the Software, which may be provided on-site or remotely. Partner will promptly notify Client of any problems reported by End Users accessing or using the Software. Client will use reasonable efforts to respond to technical support requests and restore and maintain functionality of the Software.

1.6. Fees and Expenses

Partner will pay to Client fees in the amounts and on the dates specified in the Project Plan as compensation for the services, training, and support described in this MOU. Partner will also reimburse Client for expenses as set out in the Project Plan.

1.7. Scope Changes

If either Client or Partner believes this MOU or the Project Plan should be adjusted in any respect (for example, by making certain customizations to the Software), it will advise the other

of the proposed changes. Client and Partner will discuss the proposed adjustment and, if they agree on an adjustment, confirm and document the adjustment in the written Change Order (“Change Order”) provided as **Exhibit B**.

2. Health Data

2.1. Privacy of Health Data

Partner and Client may share data about patients and [_____] (“Health Data”) only with each other or End Users. Client and Partner will comply with all applicable laws and regulations regarding Health Data collection, security, use, disclosure, and privacy. Partner and Client will adopt appropriate internal policies and procedures to maintain confidentiality of Health Data within their respective organizations.

2.2. Data Security

Client will use reasonable efforts to secure Health Data stored on its servers by limiting physical access, encrypting Health Data, monitoring access to servers through the Software, performing regular backups, and other means.

3. Evaluation, Work Product, and Communications

3.1. Evaluation

Each of Client and Partner may collect, analyze, and disseminate data to evaluate effectiveness, use, and impact of the Software on health outcomes in the community, comply with external reporting obligations, and carry out its respective communication activities. Each will cooperate with the other in these efforts by providing the other with such information as the other may reasonably request.

3.2. Work Product

Client, in providing services and training under this MOU, may furnish Partner with reports, plans, or other written materials specifically prepared for Partner (“Work Product”). Work Product does not include the Software. Subject to the terms of this MOU, Partner will own all such tangible Work Product. Partner acknowledges that Client owns and retains all right, title, and interest in and to any and all proprietary know-how and methodologies Client uses in creating the Work Product or in otherwise providing services, training, and support.

3.3. Confidentiality of Non-Health Data

In working together, Client and Partner may share non-public information (“Confidential Information”) with one another, including information about financial, funding, and other matters. Client and Partner will each use the other party’s Confidential Information only in connection with activities under this MOU and will keep this information confidential. Confidential Information does not include information that is generally available to the public, already known by the receiving party before entering into this MOU, or independently developed. All Confidential Information furnished under this MOU is and will remain the property of the furnishing party.

3.4. Recordkeeping

Client and Partner will each maintain records relating to its responsibilities in a manner such that the other can evaluate compliance with this MOU, and will make those records available for review by the other on reasonable notice during the term of this MOU and for a period of three (3) years after its termination. Client and Partner will each reasonably cooperate with the other in providing information relating to its activities under this MOU in connection with any financial, tax audit, or similar matter in which the other is engaged.

3.5. Funder Requirements

Client and Partner may each enter into grant or other funding agreements that require Client or Partner to share data with or license materials to the funder. Client and Partner will each advise the other about any such requirements, and, to the extent necessary to comply with such

requirements, and subject to Sections 2.1 and 3.3, grants to the other royalty-free licenses to provide data and materials to such funders.

4. Relationship

4.1. Cooperation

Partner acknowledges that the effectiveness of an engagement depends in large part on the information it provides and the actions it undertakes. To that end, Partner will cooperate with Client in the performance of the services and training contemplated by this MOU, including, without limitation, providing Client with timely access to information and personnel and ensuring the accuracy and completeness of the information Partner provides to Client.

4.2. Principal Contacts

Client and Partner will each appoint one individual to act as the principal contact person and to coordinate activities. The initial appointees are identified in the Project Plan. Client and Partner may appoint additional contacts as needed, such as technology or training leads.

4.3. External Communication

Client and Partner may identify the other party by name or logo in internal and external communications, including, without limitation, on websites and in outreach materials. Subject to Section 2.1 and 3.3, Client and Partner may issue press releases and other public statements relating to the relationship between Partner and Client, including, without limitation, reporting results or outcomes in accordance with Section 3.1.

4.4. Independence

Client and Partner are and will remain independent contracting parties. The arrangements contemplated by this MOU do not create a partnership, joint venture, employment, fiduciary, or similar relationship for any purpose. Neither Client nor Partner has the power or authority to bind or obligate the other to a third party or commitment in any manner. Any use of the term “partner” or comparable term in any communications is solely for convenience.

5. Warranties, Indemnification, and Liability

5.1. No Warranties

Client makes no representation or warranty of any kind, express or implied, relating to the Software, including, without limitation, implied warranties of merchantability, fitness for a particular purpose, or non-infringement of intellectual property rights. Client also makes no representation or warranty of any kind, express or implied, that the Software will operate without interruption, meet any performance or reliability standards, or be error-free.

5.2. Indemnification

Client and Partner will each defend, indemnify, and hold the other and the other's directors, officers, employees, agents, and assigns harmless against all third-party claims, liabilities, losses, damages, and expenses, including reasonable attorney's fees and expenses, resulting from: (a) its own material breach of this MOU; or (b) its improper disclosure of Health Data. Neither Client nor Partner will have any obligation to indemnify the other to the extent the liability is caused by the other party's own gross negligence or willful misconduct.

5.3. Limitation of Liability

Under no circumstances, and under no legal theory, whether in tort, contract, or otherwise, will Client or its directors, officers, employees or agents be liable for any special, indirect, incidental, consequential, punitive, or exemplary damages (including, without limitation, loss of goodwill or cost of cover) arising out of or relating to this MOU, even if Client has been advised of the possibility of such damages.

6. Termination

6.1. Term

This MOU will terminate upon the completion date set out in the Project Plan unless terminated earlier under any of the other provisions of this Section 6.

6.2. Mutual Agreement

This MOU may be terminated by a writing signed by both Client and Partner that states their intent to terminate this MOU and the date upon which such termination will take effect.

6.3. Termination for Breach

If either party materially breaches any of its obligations under this MOU, the non-breaching party may provide the breaching party with written notice of the breach. If the breaching party fails to cure the breach within fifteen (15) days after receipt of such notice, the non-breaching party may terminate this MOU upon delivery to the breaching party of a written notice to that effect, with the termination effective upon receipt of such notice by the breaching party. The non-breaching party may, in its reasonable discretion, determine whether the breach has been cured.

6.4. Effect of Termination

Upon the early termination of this MOU, Partner and Client will cooperate and use reasonable efforts to minimize interruption and any adverse impacts of the termination. Client will be entitled to receive fees earned and reimbursement of expenses incurred up until the effective date of termination. Sections 2.1, 3.3, 3.4, 3.5, 5, 6.4, and 7 will survive termination of this MOU. Partner and End Users may continue to use the Software following expiration or termination of this MOU.

7. General Provisions

7.1. Entire Agreement

This MOU, together with the Project Plan and any other exhibits, expresses Client and Partners' final, complete, and exclusive agreement, and supersedes all prior or contemporaneous communications between Client and Partner, whether oral or written, relating to its subject matter. If there are any inconsistencies between the Project Plan or other documents or communications and this MOU, the MOU will control.

7.2. Amendment

This MOU may be amended only as stated in a written document signed by both Client and Partner that states that it is an amendment to this MOU.

7.3. Severability

If any provision of this MOU is held illegal, invalid, or unenforceable, all other provisions of this MOU will nevertheless be effective, and the illegal, invalid, or unenforceable provision will be considered modified such that it is valid to the maximum extent permitted by law.

7.4. Waiver

Any waiver of the provisions of this MOU must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this MOU will not be considered a waiver of any later breach or of the right to enforce any provision of this MOU.

7.5. Assignment

Partner may not assign Partner's rights or delegate Partner's duties under this MOU to anyone else without the prior written consent of Client.

7.6. No Third-Party Beneficiaries

Except as provided in Sections 5.2 and 5.3, this MOU is for the exclusive benefit of Client and Partner and not for the benefit of any third party including, without limitation, any End User, employee, affiliate, or vendor of Partner or Client.

7.7. Governing Law

This MOU will be governed by California law.

7.8. Governing Language

The English language version of this document is the official, legally-binding version. Should there be any ambiguity or conflict between the English and any translated version of this document, the English language version will control.

7.9. Force Majeure

Neither party will be required to perform or be held liable for failure to perform if nonperformance is caused by changes in law, government restrictions, labor difficulties, economic climate, political instability, wars, hostilities, civil tumult, strike, pandemic, epidemic, natural disaster, acts of God, or any other such cause beyond control of the party unable to perform. The non-performing party will notify the other of such problems and will use reasonable efforts to address the problem and carry out its obligation.

7.10. Counterparts

This MOU may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

* * * * *

Client and Partner signed this MOU as of the date stated in its first paragraph.

[Client full name]

[Partner full name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A Project Plan

Partner

Mission	Partner is a [nonprofit organization], located in [____], whose mission is to [____].
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Partner contact information

Partner address	
Partner contact person	Name: Title: E-mail: Telephone:

Client contact information

Client address	<i>[insert local office address]</i>
Client contact person	Name: Title: E-mail: Telephone:

Duration

Expected completion date	
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End Users

Description	
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Client services

Description	Assessment <ul style="list-style-type: none">• Identify, assess and prioritize opportunities for use of Software in local health system• Define challenges for Software, including hardware compatibility Design <ul style="list-style-type: none">• Assess how to incorporate Software in Partner's existing information systems• Choose and configure particular Software tools for End Users• Design workflows for End Users Evaluate <ul style="list-style-type: none">• Develop study protocols for Partner's staff• Train Partner's staff on study protocols
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	<i>[tailor the list above and include additional professional services, as appropriate]</i>
Expected number of hours (if applicable)	

Training

Description	<i>[describe training (e.g. training trainers)]</i>
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Fees and Expenses

Fees	<p>Partner will pay Client a total fee of \$__ (US). This fee will be paid as follows:</p> <p style="padding-left: 40px;">\$__ paid upon signing the MOU \$__ on <i>[date]</i> \$__ on <i>[date]</i></p> <p><i>[modify as appropriate]</i></p>
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Expenses	<p>Partner will reimburse Client for reasonable out-of-pocket travel expenses (airfare, ground transportation, mileage, hotel, meals, etc.).</p> <p>Client will send to Partner an invoice with original receipts (or reasonable documentation) for these expenses. Partner will reimburse Client for the expenses within 30 days after receipt of the invoice.</p> <p><i>[modify as appropriate]</i></p>
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Other Terms

[Topic]	
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Exhibit B
Change Order

Original MOU date	
Reason for change in services	
Modified services, training, or support (if applicable)	
Modified timeframe (if applicable)	
Modified compensation terms (if applicable)	

This document is a Change Order, dated _____, 20__, between Partner and Client and is an amendment to the MOU between the parties in accordance with Section 7.2 of the MOU.

Agreed and confirmed as of the date stated above in this Change Order:

[Client]

[Partner]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____