

BROADBAND ADOPTION MODEL eHEALTH COMMUNITIES TELEHEALTH EQUIPMENT LOAN AGREEMENT

This Model eHealth Equipment Loan Agreement (“**Agreement**”) is entered into by and between (i) the Regents of the University of California (“**University**”), a constitutional corporation under Article IX of the Constitution of the State of California acting on behalf of its University of California Davis Health System (“**UCDHS**”) and (ii) County of El Dorado, (“**Provider**”).

RECITALS

- A. WHEREAS, the University is a public, non-profit educational institution, having as its missions teaching, research, and public service and patient care;
- B. WHEREAS, the University has received a grant of federal funds through Grant #06-43-B10584 (“**Grant**”) from the National Telecommunications and Information Administration (“**NTIA**”) in support of the UCDHS program entitled “California Telehealth Network eHealth Broadband Adoption” (“**Program**”), as described in Exhibit A;
- C. WHEREAS, UCDHS wishes to utilize a portion of the Grant funding to provide telehealth equipment and on-line training to certain providers in selected Model eHealth Communities;
- D. WHEREAS, the Provider, as a selected Model eHealth Community, wishes to participate in the Program and engage UCDHS to (i) assist Provider in securing the telehealth equipment requested by Provider; and (ii) provide training to Provider’s selected staff on the use of broadband for eHealth through access to an online curriculum.
- E. NOW, THEREFORE, the University and the Provider (collectively the “**Parties**”) agree as follows:

AGREEMENT

Section 1. UCDHS — ACKNOWLEDGEMENTS AND RESPONSIBILITIES

1.1 Equipment

(a) **General.** UCDHS shall, at its own expense, use reasonable efforts to (i) furnish Provider, through a contracted vendor (“**Vendor**”), the telehealth equipment listed in Exhibit B (“**Equipment**”), (ii) furnish Provider’s personnel with the name of the Vendor, should Provider need to obtain any training regarding use of Equipment, (iii) purchase and maintain a maintenance agreement through the end of the Grant (“**Maintenance Agreement**”) for select Equipment. The Equipment shall be and remain, at all times, the property of UCDHS, and upon the termination of this Agreement for any reason, Provider shall have the obligation to promptly arrange to return the Equipment to UCDHS at Provider’s cost.

(b) **DISCLAIMER.** UCDHS DOES NOT MAKE AND EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE EQUIPMENT AND PROVIDER’S COMMUNICATIONS LINKS, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UCDHS ACCEPTS NO LIABILITY FOR ANY VENDOR ACTIONS OR OMISSIONS.

1.2 Training. UCDHS shall provide access to its on-line eHealth Broadband Adoption training for Provider's selected staff.

Section 2. PROVIDER — ACKNOWLEDGMENTS AND RESPONSIBILITIES

2.1 Equipment

(a) Provider shall, at its own expense, supply any additional equipment necessary to effectively access its communication link (“**Additional Equipment**”). Provider shall, at its own expense, provide necessary broadband connectivity and incur any other expenses that are necessary for Equipment to function. Provider is responsible for all facility related changes including but not limited to drilling holes for wall mount, pulling power and telecommunication line(s) to designated locations where Provider will install the Equipment. This Agreement is separate from any agreement that Provider may have with the California Telehealth Network for broadband connectivity.

(b) Provider shall maintain a designated technical coordinator (“**Technical Coordinator**”) at Provider's facilities to serve as technical coordinator with UCDHS to maintain the Equipment.

(c) Provider shall be responsible for the full cost of repairing or replacing any and all Equipment that is damaged, destroyed, lost or stolen (collectively, “**Loss**”) from the time Provider assumes custody of the Equipment until the Agreement is terminated or asset is transferred to Provider. Provider shall obtain and maintain in full force and effect, a policy of insurance that provides coverage for any such Loss. Such insurance shall be issued by an insurance company or companies reasonably approved by UCDHS, shall name UCDHS and its directors, officers, agents and employees as additional insured entities with respect to the Equipment. Such policy will provide UCDHS with thirty (30) days' advance written notice of cancellation. The insurance provided by Provider in accordance with this paragraph shall be primary to any coverage available to UCDHS for any such Loss.

(d) Provider shall be solely responsible for conducting any required testing, evaluation, inspection or calibration of the Equipment provided under this Agreement. In addition, Provider shall be responsible for the routine care and maintenance of the Equipment under the guidance of the UCDHS Technician. UCDHS technicians will generally be available via telephone during regular business hours.

(e) Provider must obtain any appropriate facility approvals prior to the Equipment delivery and set up. Provider acknowledges that the Equipment will be delivered and assembled (if assembly is required) by the Vendor.

(f) Use of the Equipment is authorized only for the specific activities and under the conditions described in Exhibit C. Any change to Exhibit C must be by written amendment, signed by both Parties to this Agreement.

(g) Upon termination of this Agreement for any reason, all Equipment provided by UCDHS shall be returned to UCDHS, specifically to the Technical UCDHS contact listed in the Notices section below, by Provider at Provider's cost within 30 days of such termination in a fully functional state acceptable to UCDHS. Provider shall be responsible for making, at its sole expense, such arrangements for transportation of the Equipment. Provider warrants that transportation of Equipment shall be provided by licensed haulers/contractors in compliance with all applicable State, Federal and local law.

(h) In accordance with Exhibit D, Provider acknowledges that upon expiration of this Agreement, full ownership and responsibility of the Equipment shall transfer from UCDHS to Provider. After such transfer, UCDHS shall have no further liability for the Equipment, including, but not limited to, designated use, insurance, maintenance, support or training.

Section 3. TERM AND TERMINATION

3.1 Term. This Agreement shall commence on the last date signed below and shall remain in effect through June 30, 2013, unless either party provides the other with written notice of such party's intention to terminate the Agreement in accordance with terms of this Agreement.

3.2 Termination.

(a) Termination without cause. Either party may terminate this Agreement without cause upon sixty (60) days' prior written notice to the other party.

(b) Termination for cause. For cause termination shall include the following:

(1) Breach. Either party may terminate this Agreement on thirty (30) days' prior written notice to the other party in the event of a material breach by the other party which has not been cured within the thirty (30) day period. Termination shall be effective upon written notice issued after expiration of the thirty (30) day cure period.

(2) Insolvency. Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party after the occurrence of any of the following events:

(a) the other party becomes insolvent (for purposes of this Agreement, "insolvent" shall mean that the party is generally not paying its debts as such debts become due unless such debts are the subject of a bona fide dispute); or

(b) a receiver is appointed for the assets of the other party; or

(c) an assignment is made by the other party for the benefit of its creditors; or

(d) any relief is taken or suffered by the other party as debtor under any bankruptcy or insolvency act and such proceeding has not been dismissed in sixty (60) days.

(3) Illegality. UCDHS shall have the right to terminate this Agreement upon notice to Provider in the event that (1) Provider — or any person with an ownership interest or in a management position with Provider — is excluded from participation in federal or state health care programs, debarred from receipt of federal or state funds, or convicted of a crime; or (2) any legislation, regulation or rule is duly passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or UCDHS receives notice of an actual or threatened decision, finding, or action by any governmental or private agency, court or other third party (whether or not either party to this Agreement is a party to such action), and such legislation, regulation, rule, decisions, finding or action will result in any of the following consequences because of this Agreement or any transactions contemplated herein: (a) materially and adversely affect UCDHS's licensure, tax-exempt status or any accreditation or certification; (b) materially and adversely affect a medical staff member's licensure or privileges; (c) materially and adversely affect UCDHS's ability to present a bill or claim or to receive payment or reimbursement with respect to any category of services or patients from any federal, state, local governmental or non-governmental payor; or (d) subject UCDHS or any medical staff member to a risk of prosecution, civil monetary penalty or Medicare or Medi-Cal program exclusion.

(4) Equipment Use. If Provider does not use the Equipment or uses it in a way for a purpose not authorized by Exhibit C, UCDHS may, at its sole discretion, terminate this Agreement with 10 days notice. If the Agreement is terminated under this provision, Provider must cease any further use

of the equipment upon notice of termination, except as necessary for safety reasons. Equipment shall be returned to UCDHS in accordance with Section 2.1, (g).

(5) Force Majeure. Either party may terminate this Agreement in accordance with the provisions of Section 4.9.

Section 4. GENERAL PROVISIONS

4.1 Use of Name. Provider shall not refer to this Agreement or UCDHS's or the University of California's participation in this Agreement or use UCDHS's or the University of California's name in any advertising or promotional materials or statements to the public without the prior written approval of UCDHS.

4.2 Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed wholly within that state. Venue shall be exclusively in the judicial district encompassing Sacramento, California.

4.3 Partial Invalidity. If any provision of this Agreement is found to be invalid or unenforceable by any court or other lawful forum, such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of this Agreement, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement.

4.4 Attorneys' Fees. If any action at law or equity is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which it may be entitled.

4.5 Notices. All notices which are required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficient in all respects if delivered personally, by electronic facsimile (with a confirmation by certified mail, return receipt requested, placed in the mail no later than the following day), by express courier (such as Federal Express) or by certified mail, return receipt requested, postage prepaid, addressed to a party as indicated below:

UCDHS

- For Contract Matters

Annie Wong
Manager, Health System Contracts
Health System Contracts
Sherman Building, Suite 2300
2315 Stockton Blvd.
Sacramento, CA 95817
916-734-3820

- For Technical Matters

George Wu (Technical Manager)
Center for Health and Technology
2300 Stockton Blvd., Suite 3900
Sacramento, CA 95817
916-734-5675

COUNTY OF EL DORADO

- For Contract Matters

Name: Daniel Nielson, MPA
Title: Director
Address: 3057 Briw Road, Suite A
Placerville, CA 95667
Phone: 530-621-6362

- For Technical Matters

Name: Tim Sampson
Title: Sr. Info Tech Dept Coordinator
Address: 931 Spring Street
Placerville, CA 95667
Phone: 530-621-613

Notice shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered or transmitted by electronic facsimile and, as to communications made by United States mail, on the third day after mailing (so long as the mailing was made in a metropolitan area in the State of California). The above addresses may be changed by giving notice of such change in the manner provided above for giving notice.

4.6 Assignability. No party to this Agreement may assign the Agreement, assign rights under the Agreement, or delegate duties under the Agreement without the prior written consent of the other party hereto. Except as specifically provided in this Agreement, any attempted assignment or delegation of a party's rights, claims, privileges, duties or obligations hereunder shall be null and void.

4.7 Construction and Agreement. Ambiguities, if any, in this Agreement shall be reasonably construed in accordance with all relevant circumstances, including, without limitation, prevailing practices in the industry of the parties in the place where the contract is to be performed and shall not be construed against either party, irrespective of which party may be deemed to have authored the ambiguous provision.

4.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

4.9 Force Majeure. Neither party hereto shall be liable for any delay or failure in the performance of any obligation under the Agreement or for any loss or damage (including indirect or consequential damage) to the extent that such nonperformance, delay, loss or damage results from any contingency which is beyond the control of such party, provided such contingency is not caused by the fault or negligence of such party. A contingency for the purposes of this Agreement shall be third-party communication network outages (such as satellite malfunctions or failures) beyond the control of either party, Acts of God, fire, explosions, storms, wars, hostilities, blockades, public disorders, quarantine restrictions, embargoes, strikes or other labor disturbances, and compliance with any law, order or control of, or insistence by any governmental or military authority. The party claiming to be affected by such contingency shall give immediate notice to the other party, giving full particulars thereof. The existence of such contingencies shall justify the suspension of performance hereunder by either party; provided, however, that if such period of delay shall exceed sixty (60) days from the date of such notice, either party shall have the right to terminate this Agreement.

4.10 Insurance. Each Party warrants that it shall maintain during the term of this Agreement a policy of insurance or self-insurance with minimum coverage as follows:

(a) General Liability: Comprehensive or Commercial Form (Minimum Limits)

1)	Each Occurrence	\$1,000,000
2)	Products, Completed Operations Aggregate	\$2,000,000
3)	Personal and Advertising Injury	\$1,000,000
4)	General Aggregate (BI, PD)*	\$2,000,000

(not applicable to comprehensive form)

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

Prior to the commencement of the term of this Agreement, Provider shall cause to be issued and UCDHS shall have received a certificate of insurance evidencing Provider's insurance coverage in accordance with this Agreement, and an additional insured endorsement naming UCDHS as an additional insured.

(b) Workers' Compensation as required under California State Law.

4.11 Indemnification, Limitation of Liability.

(a) UCDHS shall defend, indemnify and hold Provider, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injuries or damages are caused by or result from the negligent or intentional acts or omissions of UCDHS, its officers, agents or employees.

(b) Provider shall defend, indemnify and hold UCDHS, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injuries or damages are caused by or result from the negligent or intentional acts or omissions of Provider, its officers, agents or employees.

(c) **Limitation of Liability.** UCDHS shall have no liability for consequential, exemplary, indirect, special, incidental or punitive damages, including loss of profits, revenues, data or use, incurred by Provider or any third party, whether based on contract, tort or any other legal theory, arising out of selection, installation, maintenance, failure to maintain, use, misuse, or malfunction of the Equipment or the communications links utilized by Provider.

4.12 Continuing Cooperation. Throughout the term of this Agreement, the parties shall cooperate in good faith and agree to perform any and all tasks which are reasonably necessary for the performance of this Agreement.

4.13 Exhibits and Amendments. All Exhibits are incorporated into this Agreement as part of the Agreement. This Agreement and its Exhibits may only be amended in writing and upon the approval of authorized officers of both Parties.

4.14 Integration. This Agreement sets forth the entire understanding between the parties relating to the transactions it contemplates, and supersedes all prior understandings relating to such transactions, whether oral or written. Any prior oral representations or modifications concerning this Agreement shall be of no force and effect, unless attached to this Agreement as a written amendment that is executed or initialed by the parties.

4.15 Waiver. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated.

4.16 Third Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and the respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

4.17 Authorized Representatives. Each of the persons signing below represents and warrants to the other party that he/she is duly authorized to sign this Agreement and that upon his/her execution of this Agreement, this Agreement is a binding obligation of the party on whose behalf the person executes this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above.

The Regents of the University of California

Signed: _____
Annie Wong, Director
Health System Contracts

Date: _____

County of El Dorado

“Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Sharon Elliott, Assistant Director of Public Health, or successor”

Signed: _____
Raymond J. Nutting, Chair
Board of Supervisors

Date: _____

EXHIBIT A

The Model eHealth Communities Project is one element of a broader initiative, the Broadband Adoption eHealth Initiative. The vision of this initiative is to further advances in telecommunications and information technologies in order to redistribute health care knowledge and expertise to where and when it is needed. These technologies can help facilitate a new, more efficient model of care across the economic and geographic spectrum. Three complementary components of this grant collectively support this goal.

The first component of the initiative is support for the California Telehealth Network, a low cost state-of-the-art statewide managed, medical grade broadband network which will allow healthcare providers to effectively participate in a technology-enabled healthcare system. The establishment of the Model eHealth Communities (“MC”) involves strategically placing eHealth equipment in a number of communities in rural and other medically underserved areas of California. The overarching goal for the MCs is to demonstrate a community-based transition model to technology-enabled health delivery. Finally, successful broadband adoption requires implementation of broadband-dependent applications that add value to healthcare organizations, businesses and consumers. The eHealth Broadband Adoption Training program is intended to provide tools to raise the level of understanding of health-related broadband applications for healthcare providers, community college instructors, public safety/county health officers, local librarians and the general public.

Exhibit B
Model eHealth Communities Equipment
Models and Serial Numbers

Organization: El Dorado County

Cart: Model: Master Serial No:	
Codec: Polycom Model: HDX 8000 Serial No:	Monitor: 26" Monitor Model: Serial No:
Main Camera: Polycom Model: EagleEye HD Serial No -	Speaker: Serial No:
Microphone: Polycom Part No: Serial No:	Battery: Model No: Serial No:
Computer: Model No: Service Tag No:	Linksys: Wireless Bridge Model No: Serial No: MAC Address:
Keyboard: Model No: Serial No:	10/100/1000 Switch Model No: Serial No:
Mouse: Serial No:	
Cart: Model: Master Serial No:	
Codec: Polycom Model: HDX 8000 Serial No:	Monitor: 26" Monitor Model: Serial No:
Main Camera: Polycom Model: EagleEye HD Serial No -	Speaker: Serial No:
Microphone: Polycom Part No: Serial No:	Battery: Model No: Serial No:
Computer: Model No: Service Tag No:	Linksys: Wireless Bridge Model No: Serial No: MAC Address:
Keyboard: Model No: Serial No:	10/100/1000 Switch Model No: Serial No:
Mouse: Serial No:	
Cart: Mobile Media Cart	

Model: Master Serial No:	
Codec: Polycom Model: HDX 6000 Serial No:	Monitor: 55" Monitor Model: Serial No:
Main Camera: Polycom Model: EagleEye HD Serial No:	Microphone: Polycom Part No: Serial No:
Cart: Mobile Media Cart Model: Master Serial No:	
Codec: Polycom Model: HDX 6000 Serial No:	Monitor: 55" Monitor Model: Serial No:
Main Camera: Polycom Model: EagleEye HD Serial No:	Microphone: Polycom Part No: Serial No:
Polycom VBP 5300 E25 Serial No:	

EXHIBIT C

AUTHORIZED PURPOSE AND USE OF EQUIPMENT

1. Equipment is being provided primarily for the purpose of fulfilling the intent of Model eHealth Communities, which provides equipment for medical and educational opportunities to medically underserved communities.
2. Under the conditions of this Agreement, Provider may enter into a separate contract for telemedicine services with UCDHS or sources other than UCDHS, utilizing the Equipment to access such services.
3. Equipment shall be stored in a secured location at the Provider facilities to prevent as far as possible, any damage, destruction, loss or theft of said equipment.
4. Equipment shall not be transported to or installed at any facility, other than the facilities listed below:

Physical Location for Equipment

El Dorado County

Address	Specific Unit	Quantity
Juvenile Treatment Center – 1041 Al Tahoe Blvd South Lake Tahoe, CA 96150	Global Media Telehealth Cart, includes Polycom HDX 8000, 26" monitors	1
Juvenile Hall - 299 Fair Lane Placerville, CA 95667	Global Media Telehealth Cart, includes Polycom HDX 8000, 26" monitors	1
County Jail – 1051 Al Tahoe Blvd South Lake Tahoe CA 96150	Polycom HDX 6000, 55" LCD Monitor, Mobile Media Cart VFI PL3070 plus PMS for single display	1
County Jail – 300 Forni Rd Placerville CA 95667	Polycom HDX 6000, 55" LCD Monitor, Mobile Media Cart VFI PL3070 plus PMS for single display	1
360 Fair Lane, Build. B Lower Level, Placerville, CA 95667	Polycom VBP 5300 E25	1

EXHIBIT D

LETTER FROM GRANTING AGENCY

(regarding asset transfer)

Attached



SEP 08 2011

Jana Katz-Bell, Assistant Dean
UC Davis Administration, School of Medicine
4610 X Street; Suite 4202
Sacramento, CA 95817

RE: NIST Award #06-43-B10584
UC Davis California Telehealth Network eHealth Broadband Adoption

Dear Ms. Katz-Bell:

This letter is provided by the Grants and Agreements Management Division of the National Institute of Standards and Technology to authorize approval of the request from the CTN eHealth Broadband Adoption project, University of California, Davis to transfer permanent placement of telemedicine equipment purchased through the NTIA Broadband Technology Opportunities Program (BTOP). The equipment will be placed at locations selected through the competitive bid process and participating as Model Communities through the CTN eHealth Broadband Adoption project. Transfer is authorized, understanding as the CTN eHealth Broadband Adoption grant comes to a close, the intended use of the equipment remains primarily within the original intent of the funding and that the titles for the equipment rest with the selected sites.

Please consult the cognizant cost principles (OMB Circular A-21) for additional guidance regarding equipment transfers. Also, the transfer of the telehealth equipment will need to be documented by the Center for Health Technology, University of California, Davis during closeout of the CTN eHealth Broadband Adoption grant for the file. This approval is granted for telehealth equipment transfer at Model Community facilities where the items will be used.

If you need additional information, please contact me at (301) 975-6544.

Sincerely,

Janet Cancino
Grants Officer

cc: Gwenn Weaver, FPO - NTIA