

EXHIBIT A

AGREEMENT

This Agreement, made and executed on this _____ day of _____, 2015, by and between GENESIS HEALTH TECHNOLOGIES, LLC, an Illinois limited liability company, hereinafter referred to as "Genesis," and City of McKinney, a Texas municipality, hereinafter referred to as "Plan Sponsor".

WITNESSETH:

WHEREAS, Genesis has developed a system for monitoring the glucose levels in blood samples through use of a portable device which transmits encrypted glucose data via the Verizon Wireless Network System to a secure and Internet-based database; and

WHEREAS, the Plan Sponsor is desirous of using Genesis' devices for the use and benefit of its designated members, and of acquiring access to Genesis' database to retrieve the members' glucose data for its own use and benefit, and for the use and benefit of the members and the members' designated medical providers.

NOW, THEREFORE, for valuable consideration, the legal adequacy and sufficiency of which is hereby acknowledged by the parties hereto, the parties do hereby covenant and agree as follows:

1. **Definitions.** The following terms as used in this Agreement shall have the meaning as described below:

"Access Credentials" shall mean the unique user identification and password that enables access to an Eligible Member's Information in the Database.

"Authorized Users" shall mean and include the Eligible Members and their Designated Medical Providers.

"Database" shall mean the My Genesis Health Record Information database utilized by Genesis for storing information on the Eligible Members and made accessible through the Internet.

"Designated Medical Provider" shall mean the medical providers who are authorized by an Eligible Member and/or the Plan Sponsor to access and obtain their Information. As of the date of execution of this agreement and upon disclosure and approval by the Eligible Members, Char-Lee Corporation, a Texas corporation, shall be designated as a Designated Medical Provider to perform Tele-monitoring.

“*Device*” shall mean the Genesis Health Technologies Blood Glucose Meter which utilizes embedded cellular technology.

“*Eligible Member*” shall mean and include all of the Plan Sponsor’s members who are eligible to participate in the Plan Sponsor’s Glucose Monitoring Program.

“*Glucose Monitoring Program*” shall mean a program which measures and monitors the level of glucose in blood samples through use of a measurement device which utilizes embedded cellular technology in the transmission of data as Genesis’ Device does.

“*Information*” shall mean the encrypted data that is maintained on each Eligible Member in the Database.

“*Pharmacy Benefits Manager*” shall mean the entity designated by Plan Sponsor to process pharmacy claims on its behalf and also authorized to make payment to Genesis or their designee on behalf of the Plan Sponsor. As of the date of execution of this agreement the Pharmacy Benefits Manager shall be designated as MaxorPlus Ltd, a Texas limited partnership The Plan Sponsor shall have the right to change the Pharmacy Benefits Manager at any time with appropriate notice provided to Genesis.

“*Testing Supplies*” shall mean a 50-count vial of test strips. It is agreed and understood that lancing devices shall be included in every other shipment of the Testing Supplies.

2. **Scope of Sale – Access to Database.** Genesis agrees to supply a sufficient number of Devices to accommodate all of the needs and requirements of the Glucose Monitoring Program, and to provide each Eligible Member and their Designated Medical Providers, with Internet access to the Eligible Member’s Information maintained in the Database. Genesis also agrees to supply Testing Supplies through the Plan Sponsor’s Pharmacy Benefits Manager to be utilized with the Devices as part of the Glucose Monitoring Program.

3. **Exclusive Arrangement – Minimum Requirements.** The Plan Sponsor agrees to utilize Genesis as the sole and exclusive provider for its Glucose Monitoring Program, and to procure from Genesis all of the Testing Supplies that are utilized in that program, subject to the following requirements:

- (a) Each Eligible Member shall be eligible to receive one (1) Device each year. The Plan Sponsor’s Pharmacy Benefits Manager and or Designated Medical Providers shall have the sole and absolute discretion to determine which of its members are deemed eligible for the Glucose Monitoring Program.
- (b) The Plan Sponsor shall authorize its Pharmacy Benefits Manager to purchase six (6) Testing Supplies for each Eligible Member receiving a Device as part of the initial order.

Genesis shall provide the Plan Sponsor's Pharmacy Benefits Manager and other Designated Medical Providers as directed by the Plan Sponsor with Participation and Utilization Reporting which itemizes each Eligible Member's use of the Device over a sixty (60) day period, or as requested by the Pharmacy Benefits Manager and/or Designated Medical Providers. The Plan Sponsor's Pharmacy Benefit Manager shall have the right to reduce the number of Testing Supplies for any Eligible Member who fails to utilize the Device in accordance with the Glucose Monitoring Program, subject to the minimum guaranteed purchase requirement as defined above.

4. **Delivery.** The Pharmacy Benefits Manager, Plan Sponsor, and or a Designated Medical Provider shall provide Genesis with the names and mailing addresses of each Eligible Member. Genesis and or their designee shall utilize its reasonable efforts to deliver the Devices and Testing Supplies to each Eligible Member at their designated mailing address in a timely manner. Shipments shall be made via UPS, Federal Express, or other carrier as Genesis may designate.

5. **Operation of Device.** Genesis shall provide each Eligible Member with a written operation manual that instructs the Eligible Member on the proper use and operation of the Device. Each Eligible Member shall be fully responsible for ensuring that their use and operation of the Device is in strict conformance with the instructions provided in the manual.

6. **Access to Database.** All access shall be subject to and governed by Genesis' directives and rules of operation. Genesis shall provide each Member and any associated Designated Medical Provider with a unique Access Credential that will enable them and the Authorized Users to access the Information that is maintained on each Eligible Member. The Designated Medical Provider shall assume full responsibility for the safekeeping and proper use of the Access Credentials, and the disclosures of Information that are obtained through use of the Access Credentials. It is agreed and understood that Genesis shall have no liability to the Plan Sponsor, Pharmacy Benefits Manager, Designated Medical Providers, or to any Eligible Member for any unauthorized use of the Access Credentials, and for any disclosures of Information that are obtained through the use of those credentials, except for the case of unauthorized access to the database by third-parties which was not the fault of an Eligible Member.

7. **Charges.** The Plan Sponsor's Pharmacy Benefits Manager shall pay Genesis or their designee the scheduled charges that are outlined in Appendix "A" to this Agreement. In the event Genesis is required to seek collection of any unpaid invoice, and as allowed by applicable law the Plan Sponsor shall reimburse Genesis for the costs of collection,. Further, nothing contained herein shall relieve the Plan Sponsor of the obligation to pay and satisfy any and all claims due and payable to Genesis or their designee in the event the Pharmacy Benefits Manager fails to do so. Plan Sponsor agrees to waive all co-pay amounts for each eligible member related to diabetes test strips, lancets, and any other testing supplies that are provided through the Glucose Monitoring Program. All sales are final upon shipment to each eligible member.

8. **Term.** The term of this Agreement shall be for a term of one (1) year following the date of this Agreement. The Plan Sponsor shall have the right to renew this Agreement for successive renewal terms of one (1) year, subject to Plan Sponsor's acceptance of Genesis' standard charges that are in effect at the time of renewal. Genesis shall provide the Plan Sponsor with a schedule of its then current charges upon the Plan Sponsor's request. In the event the Plan Sponsor elects to renew this Agreement for any renewal term, the Plan Sponsor agrees to pay Genesis its standard charges that are in effect at time of renewal in accordance with the payment terms under this Agreement.

9. **Termination.** Either party shall have the right to terminate this Agreement upon written notice for cause. The term "cause" shall include (i) the failure of a party to perform and/or comply with any of their obligations or duties under this Agreement, (ii) the failure of the Plan Sponsor to safeguard the security of the Access Credentials and the Information contained in the Database, and (iii) the failure of the Plan Sponsor to pay any submitted invoice within thirty (30) days following date of invoice. Upon termination, the non-defaulting party shall have all rights and remedies as provided by law, subject to the limitations and exclusions that are contained in this Agreement.

10. **Duties of Plan Sponsor.** The Plan Sponsor shall assist Genesis and Designated Medical Providers obtain medical and pharmacy claims history to identify Eligible Members for the Glucose Monitoring Program. The Plan Sponsor shall ensure that its plan documents provide access to the Eligible Member's Information and assume full responsibility for ensuring that all access to and that disclosures of an Eligible Member's Information said information is duly authorized by the Eligible Member.

11. **Monitoring and Evaluating Information.** Genesis shall have no duty or obligation to review, monitor, analyze and/or evaluate any Eligible Member's Information, or to provide any medical advice, diagnosis and/or treatment with respect to such Information. The Plan Sponsor expressly acknowledges that neither Genesis, nor any of its employees or agents, are qualified to offer any medical advice or treatment with respect to an Eligible Member's Information, and that they assume no obligation or duty with respect to such advice and treatment, all of which is expressly disclaimed.

12. **Excuse from Performance.** Genesis shall not be liable to the Plan Sponsor or any authorized user for any failure of performance which is caused by a force majeure event as defined under Texas law. In addition thereto, Genesis shall not be liable to the Plan Sponsor or any authorized user for any failure of performance that is attributable to or caused by a failure of an internet provider, or Designated Medical Provider's own internal system.

13. **Limited Warranties.** Genesis makes the following limited warranties, which warranties are the sole and exclusive warranties made by Genesis under this Agreement:

- (a) **Warranty on Device.** Genesis warrants to the Plan Sponsor that each Device sold hereunder shall be free of all material defects and deficiency for a warranty period of one (1) year following the date of delivery. If, during the warranty period, any Device should fail to operate due to a defect or deficiency in the Device, Genesis shall, at its option, have the right to repair or remedy the defect or deficiency, or to replace the defective Device with a substitute Device. Any repairs made to a Device must be performed by an authorized Genesis service representative. This limited warranty shall not apply to any defect or deficiency caused by the misuse of a Device, or any negligent act or omission of an Eligible Member.
- (b) **Warranty on Database.** Genesis warrants to the Plan Sponsor that its Database will be accessible to the Plan Sponsor's Members, Pharmacy Benefits Manager, and their Designated Medical Providers through Internet access, subject to downtime due to routine or necessary maintenance or to events beyond Genesis' reasonable control.

14. **Warranty Disclaimers:** **THE LIMITED WARRANTIES ARE THE ONLY WARRANTIES MADE BY GENESIS UNDER THIS AGREEMENT. TO THE EXTENT PERMITTED BY LAW, GENESIS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES WITH RESPECT TO THE DEVICE, TESTING SUPPLIES AND THE DATABASE, EXPRESS OR IMPLIED, WHICH INCLUDES BUT IS NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

15. **Reported Defects.** Genesis shall utilize its best efforts to remedy or replace any reported deficiencies in accordance with its limited warranties hereunder. In the event the Plan Sponsor should receive any complaint from an Eligible Member or other Authorized User with respect to any deficiency in the Device or Database, the Plan Sponsor shall provide Genesis with a copy of same within three (3) business days following receipt.

16. **Miscellaneous Provisions.** The following miscellaneous provisions shall be deemed a part of this Agreement, and shall be binding on the parties:

- (a) **Notices:** Unless specifically noted otherwise, all notices required to be given to a party hereunder shall be sent by any documented means to that party at the following address:

GENESIS:

Genesis Health Technologies, LLC
Attention: Nathan G. Cross
212 Lone Oak Road
Paducah, KY 42001
Phone: (888) 263-0003
E-Mail: ncross@genesishhealthtechnologies.com

PLAN SPONSOR:

City of McKinney
Attention: Tom Meuhlenbeck
222 N. Tennessee Street
McKinney, TX 75069
Phone: (972) 547-7500

- (b) **Entire Agreement:** This Agreement constitutes the complete agreement between the parties with respect to its subject matter, and supersedes all prior or contemporaneous agreements, understandings, representations, discussions, proposals, whether written or oral. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.
- (c) **Waiver.** The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Each party shall have the right at all times to enforce the provisions of this Agreement in strict accordance with the terms hereof, notwithstanding any prior conduct or custom. The failure of a party to enforce its rights under this Agreement shall not be construed as having created a custom which is contrary to specific provisions of this Agreement, or as having in any way or manner modified or waived the same. All rights and remedies of the parties shall be cumulative, and the exercise of one right or remedy shall not be deemed a waiver or release of any other right or remedy.
- (d) **Assignment:** Neither party may assign this Agreement, of any of their rights and obligations under this Agreement, without the other party's prior written consent.
- (e) **Severability:** If any provision is held invalid, the remaining provisions of the Agreement shall remain in full effect.
- (f) **Disputes:** This Agreement shall be governed in accordance with

the laws of the State of Texas. The parties are encouraged to pursue mediation before a mutually acceptable qualified mediator prior to filing suit. Any dispute between the parties shall be brought exclusively in the state or federal court located in, or with jurisdiction over Collin County, Texas. By execution of the Agreement, each of the parties consent to the exclusive jurisdiction of such courts... The Plan Sponsor expressly retains all defenses and immunities, including but not limited to governmental immunity and the protections of the Texas Tort Claims Act, that may be available to it under Texas law.

- (g) **Execution:** This Agreement may be executed (by original or faxed signature, or by electronic submission by Contractor typing his/her name) in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

WITNESS the following signatures of the parties hereto:

GENESIS HEALTH TECHNOLOGIES, LLC
An Illinois Limited Liability Company

By: _____

Name: _____

Title: _____

Dated: _____

CITY OF MCKINNEY,

a Texas home-rule municipality

By: _____

TOM MUEHLENBECK
Interim City Manager

Dated: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

APPENDIX "A"

Healthy Track Services
Attachment 2

Services provided by Char-Lee Corporation dba Managed Care Concepts for the Healthy Track Platform Disease Management Program for City of McKinney:
Telemonitoring:

- Event based outreach (made to members that have tested out of set parameter)
- Compliance outreach (if a member is non-compliant with testing MCC nurse shall reach out to member)
- In-bound calling to MCC nurse