

1 HIPAA Business Associate Agreement

2 Addendum to Contract

3 Between the County of Riverside and \_\_\_\_\_

4  
5 This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the  
6 \_\_\_\_\_ (the "Underlying Agreement") between the County of Riverside  
7 ("County") and \_\_\_\_\_ ("Contractor") and shall be effective as of the date the  
8 Underlying Agreement is approved by both Parties (the "Effective Date").

9 RECITALS

10 WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which  
11 the Contractor provides services to County, and in conjunction with the provision of such services  
12 certain protected health information ("PHI") and/or certain electronic protected health information  
13 ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its  
14 obligations under the Underlying Agreement; and,

15 WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996  
16 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for  
17 Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of  
18 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated  
19 subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or  
20 disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

21 WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

22 WHEREAS, to the extent County discloses PHI and/or ePHI to Contractor or Contractor creates,  
23 receives, maintains, transmits, or has access to PHI and/or ePHI of County, Contractor is a business  
24 associate, as defined in the Privacy Rule; and,

25 WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule  
26 and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to  
27 the covered entity, the additional security and privacy requirements of HITECH are applicable to  
28 business associates and must be incorporated into the business associate agreement, and a business  
29 associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy  
30 provisions; and,

31 WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in  
32 compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

33 WHEREAS, the parties intend to enter into this Addendum to address the requirements and  
34 obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to  
35 Contractor as a business associate of County, including the establishment of permitted and required uses  
36 and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing  
37 functions, services and activities on behalf of County, and appropriate limitations and conditions on such  
38 uses and disclosures;

1 NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein,  
2 the parties agree as follows:

3 **1. Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning  
4 as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from  
5 time to time.

6 A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of  
7 PHI in a manner not permitted under subpart E of the Privacy Rule which compromises the  
8 security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.

9 (1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or  
10 disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to  
11 be a breach unless Contractor demonstrates that there is a low probability that the PHI has  
12 been compromised based on a risk assessment of at least the following four factors:

- 13 (a) The nature and extent of the PHI involved, including the types of identifiers and the  
14 likelihood of re-identification;
- 15 (b) The unauthorized person who used the PHI or to whom the disclosure was made;
- 16 (c) Whether the PHI was actually acquired or viewed; and
- 17 (d) The extent to which the risk to the PHI has been mitigated.

18 (2) Breach excludes:

- 19 (a) Any unintentional acquisition, access or use of PHI by a workforce member or person  
20 acting under the authority of a covered entity or business associate, if such acquisition,  
21 access or use was made in good faith and within the scope of authority and does not  
22 result in further use or disclosure in a manner not permitted under subpart E of the  
23 Privacy Rule.
- 24 (b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered  
25 entity or business associate to another person authorized to access PHI at the same  
26 covered entity, business associate, or organized health care arrangement in which  
27 County participates, and the information received as a result of such disclosure is not  
28 further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
- 29 (c) A disclosure of PHI where a covered entity or business associate has a good faith belief  
30 that an unauthorized person to whom the disclosure was made would not reasonably  
31 have been able to retain such information.

32 B. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not  
33 limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf  
34 of the business associate.

35 C. "Data aggregation" has the meaning given such term in 45 CFR §164.501.

- 1 D. “Designated record set” as defined in 45 CFR §164.501 means a group of records maintained by  
2 or for a covered entity that may include: the medical records and billing records about  
3 individuals maintained by or for a covered health care provider; the enrollment, payment, claims  
4 adjudication, and case or medical management record systems maintained by or for a health  
5 plan; or, used, in whole or in part, by or for the covered entity to make decisions about  
6 individuals.
- 7 E. “Electronic protected health information” (“ePHI”) as defined in 45 CFR §160.103 means  
8 protected health information transmitted by or maintained in electronic media.
- 9 F. “Electronic health record” means an electronic record of health-related information on an  
10 individual that is created, gathered, managed, and consulted by authorized health care clinicians  
11 and staff, and shall have the meaning given such term in 42 USC §17921(5).
- 12 G. “Health care operations” has the meaning given such term in 45 CFR §164.501.
- 13 H. “Individual” as defined in 45 CFR §160.103 means the person who is the subject of protected  
14 health information.
- 15 I. “Person” as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership,  
16 corporation, professional association or corporation, or other entity, public or private.
- 17 J. “Privacy Rule” means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A  
18 and E.
- 19 K. “Protected health information” (“PHI”) has the meaning given such term in 45 CFR §160.103,  
20 which includes ePHI.
- 21 L. “Required by law” has the meaning given such term in 45 CFR §164.103.
- 22 M. “Secretary” means the Secretary of the U.S. Department of Health and Human Services  
23 (“HHS”).
- 24 N. “Security incident” as defined in 45 CFR §164.304 means the attempted or successful  
25 unauthorized access, use, disclosure, modification, or destruction of information or interference  
26 with system operations in an information system.
- 27 O. “Security Rule” means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts  
28 A and C.
- 29 P. “Subcontractor” as defined in 45 CFR §160.103 means a person to whom a business associate  
30 delegates a function, activity, or service, other than in the capacity of a member of the workforce  
31 of such business associate.
- 32 Q. “Unsecured protected health information” and “unsecured PHI” as defined in 45 CFR §164.402  
33 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized persons  
34 through use of a technology or methodology specified by the Secretary in the guidance issued  
35 under 42 USC §17932(h)(2).

1 **2. Scope of Use and Disclosure by Contractor of County's PHI and/or ePHI.**

2 A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI  
3 and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying  
4 Agreement or to perform functions, activities or services for, or on behalf of, County as specified  
5 in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule  
6 and/or Security Rule.

7 B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or  
8 authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2),  
9 Contractor may:

10 (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration  
11 and to carry out its legal responsibilities; and,

12 (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and  
13 administration or to carry out its legal responsibilities, only if:

14 (a) The disclosure is required by law; or,

15 (b) Contractor obtains reasonable assurances, in writing, from the person to whom  
16 Contractor will disclose such PHI and/or ePHI that the person will:

17 (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the  
18 purpose for which Contractor disclosed it to the person, or as required by law; and,

19 (ii) Notify Contractor of any instances of which it becomes aware in which the  
20 confidentiality of the information has been breached; and,

21 (3) Use PHI to provide data aggregation services relating to the health care operations of County  
22 pursuant to the Underlying Agreement or as requested by County; and,

23 (4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum  
24 provided that the de-identification conforms to the requirements of the Privacy Rule and/or  
25 Security Rule and does not preclude timely payment and/or claims processing and receipt.

26 C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or  
27 regulations are more stringent in their requirements than the provisions of HIPAA, including,  
28 but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the  
29 applicable state and/or federal laws and/or regulations shall control the disclosure of records.

30 **3. Prohibited Uses and Disclosures.**

31 A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by  
32 the Underlying Agreement or this Addendum without patient authorization or de-identification  
33 of the PHI and/or ePHI and as authorized in writing from County.

34 B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or  
35 from another business associate of County, except as permitted or required by this Addendum, or  
36 as required by law.

1 C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be  
2 prohibited from making.

3 D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security  
4 Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §17935 and §17936.  
5 Contractor agrees:

6 (1) Not to use or disclose PHI for fundraising , unless pursuant to the Underlying Agreement and  
7 only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45  
8 CFR §164.508;

9 (2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to  
10 the Underlying Agreement and only if permitted by and in compliance with the requirements  
11 of 45 CFR §164.508(a)(3);

12 (3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of  
13 carrying out payment or health care operations, if the individual has requested this restriction  
14 pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for  
15 the health care item or service to which the PHI solely relates; and,

16 (4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act  
17 that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted  
18 by the Underlying Agreement and in compliance with the requirements of a valid  
19 authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by  
20 County to Contractor for services provided pursuant to the Underlying Agreement.

21 **4. Obligations of County.**

22 A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions  
23 on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's  
24 ability to perform its obligations under the Underlying Agreement, or this Addendum.

25 B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in,  
26 or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such  
27 changes or revocation may affect Contractor's ability to perform its obligations under the  
28 Underlying Agreement, or this Addendum.

29 C. County agrees to make its best efforts to promptly notify Contractor in writing of any known  
30 limitation(s) in its notice of privacy practices to the extent that such limitation may affect  
31 Contractor's use or disclosure of PHI and/or ePHI.

32 D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that  
33 would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.

34 E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or  
35 ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying  
36 Agreement.

1 **5. Obligations of Contractor.** In connection with the use or disclosure of PHI and/or ePHI,  
2 Contractor agrees to:

- 3 A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of  
4 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that  
5 are applicable to covered entities in HITECH, as may be amended from time to time.
- 6 B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this  
7 Addendum or as required by law. Contractor shall promptly notify County if Contractor is  
8 required by law to disclose PHI and/or ePHI.
- 9 C. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to  
10 ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this  
11 Addendum.
- 12 D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or  
13 disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
- 14 E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum  
15 or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which  
16 Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR  
17 §164.410.
- 18 F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create,  
19 receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to  
20 the same restrictions and conditions that apply to Contractor with respect to such PHI and/or  
21 ePHI, including the restrictions and conditions pursuant to this Addendum.
- 22 G. Make available to County or the Secretary, in the time and manner designated by County or  
23 Secretary, Contractor's internal practices, books and records relating to the use, disclosure and  
24 privacy protection of PHI received from County, or created or received by Contractor on behalf  
25 of County, for purposes of determining, investigating or auditing Contractor's and/or County's  
26 compliance with the Privacy Rule.
- 27 H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended  
28 purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR  
29 §164.502(b)(1).
- 30 I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice  
31 or qualified protective order in response to a third party's subpoena, discovery request, or other  
32 lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon  
33 Contractor's receipt of such request from a third party.
- 34 J. Not require an individual to provide patient authorization for use or disclosure of PHI as a  
35 condition for treatment, payment, enrollment in any health plan (including the health plan  
36 administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR  
37 §164.508(b)(4) and authorized in writing by County.
- 38 K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use,  
39 disclosure, or access of PHI and/or ePHI.

- 1 L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and  
2 HITECH, as may be amended from time to time.
- 3 M. Comply with the requirements of the Privacy Rule that apply to the County to the extent  
4 Contractor is to carry out County's obligations under the Privacy Rule.
- 5 N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of  
6 which Contractor becomes aware that constitute a material breach or violation of the  
7 subcontractor's obligations under the business associate contract with Contractor, and if such  
8 steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if  
9 feasible.

10 **6. Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:

- 11 A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained  
12 electronically, in a designated record set to County or an individual as directed by County, within  
13 five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.
- 14 B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI  
15 in a designated record set County directs or agrees to at the request of an individual, within  
16 fifteen (15) days of receiving a written request from County, in accordance with 45 CFR  
17 §164.526.
- 18 C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its  
19 obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where  
20 applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains  
21 electronic health records. Contractor shall:
  - 22 (1) Document such disclosures of PHI and/or electronic health records, and information related  
23 to such disclosures, as would be required for County to respond to a request by an individual  
24 for an accounting of disclosures of PHI and/or electronic health record in accordance with 45  
25 CFR §164.528.
  - 26 (2) Within fifteen (15) days of receiving a written request from County, provide to County or  
27 any individual as directed by County information collected in accordance with this section to  
28 permit County to respond to a request by an individual for an accounting of disclosures of  
29 PHI and/or electronic health record.
  - 30 (3) Make available for County information required by this Section 6.C for six (6) years  
31 preceding the individual's request for accounting of disclosures of PHI, and for three (3)  
32 years preceding the individual's request for accounting of disclosures of electronic health  
33 record.

34 **7. Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create,  
35 receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and  
36 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:

- 37 A. Comply with the applicable requirements of the Security Rule, and implement administrative,  
38 physical, and technical safeguards that reasonably and appropriately protect the confidentiality,  
39 integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on  
40 behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;

- 1 B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of  
2 policies, procedures and documentation requirements with respect to ePHI;
- 3 C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
- 4 D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or  
5 required under the Privacy Rule;
- 6 E. Ensure compliance with the Security Rule by Contractor's workforce;
- 7 F. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive,  
8 maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same  
9 restrictions and requirements contained in this Addendum and comply with the applicable  
10 requirements of the Security Rule;
- 11 G. Report to County any security incident of which Contractor becomes aware, including breaches  
12 of unsecured PHI as required by 45 CFR §164.410; and,
- 13 H. Comply with any additional security requirements that are applicable to covered entities in Title  
14 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time,  
15 including but not limited to HITECH.
- 16 **8. Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with  
17 the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not  
18 limited to 45 CFR §164.410.
- 19 A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor  
20 shall notify County in writing of such breach without unreasonable delay and in no case later  
21 than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
- 22 (1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the  
23 first day on which such breach is known to Contractor or, by exercising reasonable diligence,  
24 would have been known to Contractor, which includes any person, other than the person  
25 committing the breach, who is an employee, officer, or other agent of Contractor (determined  
26 in accordance with the federal common law of agency).
- 27 (2) **Content of notification.** The written notification to County relating to breach of unsecured  
28 PHI shall include, to the extent possible, the following information if known (or can be  
29 reasonably obtained) by Contractor:
- 30 (a) The identification of each individual whose unsecured PHI has been, or is reasonably  
31 believed by Contractor to have been accessed, acquired, used or disclosed during the  
32 breach;
- 33 (b) A brief description of what happened, including the date of the breach and the date of the  
34 discovery of the breach, if known;
- 35 (c) A description of the types of unsecured PHI involved in the breach, such as whether full  
36 name, social security number, date of birth, home address, account number, diagnosis,  
37 disability code, or other types of information were involved;



- 1 (d) Any steps individuals should take to protect themselves from potential harm resulting  
2 from the breach;
- 3 (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm  
4 to individuals, and to protect against any further breaches; and,
- 5 (f) Contact procedures for individuals to ask questions or learn additional information, which  
6 shall include a toll-free telephone number, an e-mail address, web site, or postal address.

7 **B. Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor  
8 shall cooperate with County and shall provide County with any information requested by County  
9 to enable County to fulfill in a timely manner its own reporting and notification obligations,  
10 including but not limited to providing notice to individuals, prominent media outlets and the  
11 Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.

12 **C. Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals,  
13 Contractor shall maintain a log or other documentation of such breaches and provide such log or  
14 other documentation on an annual basis to County not later than fifteen (15) days after the end of  
15 each calendar year for submission to the Secretary.

16 **D. Delay of notification authorized by law enforcement.** If Contractor delays notification of  
17 breach of unsecured PHI pursuant to a law enforcement official's statement that required  
18 notification, notice or posting would impede a criminal investigation or cause damage to national  
19 security, Contractor shall maintain documentation sufficient to demonstrate its compliance with  
20 the requirements of 45 CFR §164.412.

21 **E. Payment of costs.** With respect to any breach of unsecured PHI caused solely by the  
22 Contractor's failure to comply with one or more of its obligations under this Addendum and/or  
23 the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to  
24 pay any and all costs associated with providing all legally required notifications to individuals,  
25 media outlets, and the Secretary. This provision shall not be construed to limit or diminish  
26 Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this  
27 Addendum.

28 **F. Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of  
29 PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to  
30 demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164,  
31 Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's  
32 completed risk assessment and investigation documentation.

33 **G. Additional State Reporting Requirements.** The parties agree that this Section 8.G applies only  
34 if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or  
35 hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical  
36 information under the more stringent requirements of California Health & Safety Code §1280.15.  
37 For purposes of this Section 8.G, "unauthorized" has the meaning given such term in California  
38 Health & Safety Code §1280.15(j)(2).

- 39 (1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and  
40 to the California Department of Public Health ("CDPH") in a timely manner under the  
41 California Health & Safety Code §1280.15.

1 (2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure  
2 of patient's medical information without unreasonable delay and no later than two (2)  
3 business days after Contractor detects such incident. Contractor further agrees such report  
4 shall be made in writing, and shall include substantially the same types of information listed  
5 above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or  
6 unauthorized access, use, or disclosure as defined above in this section, understanding and  
7 acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California  
8 Health & Safety Code §1280.15.

9 **9. Hold Harmless/Indemnification.**

10 A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special  
11 Districts and Departments of County, their respective directors, officers, Board of Supervisors,  
12 elected and appointed officials, employees, agents and representatives from any liability  
13 whatsoever, based or asserted upon any services of Contractor, its officers, employees,  
14 subcontractors, agents or representatives arising out of or in any way relating to this Addendum,  
15 including but not limited to property damage, bodily injury, death, or any other element of any  
16 kind or nature whatsoever arising from the performance of Contractor, its officers, agents,  
17 employees, subcontractors, agents or representatives from this Addendum. Contractor shall  
18 defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of  
19 investigation, defense and settlements or awards, of County, all Agencies, Districts, Special  
20 Districts and Departments of County, their respective directors, officers, Board of Supervisors,  
21 elected and appointed officials, employees, agents or representatives in any claim or action based  
22 upon such alleged acts or omissions.

23 B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor  
24 shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of  
25 County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or  
26 compromise any such action or claim without the prior consent of County; provided, however,  
27 that any such adjustment, settlement or compromise in no manner whatsoever limits or  
28 circumscribes Contractor's indemnification to County as set forth herein. Contractor's  
29 obligation to defend, indemnify and hold harmless County shall be subject to County having  
30 given Contractor written notice within a reasonable period of time of the claim or of the  
31 commencement of the related action, as the case may be, and information and reasonable  
32 assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation  
33 hereunder shall be satisfied when Contractor has provided to County the appropriate form of  
34 dismissal relieving County from any liability for the action or claim involved.

35 C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in  
36 no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County  
37 herein from third party claims arising from issues of this Addendum.

38 D. In the event there is conflict between this clause and California Civil Code §2782, this clause  
39 shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the  
40 Contractor from indemnifying County to the fullest extent allowed by law.

41 E. In the event there is a conflict between this indemnification clause and an indemnification clause  
42 contained in the Underlying Agreement of this Addendum, this indemnification shall only apply  
43 to the subject issues included within this Addendum.

1 **10. Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI  
2 and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of  
3 County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI,  
4 protections are extended to such information, in accordance with section 11.B of this Addendum.

5 **11. Termination.**

6 **A. Termination for Breach of Contract.** A breach of any provision of this Addendum by either  
7 party shall constitute a material breach of the Underlying Agreement and will provide grounds  
8 for terminating this Addendum and the Underlying Agreement with or without an opportunity to  
9 cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary.  
10 Either party, upon written notice to the other party describing the breach, may take any of the  
11 following actions:

12 (1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other  
13 party breaches a material provision of this Addendum.

14 (2) Provide the other party with an opportunity to cure the alleged material breach and in the  
15 event the other party fails to cure the breach to the satisfaction of the non-breaching party in  
16 a timely manner, the non-breaching party has the right to immediately terminate the  
17 Underlying Agreement and this Addendum.

18 (3) If termination of the Underlying Agreement is not feasible, the breaching party, upon the  
19 request of the non-breaching party, shall implement, at its own expense, a plan to cure the  
20 breach and report regularly on its compliance with such plan to the non-breaching party.

21 **B. Effect of Termination.**

22 (1) Upon termination of this Addendum, for any reason, Contractor shall return or, if agreed to in  
23 writing by County, destroy all PHI and/or ePHI received from County, or created or received  
24 by the Contractor on behalf of County, and, in the event of destruction, Contractor shall  
25 certify such destruction, in writing, to County. This provision shall apply to all PHI and/or  
26 ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall  
27 retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this  
28 section.

29 (2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is  
30 not feasible, Contractor shall provide written notification to County of the conditions that  
31 make such return or destruction not feasible. Upon determination by Contractor that return  
32 or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of  
33 this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI  
34 and/or ePHI to those purposes which make the return or destruction not feasible, for so long  
35 as Contractor maintains such PHI and/or ePHI.

36 **12. General Provisions.**

37 **A. Retention Period.** Whenever Contractor is required to document or maintain documentation  
38 pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years  
39 from the date of its creation or as otherwise prescribed by law, whichever is later.

1 B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum  
2 from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security  
3 Rule, and HIPAA generally.

4 C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this  
5 Addendum shall survive the termination or expiration of this Addendum.

6 D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH,  
7 HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.

8 E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying  
9 Agreement that conflict or appear inconsistent with any provision in this Addendum.

10 F. **Interpretation of Addendum.**

11 (1) This Addendum shall be construed to be part of the Underlying Agreement as one document.  
12 The purpose is to supplement the Underlying Agreement to include the requirements of the  
13 Privacy Rule, Security Rule, HIPAA and HITECH.

14 (2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to  
15 permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH  
16 generally.

17 G. **Notices to County.** All notifications required to be given by Contractor to County pursuant to  
18 the terms of this Addendum shall be made in writing and delivered to the County both by fax and  
19 to both of the addresses listed below by either registered or certified mail return receipt requested  
20 or guaranteed overnight mail with tracing capability, or at such other address as County may  
21 hereafter designate. All notices to County provided by Contractor pursuant to this Section shall  
22 be deemed given or made when received by County.

23 County HIPAA Privacy Officer: Privacy Officer

24 County HIPAA Privacy Officer Address: 26520 Cactus Ave.  
25 Moreno Valley, CA 92555

26 County HIPAA Privacy Officer Phone Number: (951) 486-6471

27 ----- **TO BE COMPLETED BY COUNTY PERSONNEL ONLY** -----

28 County Departmental Officer: \_\_\_\_\_

29 County Departmental Officer Title: \_\_\_\_\_

30 County Department Address: \_\_\_\_\_

31 County Department Fax Number: \_\_\_\_\_