

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

974



SUBMITTAL DATE:
December 7, 2010

FROM: Executive Office

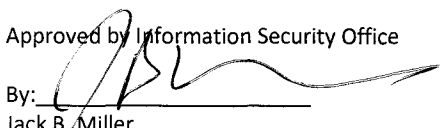
SUBJECT: Revision of Board Policy B-23

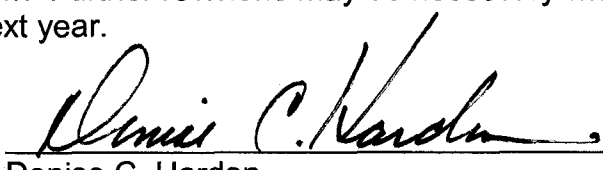
RECOMMENDED MOTION: That the Board of Supervisors approve:

1. Amending Board Policy B-23 as indicated in Exhibit A; and,
2. Amending the county's standard business associate agreement, which is Attachment 3 to Board Policy B-23, as indicated in Exhibit B.

BACKGROUND: Interim regulations issued by the Secretary of Health and Human Services (HHS) pursuant to passage of the Health Information Technology for Economic and Clinical Health Act ("HITECH") necessitate that the county update its standard business associate agreement to incorporate those changes in law. Further revisions may be necessary when HHS issues the final regulations sometime next year.

Approved by Information Security Office

By: 
Jack B. Miller,
Chief Information Security Officer


Denise C. Harden
Principal Management Analyst

FINANCIAL DATA	Current F.Y. Total Cost:	\$ NA	In Current Year Budget:
	Current F.Y. Net County Cost:	\$ NA	Budget Adjustment:
	Annual Net County Cost:	\$ NA	For Fiscal Year:

SOURCE OF FUNDS:

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: 
Christopher M. Hans

County Executive Office Signature

- Policy
- Consent
- Policy
- Consent

Dept's Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: 04/10/07 Item #3.4;
05/03/05 #3.4; 03/18/03 Item #3.26

District: All

Agenda Number:

3.4

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

Approved by Human Resources Department
 By: 
 Barbara A. Olivier
 Assistant County Executive Officer/Human Resources Director
 FORM APPROVED COUNTY COUNSEL
 BY: 
 TAWNY X. LIEU
 DATE: 12/06/2010
 Department

COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject:
HEALTH PRIVACY AND SECURITY POLICY

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Policy:

The County creates records of health care to provide quality care and comply with legal requirements. The County understands health information is personal and private, and commits to safeguarding it to the extent reasonably possible. The County shall operate in a manner consistent with federal regulations for safeguarding protected health information. County departments shall safeguard the confidentiality and integrity of the electronic and non-electronic protected health information they handle, store, process and/or transmit. The law requires the County, as a single covered entity, to:

- Keep individually identifiable health information private;
- Provide notice of legal duties and privacy practices with respect to health information; and,
- Follow the terms of the notice currently in effect.

This policy outlines the limits within which the County will handle individuals' health information. In accordance with federal law, the County will provide a copy of the notice in Attachment 1 outlining this policy to each individual receiving health care and related services from the County, and to participants in certain health plans administered or operated by the County. Where applicable, the County will make the best effort to obtain completed acknowledgements of receipt of this notice from each client, substantially in the form in Attachment 2 of this policy. This notice and acknowledgement may be amended as needed with the approval of County Counsel and the Executive Officer, and amended copies provided upon request.

A. Use and Disclosure – General

Generally, except as otherwise specified below, the County may use and disclose health information, as allowed under state and federal law:

1. For treatment;
2. For payment;
3. For health care operations; and
4. For health plan administration.

B. Use and Disclosure Requiring Authorization

On a limited basis, the County may use and disclose health information as follows only with a valid authorization, as allowed under state and federal law:

1. From mental health records; and,
2. From or pertaining to some substance abuse treatment programs.

COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject:
HEALTH PRIVACY AND SECURITY POLICY

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C. Use and Disclosure Requiring an Opportunity to Agree or Object

In certain cases, the County may use and disclose health information as follows only if it informs individuals in advance and provides them the opportunity to agree or object, as allowed under state and federal law:

1. For facility directories;
2. To individuals involved in the individual's care; and,
3. To assist in disaster relief efforts.

D. Use and Disclosure NOT Requiring Authorization or an Opportunity to Agree or Object

In specific cases, the County may be required to use and disclose health information as follows without authorization and without providing the opportunity to agree or object:

1. As required by law;
2. For public health activities;
3. To report victims of abuse, neglect or domestic violence;
4. For health oversight activities;
5. To the minimum extent necessary to comply with judicial and administrative proceedings when compelled by an order of a court or administrative tribunal, or in response to a subpoena, discovery request or other lawful process as allowed by law;
6. For law enforcement purposes;
7. To coroners, medical examiners and funeral directors;
8. On a deceased person for organ, eye or tissue donation and transplantation;
9. For research purposes in compliance with required conditions approved by an institutional review board;
10. To avert serious threats to health and safety;
11. On armed forces and foreign military personnel for activities deemed necessary by appropriate military command authorities to assure proper execution of a military mission;
12. To determine eligibility for or entitlement to veterans benefits;
13. To authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities;

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BOARD OF SUPERVISORS POLICY

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14. To correctional institutions and other law enforcement custodial situations;
15. To determine eligibility for or enrollment in a government health plan program, or to coordinate and improve administration of benefits for such government plans; and,
16. To the minimum extent necessary to comply with workers' compensation laws or similar programs providing benefits for work-related injuries or illnesses.

The County will not disclose individuals' health information to outside parties for marketing, fundraising, or any other reasons not listed above without prior written authorization.

E. Rights and Responsibilities

With regard to health information, the County recognizes and commits to safeguard each individual's:

1. Right to request restrictions on certain uses and disclosures;
2. Right to confidential communications;
3. Right to request to inspect and copy records;
4. Right to amend health records;
5. Right to an accounting of certain disclosures;
6. Right to obtain a paper copy of the required notice of privacy practices upon request; and,
7. Right to file complaints without fear of retaliation.

F. HIPAA Officers

The federal regulations pertaining to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) specifically require covered entities, such as the County, to establish HIPAA Privacy and Compliance Officers and HIPAA Security Officers. HIPAA specifies certain roles and responsibilities for each of these separate offices.

1. HIPAA Privacy and Compliance Office

The County designates the Human Resources Department as the official HIPAA Privacy and Compliance Office of the County. Individuals may choose to direct inquiries and complaints regarding health privacy issues to designees within departments, to the County Privacy and Compliance Office, or to the Secretary of the Department of Health and Human Services. Under no circumstances will the County allow or enable retaliation or reprisal against individuals who file such complaints.

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BOARD OF SUPERVISORS POLICY**

Subject:
HEALTH PRIVACY AND SECURITY POLICY

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2. HIPAA Security Officer

The County designates the Chief Information Security Officer as the official HIPAA Security Officer of the County. The HIPAA Security Officer shall coordinate and oversee generally all HIPAA security requirements for the County as specified and required under HIPAA.

G. Organized Health Care Arrangement

The County engages and partners with doctors, nurses, and other providers of health care services who participate with the County to provide health care. The County may share or disclose protected health care information to such parties for the purposes outlined above. In such instances, the County requires those entities to agree to abide by all applicable laws and regulations, this policy, and the terms of the County's privacy notice in Attachment 1 of this policy.

H. Business Associates

The County engages and partners with a variety of vendors who perform functions on behalf of the County. The County may share or disclose protected health care information to such parties for the purposes outlined above. In such instances, the County requires those entities to agree to abide by all applicable laws and regulations, this policy, and the terms of the County's business associate agreement substantially as shown in Attachment 3 of this policy. The terms of this agreement may be amended from time to time with the approval of County Counsel and the Executive Officer. This policy authorizes the County Purchasing Agent to execute on behalf of the Board of Supervisors all business associate agreements pertaining to conforming with Attachment 3 of this policy as necessary to bring existing underlying agreements into compliance with this policy. ~~on behalf of the Board of Supervisors.~~

I. Effective Date

This policy shall take effect on April 14, 2003.

Reference:

Minute Order 3.26 of 03/18/03

Minute Order 3.4 of 05/03/05

Minute Order 3.4 of 04/10/07

Attachment 1.a – Notice of Privacy Practices – English

Attachment 1.b – Notice of Privacy Practices – Spanish

Attachment 2.a – Acknowledgement of Receipt of Notice of Privacy Practices – English

Attachment 2.b – Acknowledgement of Receipt of Notice of Privacy Practices – Spanish

Attachment 3 – Business Associate Agreement Template

1 HIPAA Business Associate Agreement

2 Addendum to Contract

3 Between the County of Riverside and [name of Contractor]

4
5 This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the
6 [name of contract] (the "Underlying Agreement") between the County of Riverside ("County") and
7 [name of Contractor] ("Contractor") and shall be effective as of the date the Underlying Agreement is
8 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, Contractor when a creator or recipient of, or when they have access to, PHI and/or
23 ePHI of County, is a business associate as defined in the Privacy Rule; and,

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

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

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

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

- 1 1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning
2 as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from
3 time to time.
- 4 A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of
5 PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of
6 the PHI, and shall have the meaning given such term in 45 CFR §164.402. For purposes of this
7 definition, "compromises the security or privacy of PHI" means poses a significant risk of
8 financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not
9 include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach
10 excludes:
- 11 (1) Any unintentional acquisition, access or use of PHI by a workforce member or person acting
12 under the authority of a covered entity or business associate, if such acquisition, access or use
13 was made in good faith and within the scope of authority and does not result in further use or
14 disclosure in a manner not permitted under subpart E of the Privacy Rule.
- 15 (2) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or
16 business associate to another person authorized to access PHI at the same covered entity,
17 business associate, or organized health care arrangement in which County participates, and the
18 information received as a result of such disclosure is not further used or disclosed in a
19 manner not permitted by subpart E of the Privacy Rule.
- 20 (3) A disclosure of PHI where a covered entity or business associate has a good faith belief that
21 an unauthorized person to whom the disclosure was made would not reasonably have been
22 able to retain such information.
- 23 B. "Data aggregation" has meaning given such term in 45 CFR §164.501.
- 24 C. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by
25 or for a covered entity that may include: the medical records and billing records about
26 individuals maintained by or for a covered health care provider; the enrollment, payment, claims
27 adjudication, and case or medical management record systems maintained by or for a health
28 plan; or, used, in whole or in part, by or for the covered entity to make decisions about
29 individuals.
- 30 D. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means
31 protected health information transmitted by or maintained in electronic media.
- 32 E. "Electronic health record" means an electronic record of health-related information on an
33 individual that is created, gathered, managed, and consulted by authorized health care clinicians
34 and staff, and shall have the meaning given such term in 42 USC §17921(5).
- 35 F. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- 36 G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health
37 information.
- 38 H. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation,
39 professional association or corporation, or other entity, public or private.

- 1 I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- 2 J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which
3 includes ePHI.
- 4 K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- 5 L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").
- 6 M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- 7 N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means
8 PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a
9 technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2)
10 on the HHS web site.

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

- 12 A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI
13 and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying
14 Agreement or to perform functions, activities or services for, or on behalf of, County as specified
15 in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule
16 and/or Security Rule.
- 17 B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or
18 authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2),
19 Contractor may:
- 20 (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration
21 and to carry out its legal responsibilities; and,
- 22 (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and
23 administration or to carry out its legal responsibilities, only if:
- 24 (a) The disclosure is required by law; or,
- 25 (b) Contractor obtains reasonable assurances, in writing, from the person to whom
26 Contractor will disclose such PHI and/or ePHI that the person will:
- 27 (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose
28 for which Contractor disclosed it to the person, or as required by law; and,
- 29 (ii) Notify Contractor of any instances of which it becomes aware in which the confidentiality of
30 the information has been breached; and,
- 31 (3) Use PHI to provide data aggregation services relating to the health care operations of County
32 pursuant to the Underlying Agreement or as requested by County; and,
- 33 (4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum
34 provided that the de-identification conforms to the requirements of the Privacy Rule and/or
35 Security Rule and does not preclude timely payment and/or claims processing and receipt.

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

5 **3. Prohibited Uses and Disclosures.**

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

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

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

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

17 (1) Not to use or disclose PHI for fundraising or marketing purposes, unless pursuant to the
18 Underlying Agreement and as permitted by and consistent with the requirements of 42 USC
19 §17936;

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

24 (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by
25 42 USC §17935(d)(2) and with the prior written consent of County. This prohibition shall
26 not apply to payment by County to Contractor for services provided pursuant to the
27 Underlying Agreement.

28 **4. Obligations of County.**

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

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

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

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

- 1 L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as
2 may be amended from time to time.
- 3 6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- 4 A. **Access to PHI and electronic health record.** Provide access to PHI in a designated record set
5 to County or an individual as directed by County, within five (5) days of request from County, to
6 satisfy the requirements of 45 CFR §164.524. If Contractor uses or maintains electronic health
7 records, Contractor shall, at the request of County, provide electronic health records in electronic
8 format to enable County to fulfill its obligations under 42 USC §17935(e).
- 9 B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI
10 in a designated record set County directs or agrees to at the request of an individual, within
11 fifteen (15) days of receiving a written request from County, in accordance with 45 CFR
12 §164.526.
- 13 C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its
14 obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where
15 applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains
16 electronic health records. Contractor shall:
- 17 (1) Document such disclosures of PHI and/or electronic health records, and information related to such
18 disclosures, as would be required for County to respond to a request by an individual for an
19 accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR
20 §164.528.
- 21 (2) Within fifteen (15) days of receiving a written request from County, provide to County or any
22 individual as directed by County information collected in accordance with this section to permit
23 County to respond to a request by an individual for an accounting of disclosures of PHI and/or
24 electronic health record.
- 25 (3) Make available for County information required by this section for six (6) years preceding the
26 individual's request for accounting of disclosures of PHI, and for three (3) years preceding the
27 individual's request for accounting of disclosures of electronic health record.
- 28 7. **Security of ePHI.** In the event Contractor needs to create, receive, or have access to County ePHI,
29 in accordance with 42 USC §17931 and 45 CFR §§164.314(a)(2)(i), and 164.306, Contractor shall:
- 30 A. Implement the administrative, physical, and technical safeguards that reasonably and
31 appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor
32 creates, receives, maintains, or transmits on behalf of County as required by the Security Rule,
33 including without limitations, each of the requirements of the Security Rule at 45 CFR
34 §§164.308, 164.310, and 164.312;
- 35 B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of
36 policies, procedures and documentation requirements with respect to ePHI;
- 37 C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
- 38 D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or
39 required under the Privacy Rule;

- 1 E. Ensure compliance by Contractor's workforce;
- 2 F. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement
3 reasonable appropriate safeguards to protect it;
- 4 G. Report to County any security incident of which Contractor becomes aware; and,
- 5 H. Comply with any additional security requirements that are applicable to covered entities in Title
6 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time,
7 including but not limited to HITECH.
- 8 8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with
9 the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not
10 limited to 45 CFR §164.410.
- 11 A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor
12 shall notify County in writing of such breach without unreasonable delay and in no case later
13 than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
- 14 (1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the
15 first day on which such breach is known to Contractor or, by exercising reasonable diligence,
16 would have been known to Contractor, which includes any person, other than the person
17 committing the breach, who is an employee, officer, or other agent of Contractor (determined
18 in accordance with the federal common law of agency).
- 19 (2) **Content of notification.** The written notification to County relating to breach of unsecured
20 PHI shall include, to the extent possible, the following information if known (or can be
21 reasonably obtained) by Contractor:
- 22 (a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by
23 Contractor to have been accessed, acquired, used or disclosed during the breach;
- 24 (b) A brief description of what happened, including the date of the breach and the date of the
25 discovery of the breach, if known;
- 26 (c) A description of the types of unsecured PHI involved in the breach, such as whether full name,
27 social security number, date of birth, home address, account number, diagnosis, disability code,
28 or other types of information were involved;
- 29 (d) Any steps individuals should take to protect themselves from potential harm resulting from the
30 breach;
- 31 (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to
32 individuals, and to protect against any further breaches; and,
- 33 (f) Contact procedures for individuals to ask questions or learn additional information, which shall
34 include a toll-free telephone number, an e-mail address, web site, or postal address.
- 35 B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall
36 cooperate with County and shall provide County with any information requested by County to enable
37 County to fulfill in a timely manner its own reporting and notification obligations, including but not

1 limited to providing notice to individuals, media outlets and the Secretary in accordance with 42 USC
2 §17932 and 45 CFR §§ 164.404, 164.406 and 164.408.

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

7 D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of
8 unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or
9 posting would impede a criminal investigation or cause damage to national security, Contractor shall
10 maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR
11 §164.412.

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

18 F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of
19 PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to
20 demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164,
21 Subpart D, or that such use or disclosure did not constitute a breach.

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

23 A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special
24 Districts and Departments of County, their respective directors, officers, Board of Supervisors,
25 elected and appointed officials, employees, agents and representatives from any liability
26 whatsoever, based or asserted upon any services of Contractor, its officers, employees,
27 subcontractors, agents or representatives arising out of or in any way relating to this Addendum,
28 including but not limited to property damage, bodily injury, death, or any other element of any
29 kind or nature whatsoever arising from the performance of Contractor, its officers, agents,
30 employees, subcontractors, agents or representatives from this Addendum. Contractor shall
31 defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of
32 investigation, defense and settlements or awards, of County, all Agencies, Districts, Special
33 Districts and Departments of County, their respective directors, officers, Board of Supervisors,
34 elected and appointed officials, employees, agents or representatives in any claim or action based
35 upon such alleged acts or omissions.

36 B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor
37 shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of
38 County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or
39 compromise any such action or claim without the prior consent of County; provided, however,
40 that any such adjustment, settlement or compromise in no manner whatsoever limits or
41 circumscribes Contractor's indemnification to County as set forth herein. Contractor's
42 obligation to defend, indemnify and hold harmless County shall be subject to County having
43 given Contractor written notice within a reasonable period of time of the claim or of the
44 commencement of the related action, as the case may be, and information and reasonable

1 assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation
2 hereunder shall be satisfied when Contractor has provided to County the appropriate form of
3 dismissal relieving County from any liability for the action or claim involved.

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

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

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

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

17 11. **Termination.**

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

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

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

30 (3) If termination of the Underlying Agreement is not feasible, the non-breaching party may
31 report the problem to the Secretary, and upon the non-breaching party's request, the
32 breaching party at its own expense shall implement a plan to cure the breach and report
33 regularly on its compliance with such plan to the non-breaching party.

34 B. **Effect of Termination.**

35 (1) Upon termination of this Addendum, for any reason, Contractor shall return or destroy all
36 PHI and/or ePHI received from County, or created or received by the Contractor on behalf of
37 County, and, in the event of destruction, Contractor shall certify such destruction, in writing,
38 to County. This provision shall apply to all PHI and/or ePHI which are in the possession of
39 subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI,
40 except as provided below in paragraph (2) of this section.

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

8 **12. General Provisions.**

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

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

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

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

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

21 F. **Interpretation of Addendum.**

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

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

28 G. **Notices to County.** All notifications required to be given by Contractor pursuant to the terms of
29 this Addendum shall be in writing and delivered to the County by either registered or certified
30 mail return receipt requested or guaranteed overnight mail with tracing capability at the address
31 listed below, or at such other address as County may hereafter designate. All notices provided
32 by Contractor pursuant to this Section shall be deemed given or made when received by County.

33 Name:

34 Title:

35 Address: