

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

159



SUBMITTAL DATE:
November 2, 2010

FROM: Riverside County Regional Medical Center

SUBJECT: Professional Services Agreement with Dell Marketing LP

RECOMMENDED MOTION: Move that the Board of Supervisors:

- 1) Approve and authorize the Chairman of the Board to execute the Service Agreement with Dell Marketing LP for a term of five years, effective January 17, 2011 through June 30, 2015, for an aggregate amount not to exceed \$204,560;
- 2) Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to approve automatic renewals for four additional consecutive fiscal years and sign amendments that do not change the substantive terms of the Agreement.

BACKGROUND: The Medicare Modernization Act of 2003 established the Medicare Recovery Audit Contractor (RAC) program as a demonstration program to identify improper Medicare payments – both overpayments and underpayments. Under the three-year demonstration program in Florida, New York, *(continued on page 2)*

Douglas D. Bagley

Douglas D. Bagley, Hospital Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$130,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/2011

SOURCE OF FUNDS: 100% Enterprise Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Debra Cournoyer*
Debra Cournoyer

County Executive Office Signature

- Consent
- Policy
- Consent
- Policy

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

3.67

FORM APPROVED COUNTY COUNSEL DATE 11/2/10
 BY: NEAL R. KIPNIS Departmental Concurrence
 Purchasing: Mark Seller, Assistant Director

SUBJECT: Professional Services Agreement with Siemens Medical Solutions USA, Inc.

BACKGROUND: (Continued)

California, South Carolina and Massachusetts, the Center for Medicare & Medicaid Services (CMS) reported RACs had succeeded in correcting more than 96% of improper overpayments. In the Tax Relief and Health Care Act of 2006, the RAC program was made permanent and CMS, was mandated to roll out the program to all 50 states by 2010.

Providing this needed service would help aid RCRMC meet the following expected outcome & objectives:

- To improve clinical documentation improvement in an academic facility;
- To identify areas that need immediate attention and direct the required change in practice; and
- To track code assignments and identify staff education needs.

On behalf of RCRMC, County Purchasing released a Request for Proposal (RFP MCARC128), to secure Recovery Audit Contractor Preparedness services for the hospital. Solicitations were sent to fifteen prospective vendors specializing in this service and advertised on the County's Internet/Website. Six proposals were received and evaluated by hospital staff with expertise in the field.

The evaluation team reviewed and scored each proposal based on the bidder's overall responsiveness to the RFP requirements, their experience, the ability to perform the services and the overall cost to the County. The scores ranged from 43.00 to 89.67. Dell Marketing LP received the highest score of 89.67.

Additional questions were sent to the top two highest scoring vendors (Dell Marketing LP and Pyramid Healthcare Solutions) to clarify their proposals. As a result of the questionnaire, Dell was determined as the most responsive/responsible bidder and was invited to conduct a demonstration to showcase their product for the evaluators.

Dell is a publicly owned corporation traded on NASDAQ through the 'Dell' stock symbol. They have been in business for 26 years under the Dell Inc. name since their inception in June 1984. Dell has developed extensive domain expertise in utilizing a third-party RAC Audit Management tool which will be implemented in this Professional Services Agreement.

PRICE REASONABLENESS:

As a result of RFP MCARC128, the bid proposals ranged from \$64,400 to \$1,902,600. Dell proposed an inclusive price structure not to exceed \$130,000 for the first fiscal year payment and an ongoing annual fee for the remaining four years in the amount of \$18,640 annually thereafter.

FINANCIAL IMPACT:

Funding for this service is 100% Hospital Enterprise funded and does not require additional County funds.

REVIEW/APPROVAL:

County Counsel
County Purchasing

DB:ns

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

1 This Professional Services Agreement ("Agreement"), effective January 17, 2011
2 ("Effective Date") is made and entered into by and between the County of Riverside, a
3 political subdivision of the State of California, through its Medical Center, (Riverside
4 County Regional Medical Center) hereinafter referred to as COUNTY, and **Dell**
5 **Marketing L.P.**, a Texas Limited Partnership, hereinafter referred to as
6 CONTRACTOR. COUNTY and CONTRACTOR are referred to individually as a
7 "PARTY" and collectively as the "PARTIES".

8 WHEREAS, Government Code Section 31000 authorizes the COUNTY to
9 contract for special services to be provided by persons/entities who are specially
10 trained, experienced and competent to perform the services required; and

11 WHEREAS, Contractor has the expertise, special skills, knowledge and
12 experience to perform the duties set out herein;

13 NOW THEREFORE, in consideration of the mutual promises, covenants
14 and conditions hereinafter contained the PARTIES hereto mutually agree as provided
15 on pages 1 through 38, attached hereto and incorporated herein.

16 **1.0 HIPAA Business Associate Agreement**

17 Each PARTY is subject to the requirements contained in the Health
18 Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-91,
19 enacted August 21, 1996, and the laws and regulations that are applicable to that
20 PARTY that set forth in **Attachment A**, consisting of 7 pages, attached hereto and by
21 this reference incorporated herein.

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**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

23 **2.0 DESCRIPTION OF SERVICES**

24 CONTRACTOR shall provide the services as outlined and specified in
25 **Exhibit A**, Scope of Work / Task Order (“Services”), consisting of 6 pages at the prices
26 stated in **Exhibit B**, Fee Schedule, consisting of 1 page.

27 **3.0 CONTRACTOR KNOW-HOW**

28 COUNTY acknowledges that, prior to the Effective Date (defined in the
29 opening paragraph), CONTRACTOR has acquired, conceived, developed or licensed,
30 and after the Effective Date will continue to acquire, conceive, develop or license,
31 certain architectures, concepts, industry knowledge, techniques, templates, and works
32 of authorship which embody copyrights, inventions, trade secrets and other intellectual
33 property relating to the type of Services to be performed for COUNTY (collectively, the
34 “Know-How”). COUNTY desires CONTRACTOR to apply its Know-How in connection
35 with the Services hereunder, and acknowledges that performance of the Services will
36 enhance and expand the Know-How. Subject to the confidentiality provisions of this
37 Agreement, nothing in the Agreement will impair CONTRACTOR’s right to use its Know-
38 How or to acquire, license, market, distribute, develop for itself or others or have others
39 develop for CONTRACTOR similar technology performing the same or similar functions
40 as the technology and Services contemplated by this Agreement.

41 **4.0 RIGHTS TO APPROVE CONTRACTOR MATERIALS**

42 CONTRACTOR will provide COUNTY, at least five business days (or such
43 shorter time as CONTRACTOR and COUNTY agree) prior to use, with copies of (i)
44 forms of correspondence to be used by assigned CONTRACTOR personnel to

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

45 communicate with COUNTY's patients and payors and (ii) scripts to be used by
46 assigned CONTRACTOR personnel to contact COUNTY's patients and payors. In the
47 event that COUNTY DESIRES TO change any form of correspondence or any script,
48 COUNTY will consult with CONTRACTOR regarding the proposed changes.

49 **5.0 PERIOD OF PERFORMANCE**

50 This Agreement shall begin on the Effective Date and will continue until
51 June 30, 2015, to be reviewed through the COUNTY's annual amendment process,
52 unless terminated as specified herein.

53 **6.0 COMPENSATION**

54 6.1 The COUNTY shall pay the CONTRACTOR for Services performed
55 and expenses incurred in accordance with the terms of **Exhibit B**, Payment Provisions.

56 6.2 Maximum payments by COUNTY to CONTRACTOR inclusive of
57 consulting fees and system implementation shall not exceed one hundred thirty
58 thousand dollars (\$130,000) for the first fiscal year payment. The ongoing annual fee
59 for the remaining four years shall not exceed eighteen thousand six hundred forty
60 dollars (\$18,640) annually. The COUNTY is not responsible for any fees or costs
61 incurred above or beyond the contracted amount and shall have no obligation to
62 purchase any specified amount of Services or products. Unless otherwise specifically
63 stated in **Exhibit B**, COUNTY shall not be responsible for payment of any of
64 CONTRACTOR's expenses related to this Agreement.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

65 6.3 Out-of-Pocket Expenses. Unless otherwise specifically provided in
66 **Exhibit B**, service fees will be all inclusive and out-of-pocket expenses will not be
67 separately invoiced.

68 6.4 No price increases will be permitted during the first year of this
69 Agreement. The COUNTY requires written proof satisfactory to COUNTY of cost
70 increases prior to any approved price adjustment. After the first year of the award, a
71 minimum of 30-days advance notice in writing is required to be considered and
72 approved by COUNTY. No retroactive price adjustments will be considered. Any price
73 increases must be stated in a written amendment to this Agreement.

74 6.5 Said compensation shall be paid in accordance with an invoice
75 submitted to COUNTY by CONTRACTOR, and COUNTY shall pay the invoice within
76 thirty (30) working days of receipt of the invoice. All payments will be made via check to
77 Dell Marketing L.P., 7489 Collections Center Drive, Chicago, IL 60693. Late payments
78 will bear interest paid at a rate equal to the lesser of (i) ten percent (10%) or (ii) the
79 highest rate allowed by applicable law.

80 6.6 All invoices submitted by CONTRACTOR shall be addressed to,
81 Riverside County Regional Medical Center, Attention: Accounts Payable, 26520 Cactus
82 Avenue, Moreno Valley, CA. 92555.

83 6.7 COUNTY will reimburse CONTRACTOR for amounts equal to any
84 present or future sales, use, excise, property, goods, services or other taxes relating to
85 the Services, except that CONTRACTOR shall be responsible for its franchise taxes,
86 employment taxes and taxes based upon its net income.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

87 **7.0 ASSURANCES**

88 7.1 CONTRACTOR hereby agrees that, where applicable, Services
89 provided hereunder will be performed in harmony with COUNTY policy and procedure.

90 7.2 CONTRACTOR warrants that it will perform the Services in
91 compliance with all State and Federal laws that are applicable to CONTRACTOR in the
92 performance of such Services. In addition, CONTRACTOR will comply with the
93 requirements of the Joint Commission that are applicable to the Services and as
94 directed by COUNTY.

95 7.3 CONTRACTOR certifies that it is aware of the Occupational Safety
96 and Health Administration (OSHA) regulations of the U.S. Department of Labor, the
97 derivative Cal/OSHA standards and laws and regulations relating thereto, and shall
98 comply therewith as to all relative elements under this Agreement.

99 **8.0 TERMINATION**

100 8.1 COUNTY may terminate this Agreement without cause upon 30
101 days written notice served upon the CONTRACTOR stating the extent and effective
102 date of termination.

103 8.2 Either PARTY may, upon five (5) days written notice, terminate this
104 Agreement in the event of the other PARTY's material default in the performance of any
105 term of this Agreement in the event that the defaulting PARTY fails to does not cure
106 such default within thirty (30) days written notice of such default by the non-defaulting
107 PARTY. In the event of such termination, the COUNTY may proceed with the work in
108 any manner deemed proper by COUNTY.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

109 8.3 After receipt of the notice of termination, CONTRACTOR shall: (a)
110 Stop all work under this Agreement on the date specified in the notice of termination;
111 and (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any
112 materials, reports or other products in their then-current state which, if the Agreement
113 had been completed or continued, would have been required to be furnished to
114 COUNTY.

115 8.4 After termination, COUNTY shall make payment only for
116 CONTRACTOR's performance up to the date of termination in accordance with this
117 Agreement and at the rates set forth in **Exhibit B**.

118 8.5 The rights and remedies of COUNTY provided in this section shall
119 not be exclusive and are in addition to any other rights and remedies provided by law or
120 this Agreement.

121 **9.0 CONFIDENTIALITY**

122 9.1 All written and oral information communicated to either party by the
123 other in connection with the activities contemplated by this Agreement whether before
124 or after the Effective Date, shall be held in strict confidence and used only for purposes
125 of this Agreement. No such information, including the provisions of this Agreement,
126 shall be disclosed by the recipient without the prior written consent of the other party,
127 except as required by law. If either party is required to disclose any confidential
128 information of the other party, the party so required shall notify the other party
129 immediately and shall cooperate in seeking a reasonable protective order.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

130 9.2 This Article 9.0 shall not apply to information which is (i) in the
131 public domain or is otherwise publicly available, (ii) already known to the recipient, (iii)
132 developed independently by the recipient, or (iv) received from a third party without
133 similar restriction and without breach of this Agreement.

134 **10.0 HOLD HARMLESS/INDEMNIFICATION**

135 10.1 CONTRACTOR shall indemnify and hold harmless the County of
136 Riverside, its Agencies, Districts, Special Districts and Departments, their respective
137 directors, officers, Board of Supervisors, elected and appointed officials, employees,
138 agents and representatives (individually and collectively hereinafter referred to as
139 Indemnitees) from any and all claims, damages, demands, liabilities, costs and
140 expenses arising out of or in any way relating to damage to the tangible property of
141 COUNTY or the bodily injury or death of any agent, employee, customer or business
142 visitor of COUNTY, to the extent caused by the negligence or willful misconduct of
143 CONTRACTOR, its officers, employees, subcontractors, agents or representatives.
144 With respect to any action or claim subject to indemnification herein by CONTRACTOR,
145 CONTRACTOR shall, at its sole cost, have the right to use counsel of their own choice
146 and shall have the right to adjust, settle, or compromise any such action or claim without
147 the prior consent of COUNTY; provided, however, that any such adjustment, settlement
148 or compromise places no liability on the COUNTY without its express written approval.

149 10.2 CONTRACTOR'S obligation hereunder shall be satisfied when
150 CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving
151 COUNTY from any liability for the action or claim involved. The specified insurance

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

152 limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S
153 obligations to indemnify and hold harmless the Indemnitees herein from third party
154 claims.

155 10.3 In the event there is conflict between this clause and California Civil
156 Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782.
157 Such interpretation shall not relieve the CONTRACTOR from indemnifying the
158 Indemnitees to the fullest extent allowed by law.

159 **11.0 INSURANCE**

160 11.1 Without limiting or diminishing the CONTRACTOR'S obligation to
161 indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or
162 cause to be maintained, at its sole cost and expense, the following insurance
163 coverage's during the term of this Agreement.

164 11.2 WORKERS' COMPENSATION

165 If the CONTRACTOR has employees as defined by the State of
166 California, the CONTRACTOR shall maintain statutory Workers' Compensation
167 Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall
168 include Employers' Liability (Coverage B) including Occupational Disease with limits not
169 less than **\$1,000,000** per person per accident. The policy shall be endorsed to waive
170 subrogation in favor of The County of Riverside, and, if applicable, to provide a
171 Borrowed Servant/Alternate Employer Endorsement.

172 11.3 COMMERCIAL GENERAL LIABILITY

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

173 Commercial General Liability insurance coverage, including but not
174 limited to, premises liability, contractual liability, products and completed operations
175 liability, personal and advertising injury, and cross liability coverage, covering claims
176 which may arise from or out of CONTRACTOR'S performance of its obligations
177 hereunder. Policy shall name the County of Riverside, its Agencies, Districts, Special
178 Districts, and Departments, their respective directors, officers, Board of Supervisors,
179 employees, elected or appointed officials, agents or representatives as Additional
180 Insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence
181 combined single limit, \$5,000,000 general aggregate.

182 11.4 VEHICLE LIABILITY

183 If vehicles or mobile equipment are used in the performance of the
184 obligations under this Agreement, then CONTRACTOR shall maintain liability insurance
185 for all owned, non-owned or hired vehicles so used in an amount not less than
186 \$1,000,000 per occurrence combined single limit. Policy shall name the County of
187 Riverside, its Agencies, Districts, Special Districts, and Departments, their respective
188 directors, officers, Board of Supervisors, employees, elected or appointed officials,
189 agents or representatives as Additional Insureds.

190 11.5 PROFESSIONAL LIABILITY

191 CONTRACTOR shall maintain Professional Liability Insurance
192 providing coverage for the CONTRACTOR's performance of work included within this
193 Agreement, with a limit of liability of not less than **\$1,000,000** per occurrence and
194 **\$2,000,000** annual aggregate. If CONTRACTOR's Professional Liability Insurance is

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

195 written on a claims made basis rather than an occurrence basis, such insurance shall
196 continue through the term of this Agreement and CONTRACTOR shall purchase at his
197 sole expense either 1) an Extended Reporting Endorsement (also known as Tail
198 Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to
199 the date of, or prior to, the inception of this Agreement; or 3) demonstrate through
200 Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with
201 the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue
202 for a period of three (3) years beyond the termination of this Agreement.

203 **11.6 GENERAL INSURANCE PROVISIONS - ALL LINES**

204 A. Any insurance carrier providing insurance coverage
205 hereunder shall be admitted to the State of California and have an A M BEST rating of
206 not less than A minus: VIII (A-:8) unless such requirements are waived, in writing, by the
207 County Risk Manager. If the County's Risk Manager waives a requirement for a
208 particular insurer such waiver is only valid for that specific insurer and only for one
209 policy term.

210 B. CONTRACTOR shall cause CONTRACTOR'S insurance
211 carrier(s) to furnish the County of Riverside with a properly executed original
212 Certificate(s) of Insurance evidencing the required insurance. Further, said Certificate(s)
213 and policies of insurance shall contain the covenant of the insurance carrier(s) will
214 endeavor to provide thirty (30) days written notice to the County of Riverside prior to
215 cancellation or non-renewal of such insurance. **CONTRACTOR shall not commence**
216 **operations until the COUNTY has been furnished original Certificate(s) of**

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

217 ***Insurance as required in this Section. An individual authorized by the insurance***
218 ***carrier to do so on its behalf shall sign the Certificate of Insurance.***

219 C. It is understood and agreed to by the parties hereto that the
220 CONTRACTOR'S insurance shall be construed as primary insurance, and the
221 COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured
222 programs shall not be construed as contributory.

223 D. if, during the term of this Agreement or any extension
224 thereof, there is a material change in the scope of Services; or, there is a material
225 change in the equipment to be used in the performance of the scope of work which will
226 add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or, the
227 term of this Agreement, including any extensions thereof, exceeds five (5) years the
228 COUNTY reserves the right to adjust the types of insurance required under this
229 Agreement and the monetary limits of liability for the insurance coverage's currently
230 required herein, if; in the County Risk Manager's reasonable judgment, the amount or
231 type of insurance carried by the CONTRACTOR has become inadequate.

232 E. The insurance requirements contained in this Agreement
233 may be met with a program(s) of self-insurance acceptable to the COUNTY.

234 **12.0 LIMITATION OF LIABILITY**

235 12.1 LIMITATION ON DIRECT DAMAGES. With respect to all claims,
236 actions and causes of action arising out of, under or in connection with this Agreement,
237 regardless of the form of action, whether in contract or tort (including negligence, strict
238 liability or otherwise) and whether or not such damages are foreseen, CONTRACTOR'S

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

239 liability will not exceed, in the aggregate, the greater of (i) total amount actually paid to
240 CONTRACTOR by COUNTY for Services provided under this Agreement (excluding
241 amounts paid as reimbursement of expenses or taxes) during the twelve month period
242 immediately preceding the date that the first claim, action, or cause of action arose or (ii)
243 \$200,000.00.

244 12.2 LIMITATION OF TYPE OF DAMAGES. With respect to all claims,
245 actions and causes of action arising out of, under or in connection with this Agreement and
246 all Task Orders (except for COUNTY'S obligations to make payments under this
247 Agreement), regardless of the form of action, whether in contract or tort (including
248 negligence, strict liability or otherwise) and whether or not such damages are foreseen,
249 neither PARTY will be liable for, any amounts for indirect, incidental, special,
250 consequential (including without limitation lost profits, lost revenue, or damages for the
251 loss of data) or punitive damages of the other PARTY or any third parties.

252 12.3 STATUTE OF LIMITATIONS. Neither PARTY may assert a claim
253 against the other PARTY more than two years after the date that such claim arose.

254 **13.0 AVAILABILITY OF FUNDING**

255 The COUNTY obligation for payment of any amounts due under this
256 Agreement beyond the then-current fiscal year end is contingent upon the availability of
257 funding from which payment can be made. No legal liability on the part of the COUNTY
258 shall arise for payment beyond June 30 of the then-current calendar year unless funds
259 are made available for such performance. In the event that such funding is not
260 available, COUNTY shall promptly notify CONTRACTOR in writing of the date when

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

261 such funding will end. CONTRACTOR may terminate this Agreement without penalty or
262 further obligation or liability to COUNTY upon the date set forth in COUNTY's notice by
263 providing COUNTY with written notice.

264 **14.0 RECORDS AND DOCUMENTS**

265 14.1 CONTRACTOR shall make available, upon written request by and
266 duly authorized Federal, State or COUNTY agency, a copy of this Agreement and such
267 books, documents and records as are necessary to certify the nature and extent of the
268 costs of the Services provided by CONTRACTOR. CONTRACTOR shall maintain
269 books and records for at least five (5) years after the furnishing of said Services.

270 14.2 CONTRACTOR to provide COUNTY with reports and information
271 relative to this Agreement and in accordance with terms set forth herein, as may be
272 requested by COUNTY.

273 **15.0 MONITORING**

274 15.1 CONTRACTOR hereby agrees to establish procedures for self-
275 monitoring and shall permit an appropriate official of the COUNTY, State or Federal
276 government to monitor, access, or evaluate CONTRACTOR'S performance under this
277 Agreement upon reasonable notice to CONTRACTOR and at any reasonable time.

278 15.2 Inspection of CONTRACTOR's Service Centers. Upon reasonable
279 notice and at reasonable times (including any times during which assigned
280 CONTRACTOR personnel are scheduled to be contacting COUNTY's patients and/or
281 payors), CONTRACTOR will permit COUNTY to inspect its operations at the
282 CONTRACTOR's service center where the Services are being performed ("Service

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

283 Center”), subject to reasonable measures taken by CONTRACTOR to protect the
284 confidentiality of information relation to its other customers.

285 15.3 Inspection of Records. Upon reasonable notice, CONTRACTOR
286 will provide COUNTY with access to all records of CONTRACTOR relating to
287 COUNTY’s receivables, including all paper records and records maintained on
288 CONTRACTOR’s computer systems relating to contacts with COUNTY’s patients and
289 payors.

290 15.4 Monitoring Onsite CONTRACTOR Personnel. With respect to
291 assigned CONTRACTOR personnel working at any facility owned, operated or
292 otherwise provided by COUNTY for use by the assigned CONTRACTOR personnel,
293 COUNTY shall have the right to monitor calls made on behalf of the COUNTY either in
294 person or through the use of COUNTY’S monitoring equipment.

295 15.5 Monitoring Service Center Operations. CONTRACTOR shall make
296 available to COUNTY access to CONTRACTOR’s equipment to monitor calls being
297 made from the Service Center on behalf of COUNTY under this Agreement.
298 CONTRACTOR shall make such access available at such times as the assigned
299 CONTRACTOR personnel are contacting COUNTY’s patients and payors.

300 **16.0 LICENSES**

301 16.1 CONTRACTOR shall, through the term of this Agreement, maintain
302 all licenses necessary for the provision of the Services hereunder and required by the
303 laws and regulations of the United States, the State of California, County of Riverside,
304 and all other governmental agencies. CONTRACTOR shall notify COUNTY

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

305 immediately, in writing, of inability to obtain or maintain such license. Said inability shall
306 be cause for termination of this Agreement.

307 16.2 CONTRACTOR shall ensure that CONTRACTOR'S employees,
308 agents, and subcontractors performing Services under the terms of this Agreement are
309 in compliance with all relative licensing requirements. CONTRACTOR hereby agrees to
310 notify COUNTY immediately, in writing, of inability of CONTRACTOR or any of
311 CONTRACTOR'S employees, agents and subcontractors to obtain or maintain such
312 license(s). Said inability shall be cause for termination of this Agreement.

313 16.3 COPY REQUIRED. A copy of each such license, permit, approval,
314 waiver, exemption, registration, accreditation, and certificate shall be provided to the
315 COUNTY.

316 **17.0 NONDISCRIMINATION AND ELIGIBILITY**

317 17.1 The CONTRACTOR shall not discriminate in the provision of
318 Services, allocation of benefits, accommodation in facilities, or employment of
319 personnel, on the basis of ethnic group identification, race, color, creed, ancestry,
320 religion, national origin, sexual preference, sex, age (over 40), marital status, medical
321 attention, or physical or mental handicap, and shall comply with all other requirements
322 of law regarding non discrimination and affirmative action including those laws
323 pertaining to the prohibition of discrimination against qualified handicapped persons in
324 all programs or activities.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

325 17.2 For the purpose of this Agreement, distinctions on the grounds of
326 race, religion, color, sex, national origin, age, or physical or mental handicap include but
327 at not limited to the following:

328 A. Denying an eligible person or providing to an eligible person
329 any Services or benefit which is different, or is provided in a different manner or at a
330 different time from that provided to other eligible persons under this Agreement.

331 B. Treatment in any matter related to his receipt of any service,
332 except when necessary for infection control.

333 C. Restricting an eligible person differently in any way in the
334 enjoyment of any advantage or privilege enjoyed by others receiving similar service or
335 benefit.

336 D. Treating an eligible person differently from others in
337 determining whether he satisfied any eligibility, membership, or other requirement or
338 condition which individuals must meet in order to be provided a similar service or
339 benefit.

340 E. The assignment of times or places for the provision of
341 Services on the basis of race, religion, color, sex, national origin, age, or physical or
342 mental handicap of the eligible person to be served.

343 **18.0 CONFLICT OF INTEREST**

344 CONTRACTOR and CONTRACTOR'S employees shall have no interest,
345 and shall nor acquire any interest, direct or indirect, which will conflict in any manner or
346 degree with the performance of Services required under this Agreement.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

347 **19.0 ALTERATION**

348 19.1 No alteration or variation of the terms of this Agreement shall be
349 valid unless made in writing and signed by the parties hereto, and no oral understanding
350 or agreement not incorporated herein, shall be binding on any of the parties hereto.

351 19.2 Only the County Board of Supervisors or County Purchasing Agent
352 may authorize the alteration or revision of this Agreement by COUNTY. The PARTIES
353 expressly recognize that COUNTY personnel are without authorization to either change
354 or waive any requirements of this Agreement.

355 **20.0 ASSIGNMENT**

356 CONTRACTOR may not delegate the obligations hereunder, either in
357 whole or in part, without prior written consent of COUNTY provided, however,
358 obligations undertaken by CONTRACTOR pursuant to this Agreement may be carried
359 out by means of subcontracts. No subcontract shall terminate or alter the
360 responsibilities of the CONTRACTOR to COUNTY pursuant to this Agreement.
361 CONTRACTOR may not assign the rights hereunder, either in whole or in part, without
362 prior written consent of COUNTY. Any attempted assignment or delegation in
363 derogation of this paragraph shall be void.

364 **21.0 ADMINISTRATION**

365 The County of Riverside Patient Accounts Officer, or designee, shall
366 administer this Agreement on behalf of the COUNTY. Contracts Administration is to
367 serve as its liaison with CONTRACTOR in connection with this agreement.

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**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

369 **22.0 WAIVER**

370 Any waiver by COUNTY of any breach of any one or more of the terms of
371 this Agreement shall not be construed to be a waiver of any subsequent or other breach
372 of the same or of any other term thereof. Failure on the part of the COUNTY to require
373 exact, full and complete compliance with any terms of this Agreement shall not be
374 construed as in any manner changing the terms hereof or stopping COUNTY from
375 enforcement hereof.

376 **23.0 JURISDICTION, VENUE, SEVERABILITY**

377 This Agreement and its construction and interpretation as to validity,
378 performance and breach shall be construed under the laws of the State of California.
379 Any legal action related to this Agreement shall be filed in the Federal or State courts
380 located in the State of California. In the event any provision in this Agreement is held by
381 a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining
382 provisions will nevertheless continue in full force without being impaired or invalidated in
383 any way.

384 **24.0 INDEPENDENT CONTRACTOR**

385 24.1 The CONTRACTOR is, for purposes arising out of this Agreement,
386 an independent contractor and shall not be deemed an employee of the COUNTY. It is
387 expressly understood and agreed that the CONTRACTOR shall in no event, as a result
388 of this Agreement, be entitled to any benefits to which COUNTY employees are entitled,
389 including but not limited to overtime, any retirement benefits, worker's compensation
390 benefits, and injury leave or other leave benefits. CONTRACTOR hereby holds

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

391 COUNTY harmless from any and all claims that may be made against COUNTY based
392 upon any contention by any third party that an employer-employee relationship exists by
393 reason of this Agreement.

394 24.2 It is further understood and agreed by the parties hereto that
395 CONTRACTOR in the performance of its obligation hereunder is subject to the control
396 or direction of COUNTY merely as to the result to be accomplished by the Services
397 hereunder agreed to be rendered and performed and not as to the means and methods
398 for accomplishing the results.

399 **25.0 SUBCONTRACT FOR WORK OR SERVICES**

400 CONTRACTOR may subcontract for a portion of the Services to be
401 provided under any Task Order, provided that any such subcontract shall have
402 confidentiality obligations substantially similar those contained in this Agreement.

403 **26.0 INTEREST OF CONTRACTOR**

404 The CONTRACTOR covenants that it presently has no interest, including
405 but not limited to, other projects or independent contracts, and shall not acquire any
406 such interest, direct or indirect, which would conflict in any manner or degree with the
407 performance of Services required to be performed under this Agreement.

408 **27.0 CONDUCT OF CONTRACTOR**

409 27.1 The CONTRACTOR agrees to inform the COUNTY of all the
410 CONTRACTOR's interest, if any, which are or which the CONTRACTOR believes to be
411 incompatible with any interest of the COUNTY.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

412 27.2 The CONTRACTOR shall not, under circumstances, which might
413 reasonably be interpreted as an attempt to influence the recipient in the conduct of his
414 duties, accept any gratuity or special favor from individuals or organizations with whom
415 the CONTRACTOR is doing business or proposing to do business, in accomplishing the
416 work under the contract.

417 27.3 The CONTRACTOR shall not use for personal gain or make other
418 improper use of privileged information, which is acquired in connection with his contract.
419 In this connection, the term 'privileged information' includes, but is not limited to,
420 unpublished information relating to technological and scientific development; medical,
421 personnel, or security records of the individuals; anticipated materials requirements or
422 pricing actions; and knowledge of selection of CONTRACTOR or subcontractors in
423 advance of official announcement.

424 27.4 The CONTRACTOR or employees thereof shall not offer gifts,
425 gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

426 **28.0 RIGHT TO ACQUIRE OR PROVIDE EQUIPMENT AND SERVICES**

427 Nothing in this Agreement shall prohibit the COUNTY from acquiring the
428 same type or equivalent equipment and/or service from other sources, when deemed by
429 the COUNTY to be in its best interest. Nothing in this Agreement shall prohibit the
430 CONTRACTOR from providing the same or equivalent Services to other sources, when
431 deemed by the CONTRACTOR to be in its best interest.

432 //

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

433 **29.0 FORCE MAJEURE**

434 29.1 In the event CONTRACTOR is unable to comply with any provision
435 of this agreement due to causes beyond their control such as acts of God, acts of war,
436 civil disorders, or other similar acts, CONTRACTOR shall not be held liable to COUNTY
437 for such failure to comply.

438 29.2 In the event COUNTY is unable to comply with any provision of this
439 agreement due to causes beyond its control relating to acts of God, acts of war, civil
440 disorders, or other similar acts, COUNTY shall not be held liable to CONTRACTOR for
441 such failure to comply.

442 **30.0 EDD REPORTING REQUIREMENTS**

443 In order to comply with child support enforcement requirements of the
444 State of California, the County of Riverside may be required to submit a Report of
445 Independent Contractor(s) form **DE 542** to the Employment Development Department.
446 The selected contractor agrees to furnish the required Contractor data and certifications
447 to the County of Riverside within 10 days of notification of award of contract when
448 required by the EDD.

449 It is expressly understood that this data will be transmitted to
450 governmental agencies charged with the establishment and enforcement of child
451 support orders and for no other purposes and will be held confidential by those
452 agencies. Failure of the Contractor to timely submit the data and/or certificates required
453 may result in contract being awarded to another vendor. In the event a contract has

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

454 been issued, failure of the Contractor to comply with all federal and state reporting
455 requirements for child support enforcement or to comply with all lawfully served Wage
456 and Earnings Assignments Orders and Notices of Assignment shall constitute a material
457 breach of contract. Failure to cure such breach within 60 calendar days of notice from
458 the County shall constitute grounds for termination of the contract.

459 If you have any questions concerning this reporting requirement, please
460 call (916) 657-0529. You may also contact your local Employment Tax Customer
461 Service Office listed in your telephone directory in the State Government section under
462 "Employment Development Department," or you may access their Internet site at
463 www.edd.ca.gov.

464 **31.0 ENTIRE AGREEMENT**

465 This Agreement, including any Statement(s) of Work entered into pursuant
466 to it, constitutes the entire agreement of the PARTIES hereto with respect to its subject
467 matter and supersedes all prior and contemporaneous representations, proposals,
468 discussions and communications, whether oral or in writing. This contract may be
469 modified only in writing and shall be enforceable in accordance with its terms when
470 signed by each of the PARTIES hereto.

471 **32.0 CAPTIONS AND PARAGRAPH HEADINGS**

472 Captions and paragraph headings used in this Agreement are for
473 convenience only and are not a part of this Agreement and shall not be used in
474 construing this Agreement.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

475 **33.0 NOTICES**

476 All correspondence and notices required or contemplated by this
477 Agreement shall be delivered to the respective parties at the addresses set forth below
478 and are deemed submitted one day after their deposit in the United States mail, postage
479 prepaid.

480 **CONTRACTOR**

COUNTY

481 Dell Marketing L.P.	Riverside County Regional Medical Center
482 26 Century Blvd., Suite 400	26520 Cactus Avenue
483 Nashville, TN 37214	Moreno Valley, CA 92555
484 Attn: Contract Administration	

485 With a copy to:

486 Dell Marketing L.P.
487 One Dell Way
488 Round Rock, TX 78682
489 Attn: Contracts Manager

490

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
DELL MARKETING L.P.**

491 **IN WITNESS WHEREOF**, the parties have executed this Agreement.

492 **CONTRACTOR**

COUNTY

493 By: _____

By: _____

494
495 ERIC SAMUE
496 Type or Print Name

Type or Print Name

497
498 VP, OPERATIONS
499 Type or Print Title

Type or Print Title

500
501 Date: 12/17/2010

Date: _____

FORM APPROVED COUNTY COUNSEL
BY: Neal R. Kipnis 12/23/10
NEAL R. KIPNIS DATE

**EXHIBIT A
SCOPE OF WORK / TASK ORDER
DELL MARKETING L.P.**

A. CONTRACTOR PERFORMANCE PROVISION

CONTRACTOR shall perform the revenue cycle services as outlined below in conjunction with the terms and conditions set forth in the Agreement:

- 1.0 Perform an initial assessment and preemptive sample review of the key Recovery Audit Contractor (RAC) review target focal points as outlined in the Center for Medicare & Medicaid Services (CMS) notice for coding accuracy, potential clinical documentation education needs, and potential financial impact to COUNTY.
- 2.0 Review approximately 100 coded and billed medical records for MS-DRG assignment compliance, outpatient charge capture accuracy, medical necessity, and discharge status accuracy. For each risk area, CONTRACTOR shall assign the value of high, medium, or low likelihood of defensibility in a RAC appeal.
- 3.0 The onsite RAC analysis will include an assessment of key operational process to include, but not limited to:
 - 3.1 Patient Access – policy and procedure review for inpatient versus observation orders; Medicare Secondary Payer (MSP) data collection quality; Advance Beneficiary Notices.
 - 3.2 Case Management/UR – policy and procedure review of inpatient and observation medical necessity criteria and the use of Condition Code 44.
 - 3.3 Health Information Management (HIM) – physician query process review; operation review of ability to process RAC medical records requests in a timely manner per the RAC standards.
 - 3.4 Review of RAC preparedness activities, past & projected, and make recommendations for operational improvement – This will include the RAC coordinator job description, the RAC team

EXHIBIT A
SCOPE OF WORK / TASK ORDER
DELL MARKETING L.P.

structure, past risk area assessments, RAC tracking, and RAC appeal processing.

- 4.0 Review current revenue cycle denial process, monitoring, and reporting, and make recommendations for operation improvement.
- 5.0 Discuss the RAC analysis and audit findings with COUNTY hospital management and make recommendations relative to the various findings and improvement opportunities, including coding accuracy improvement, physician documentation improvement, medical necessity compliance, and charge capture.
- 6.0 Provide MedPAR data benchmarking against other hospital MedPAR data via shared analytics, allowing for the leveraging of lessons/experiences from other cohort members.
- 7.0 Provide written root cause analysis reports for each phase of the RAC analysis to provided detailed areas of opportunity for improvement and immediate action.
- 8.0 Provide an automated RAC tracking system that will:
 - 8.1 Provide a date timeline for each claim
 - 8.2 Track take-backs, including appeals rates and process accountability to identify opportunities for improvement.
 - 8.3 Through system support, perform pre-emptive patient record audits that will determine which patient records are at the highest risk for audit and financial loss.
- 9.0 Provide a system that identifies the specific order, case manager, clinical documentation improvement team member, or patient account representative with the ability to track additional personnel within the system.
- 10.0 Provide an automated identification of documentation and coding compliance.

EXHIBIT A
SCOPE OF WORK / TASK ORDER
DELL MARKETING L.P.

- 11.0 Provide for data validation by utilizing a data mining tool that allows reviewing data for possible issues.
- 12.0 Provide for automated and ongoing alerts of upcoming deadlines and spikes in the problem areas by utilizing the dashboard allowing automated and ongoing alerts.
- 13.0 Provide for dashboard reports with drill-down capability for all metrics by using the Key Performance Indicators (KPIs).
- 14.0 Provide a listing of all metrics in a relationship-oriented manner.
- 15.0 Provide for robust online, Internet-based access.
- 16.0 Perform the RAC risk assessment in the initial nine (9) week phase of the project with an assigned personnel onsite for two weeks, and one week offsite for follow-up and reporting (repeated in three intervals).
- 17.0 Provide training to COUNTY which encompasses the following:
 - 17.1 Identify COUNTY's high-level objectives and align CONTRACTOR's training program.
 - 17.2 Gather all training and documentation requirements, while being proactive in addressing any unique factors.
 - 17.3 Develop a comprehensive Training Plan that will include the most efficient and effective training strategy. The Training Plan must receive prior approval from COUNTY before use.
 - 17.4 Follow up with a comprehensive evaluation process to ensure CONTRACTOR has successfully met their training obligations and completely satisfied COUNTY training needs.
- 18.0 Provide support delivery at the conclusion of the implementation for all product offerings.

EXHIBIT A
SCOPE OF WORK / TASK ORDER
DELL MARKETING L.P.

- 19.0 Provide a 1-800 telephone number for technical support between 7:00 a.m. – 7:00 p.m. (Monday through Friday). For critical issues, have an On-Call staff member available 24 hours/day, 7 days/week by telephone and E-mail.
- 20.0 Provide the following three (3) structured training courses per year:
 - 20.1 Course 100 – RCS Medicare University Basic
 - 20.2 Course 200 – RCS Medicare University Intermediate
 - 20.3 Course 300 – RCS Medicare University Advanced
- 21.0 CONTRACTOR shall offer within the 90 days intervals between courses, web casting or other media training or support to assist with utilization of material.
- 22.0 Provide ongoing access to the RAC/Coding/Billing Compliance CONTRACTOR's team through in-services, list serve groups, webcasts, or other media methods, for up to twenty-five (25) hours during the term of the Agreement.

B. CONTRACTOR ASSIGNED PERSONNEL/STAFF REQUIREMENTS

- 1.0 CONTRACTOR shall have complete control of all of its employees. Notwithstanding any other provision of this Agreement, the assigned personnel/staff shall be employees of CONTRACTOR and shall not be employees of COUNTY. CONTRACTOR shall be solely responsible for payroll, tax withholding, employee benefits, and all other matters related to the employment of the assigned personnel/staff. CONTRACTOR shall indemnify and hold COUNTY harmless for any and all losses that may be incurred by COUNTY in the event that the CONTRACTOR's assigned personnel are deemed to be employees of COUNTY.
- 2.0 CONTRACTOR shall provide assigned staff as follows:
 - 2.1 Assign an onsite Project Manager to coordinate deliverables, timeliness, and issues resolutions for the duration of the project.

EXHIBIT A
SCOPE OF WORK / TASK ORDER
DELL MARKETING L.P.

- 2.1.1 The Project Manager will conduct weekly meeting with key COUNTY hospital management and staff and provide a written report, summarizing activities, accomplishments, and issues.
- 2.1.2 At each milestone of the project, the Project Manager will ensure a Customer Satisfaction Survey (CSAT) be conducted to assess the COUNTY's satisfaction and identify any issues needing resolution.
- 3.0 Assign a System Project Manager to be responsible for the integration during the audit management system implementation.
- 4.0 Assign a support team once any and all integration work is complete. CONTRACTOR will initiate training and a transition to support.
- 5.0 CONTRACTOR assigned personnel/staff must have annual health screening to include a tuberculosis (TB) test, and or Chest X-Ray (verifying absence of active disease), and a general physical examination clearance at the expense of the CONTRACTOR. All records pertaining to this shall be kept on file in CONTRACTOR'S office.
- 6.0 CONTRACTOR staff shall be orientated to COUNTY fire, disaster, department specific procedures, and infection control practices by COUNTY.
- 7.0 CONTRACTOR staff must possess and wear a photographic identification card supplied by CONTRACTOR.
- 8.0 CONTRACTOR will adhere to all Riverside County Regional Medical Center (RCRMC) policies that are applicable to the Services.
- 9.0 CONTRACTOR shall not assign to the COUNTY any employee with a criminal history report revealing a felony and/or pending case.
- 10.0 CONTRACTOR's assigned staff shall not be under the influence of alcohol or drugs while on duty or in a standby or an on-call basis; or possess controlled substances or prescription drugs without a prescription while on duty.

EXHIBIT A
SCOPE OF WORK / TASK ORDER
DELL MARKETING L.P.

- 11.0 If COUNTY has reasonable suspicion to believe a CONTRACTOR's personnel is in violation of being under the influence of alcohol or drugs while on duty, COUNTY reserves the right to request CONTRACTOR to remove the personnel from COUNTY's premises immediately.
- 12.0 CONTRACTOR staff must be able to speak, read and write the English language.

B. COUNTY RESPONSIBILITIES

- 1.0 Provide appropriate access to COUNTY personnel, systems and information required for CONTRACTOR to perform its obligations as specified in this Agreement.
- 2.0 Provide CONTRACTOR assigned personnel/staff performing the services at COUNTY's premises, without charge, a reasonable work environment in compliance with all applicable laws and regulations, including office space, furniture, telephone services, and reproduction, computer, facsimile and other necessary equipment, supplies, and services.
- 3.0 Have the right to interview any and all of the assigned and/or prospective assigned personnel/staff. If COUNTY requests, after consultation with CONTRACTOR, that one or more of the assigned personnel/staff be removed from a position contacting COUNTY's patients and/or payors, CONTRACTOR shall promptly remove such assigned personnel/staff (unless CONTRACTOR reasonably believes that such removal has been requested for reasons that would result in a violation of law).
- 4.0 Obtain all consents, licenses and sublicenses necessary for CONTRACTOR to perform under this Agreement and shall be responsible for any fee payments associated with obtaining such consents, licenses and sublicenses.

**EXHIBIT B
FEE SCHEDULE
DELL MARKETING L.P.**

CONTRACTOR shall be paid for the first year, inclusive of consulting fees and system implementation, the total of \$130,000. The ongoing annual fee for the remaining four years is \$18,640, based on current claim volume estimates and cost for education services.

Description	Number of Units	Cost Per Unit	Total
Administrative: (direct & indirect costs)			
Project Manager	1	\$58,610	\$58,610
RAC Consultant	1	\$50,000	\$50,000
		Subtotal Total	\$108,610 / one-time fee
Software Implementation:			
1 st facility	1	\$2,000	\$2,000
Each additional facility	1	\$750	\$750
		Subtotal Total	\$2,750 / one-time fee
Education:			
Tuition	15 students x 3 courses	\$125	\$5,625
Manuals	15 students x 3 courses	\$25	\$1,125
Airfare	2 instructors x 3 courses	N/A	\$1,800
Hotel / Meals	2 instructors x 3 nights x 3 courses	N/A	\$2,700
		Education Subtotal Total	\$11,350
		<i>Multiple Course Reduction</i>	<i>(\$1,350)</i>
		Total	\$10,000/annually
ASP Monthly Fee:			
* Not to exceed up to 2,000 Medicare claims per month	2,000	\$.36/claim	\$8,640/annually
		TOTAL COST	\$130,000

* Based on current estimates the ASP monthly fee shall not exceed \$720 per month.

ATTACHMENT A
HIPAA BUSINESS ASSOCIATE AGREEMENT
Between the County of Riverside and
DELL MARKETING L.P.

This HIPAA Business Associate Agreement Addendum ("Addendum") supplements, and is made part of the Professional Services Agreement (the "Underlying Agreement") between the County of Riverside ("County") and **DELL MARKETING L.P.** ("CONTRACTOR") as of the date of approval by both parties (the "Effective Date").

RECITALS

WHEREAS, County and CONTRACTOR entered into the Underlying Agreement pursuant to which CONTRACTOR provides services to County, and in conjunction with the provision of such services certain Protected Health Information ("PHI") and/or certain electronic Protected Health Information (ePHI) may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 and 164 (the "Privacy Rule") and/or Part 162 (the "Security Rule"), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and,

WHEREAS, CONTRACTOR, when a recipient of PHI and/or ePHI from County, is a Business Associate as defined in the Privacy Rule; and,

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

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

1. Definitions. Unless otherwise provided in this Addendum, capitalized terms shall have the same meanings as set forth in the Privacy Rule and/or Security Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by CONTRACTOR of County Disclosed PHI and/or ePHI
 - A. CONTRACTOR shall be permitted to use PHI and/or ePHI disclosed to it by the County:
 - (1) On behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule and/or Security Rule;
 - (2) As necessary to perform any and all of its obligations under the Underlying Agreement.
 - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, CONTRACTOR may:

ATTACHMENT A
HIPAA BUSINESS ASSOCIATE AGREEMENT
Between the County of Riverside and
DELL MARKETING L.P.

- (1) Use the PHI and/or ePHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) Disclose the PHI and/or ePHI in its possession to a third party for the purpose of CONTRACTOR's proper management and administration or to fulfill any legal responsibilities of CONTRACTOR. CONTRACTOR may disclose PHI and/or ePHI as necessary for CONTRACTOR's operations only if:
 - (a) The disclosure is required by law; or
 - (b) CONTRACTOR obtains written assurances from any person or organization to which CONTRACTOR will disclose such PHI and/or ePHI that the person or organization will:
 - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose of which CONTRACTOR disclosed it to the third party, or as required by law; and,
 - (ii) The third party will notify CONTRACTOR of any instances of which it becomes aware in which the confidentiality of the information has been breached.
 - (3) Aggregate the PHI and/or ePHI and/or aggregate the PHI and/or ePHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
 - (4) Not disclose PHI and/or ePHI disclosed to CONTRACTOR by County not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI as authorized in writing by County.
 - (5) De-identify any and all PHI and/or ePHI of County received by CONTRACTOR under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. CONTRACTOR agrees that it will neither use nor disclose PHI and/or ePHI it receives from County, nor from another business associate of County, except as permitted or required by this Addendum, or as required by law, or as otherwise permitted by law.
- D. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are stricter in their requirements than the provisions of HIPAA and prohibit the disclosure of mental health, and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

ATTACHMENT A
HIPAA BUSINESS ASSOCIATE AGREEMENT
Between the County of Riverside and
DELL MARKETING L.P.

3. Obligations of County.
- A. County agrees that it will make its best efforts to promptly notify CONTRACTOR in writing of any restrictions on the use and disclosure of PHI and/or ePHI agreed to by County that may affect CONTRACTOR's ability to perform its obligations under the Underlying Agreement, or this Addendum.
 - B. County agrees that it will make its best efforts to promptly notify CONTRACTOR in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect CONTRACTOR's ability to perform its obligations under the Underlying Agreement, or this Addendum.
 - C. County agrees to make its best efforts to promptly notify CONTRACTOR in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect CONTRACTOR's use or disclosure of PHI and/or ePHI.
 - D. County shall not request CONTRACTOR to use or disclose PHI and/or ePHI in any manner that would not be permissible under the Privacy Rule and/or Security Rule.
 - E. County will obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that CONTRACTOR can perform its obligations under this Addendum and/or the Underlying Agreement.
4. Obligations of CONTRACTOR. In connection with its use of PHI and/or ePHI disclosed by County to CONTRACTOR, CONTRACTOR agrees to:
- A. Use or disclose PHI and/or ePHI only as permitted or required by this Addendum or as required by law.
 - B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum. Notwithstanding the foregoing, when CONTRACTOR is present at a facility of County or its affiliates or is accessing or utilizing equipment, software, tools, network components or other information technology owned, leased or licensed by County or its affiliates, CONTRACTOR will comply with County's standard safeguards to prevent the use or disclosure of PHI applicable to such County facility or such County system, provided County has given CONTRACTOR prior notice of such safeguards in writing or in the same manner as County provides notice of such safeguards to its own employees and other contractors. Except as otherwise described above or expressly provided in the Underlying Agreement, CONTRACTOR is not responsible for implementing safeguards with respect to the facilities of County or its affiliates or County systems.

ATTACHMENT A
HIPAA BUSINESS ASSOCIATE AGREEMENT
Between the County of Riverside and
DELL MARKETING L.P.

- C. To the extent practicable, mitigate any harmful effect that is known to CONTRACTOR of a use or disclosure of PHI and/or ePHI by CONTRACTOR in violation of this Addendum.
 - D. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum of which CONTRACTOR becomes aware.
 - E. Require sub-contractors or agents to whom CONTRACTOR provides PHI and/or ePHI to agree to the restrictions and conditions that are substantially similar in all material respects to the restrictions and conditions that apply to CONTRACTOR pursuant to this Addendum.
 - F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI and/or ePHI created or received for or from the County. Notwithstanding the foregoing, when CONTRACTOR is present at a facility of County or its affiliates or is accessing or utilizing equipment, software, tools, network components or other information technology owned, leased or licensed by County or its affiliates, CONTRACTOR will comply with County's standard administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of Electronic PHI applicable to such County facility or such County System, provided County has given CONTRACTOR prior notice of such safeguards in writing or in the same manner as County provides notice of such safeguards to its own employees and other contractors. Except as otherwise described above or expressly provided in the Underlying Agreement, CONTRACTOR is not responsible for implementing safeguards with respect to the facilities of County or its affiliates or County systems.
 - G. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
5. Access to PHI, Amendment and Disclosure Accounting. CONTRACTOR agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.
 - B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
 - C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) CONTRACTOR agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.

ATTACHMENT A
HIPAA BUSINESS ASSOCIATE AGREEMENT
Between the County of Riverside and
DELL MARKETING L.P.

- (2) CONTRACTOR agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
- (3) CONTRACTOR shall have available for the County the information required by this section for the six (6) years preceding the County's request for information (except the CONTRACTOR need have no information for disclosures occurring before April 14, 2003).
- D. Make available to the County, or to the Secretary of Health and Human Services, CONTRACTOR's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining CONTRACTOR's compliance with the Privacy Rule, subject to any applicable legal restrictions.
- E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by CONTRACTOR.
- F. Within thirty (30) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in CONTRACTOR's possession constitutes a Designated Record Set.
- G. Not make any disclosure of PHI that County would be prohibited from making.
6. Access to ePHI, Amendment and Disclosure Accounting. In the event CONTRACTOR needs to create or have access to County ePHI, CONTRACTOR agrees to:
- A. Subject to Section 4.F above, implement and maintain reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality of, the integrity of, the availability of, and authorized persons' accessibility to, County ePHI as applicable under the terms and conditions of the Underlying Agreement. The ePHI shall include that which the CONTRACTOR may create, receive, maintain, or transmit on behalf of the County.
- B. Ensure that any agent, including a subcontractor, to whom CONTRACTOR provides ePHI agrees to implement reasonable and appropriate safeguards.
- C. Report to County any security incident of which CONTRACTOR becomes aware that concerns County ePHI.

ATTACHMENT A
HIPAA BUSINESS ASSOCIATE AGREEMENT
Between the County of Riverside and
DELL MARKETING L.P.

7. Term and Termination.

- A. Term – this Addendum shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, except as terminated by County as provided herein.
- B. Termination for Breach – County may terminate this Addendum, effective immediately, without cause, if CONTRACTOR has breached a material provision of this Addendum. Alternatively, County may choose to provide CONTRACTOR with notice of the existence of an alleged material breach and afford CONTRACTOR with an opportunity to cure the alleged material breach. In the event CONTRACTOR fails to cure the breach to the satisfaction of County in a timely manner, County reserves the right to immediately terminate this Addendum.
- C. Effect of Termination – upon termination of this Addendum, for any reason, CONTRACTOR shall return or destroy all PHI and/or ePHI received from the County, or created or received by CONTRACTOR on behalf of County, and, in the event of destruction, CONTRACTOR shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which is in possession of subcontractors or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the PHI and/or ePHI.
- D. Destruction not Feasible – in the event that CONTRACTOR determines that returning or destroying the PHI and/or ePHI is not feasible, CONTRACTOR shall provide written notification to County of the conditions which make such return or destruction not feasible. Upon determination by CONTRACTOR that return or destruction of PHI and/or ePHI is not feasible, CONTRACTOR shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as CONTRACTOR maintains such PHI and/or ePHI.

8. Hold Harmless/Indemnification

CONTRACTOR (the “**Indemnifying Party**”) shall, at its expense, defend the COUNTY and its officers, directors and employees (the “**Indemnified Parties**”) from all third party claims brought against one or more of the Indemnified Parties arising from or connected with the breach of the CONTRACTOR’s obligations set forth in this Addendum by the CONTRACTOR, its Affiliates or their respective employees, subcontractors, agents and representatives. In addition, CONTRACTOR shall indemnify and hold harmless the Indemnified Parties from and against (a) any financial judgments finally awarded by a court of competent jurisdiction to such third parties against any Indemnified Party based on such claims after CONTRACTOR has presented its defenses (or after CONTRACTOR elected

ATTACHMENT A
HIPAA BUSINESS ASSOCIATE AGREEMENT
Between the County of Riverside and
DELL MARKETING L.P.

not to, or failed to, defend such claims); (b) any final financial penalties assessed against any Indemnified Party by a duly authorized regulatory authority based on such claims after CONTRACTOR has presented any defenses allowed by applicable law (or after CONTRACTOR elected not to, or failed to, present such defenses); and (c) any financial settlement amount to which the CONTRACTOR agrees in writing (or to which the applicable Indemnified Parties agreed after CONTRACTOR elected not to, or failed to, defend such claims). The foregoing indemnification obligations are subject to the Indemnified Parties giving CONTRACTOR: (1) prompt written notice of any such claims; failure or delay to so notify CONTRACTOR shall not relieve CONTRACTOR from any liability hereunder so long as the failure or delay shall not have prejudiced the defense of such claim; (2) reasonable assistance in defending the claim; and (3) sole authority to defend or settle such claim.

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

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

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

9. General Provisions.

- A. Amendment – the parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- B. Survival – the respective rights and obligations of this Addendum shall survive the termination or expiration of this Addendum.
- C. Regulatory References – a reference in this Addendum to a section in the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- D. Conflicts – any ambiguity in this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- E. Interpretation of Addendum – this Addendum shall be construed to be a part of the Underlying Agreement as one document. The purpose is to

ATTACHMENT A
HIPAA BUSINESS ASSOCIATE AGREEMENT
Between the County of Riverside and
DELL MARKETING L.P.

supplement the Underlying Agreement to include the requirements of HIPAA.

- D. Conflicts – any ambiguity in this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- E. Interpretation of Addendum – this Addendum shall be construed to be a part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of HIPAA.