

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

232



FROM: Human Resources Dept.

SUBMITTAL DATE:
May 22, 2012

SUBJECT: 2012 Voluntary Employees' Beneficiary Association Post Employment Program Health Savings Plan – Assignment of the Professional Services Agreement and First Amendment Professional Services Agreement

RECOMMENDED MOTION: That the Board of Supervisors 1) ratify and approve the County's Voluntary Employees' Beneficiary Association (VEBA) Post Employment Program (PEP) Health Savings Plan (HSP) Professional Services Agreement (Attachment A), effective May 9, 2012, authorizing VEBA Service Group, LLC to assign the Professional Service Agreement to Gallagher Benefit Services, Inc. (GBS) due to the merger of the two organizations; 2) ratify and approve the First Amendment Professional Services Agreement (Attachment B), effective May 9, 2012, to replace ownership interest to reflect GBS (Attachment C), and replace the Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement (Attachment D) to reflect GBS; 3) authorize the chairperson to sign four (4) copies of Attachment A and B; and 4) retain one (1) copy of the signed documents and return three (3) copies of the signed documents to Human Resources for distribution.

FORM APPROVED COUNTY COUNSEL
BY: TAMMY V. LIEU
DATE: 6/6/12
Departmental Concurrence

Barbara A. Olivier,
Asst. County Executive Officer/Human Resources Dir.

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12

SOURCE OF FUNDS: Fees are paid by Plan participants – no additional cost to the County.	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: **APPROVE**

BY:
Elizabeth J. Olson

County Executive Office Signature

- Policy
- Consent
- Policy
- Consent

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: 01/10/12, 3.37;
11/26/02, 3.39

District: All

Agenda Number:

BACKGROUND:

The County of Riverside VEBA HSP was approved by the Board of Supervisors on November 26, 2002, and ratified on June 10, 2003. The VEBA HSP is designed to provide tax-free reimbursement for Internal Revenues Service (IRS) qualified medical expenses incurred by the participant and/or the participant's eligible dependents. Eligible expenses are detailed in IRS Publication 502 and include such items as the purchase of post employment health coverage (medical, dental, vision, etc.), copayments and deductibles. There are approximately 1,665 participants in the plan with assets totaling \$23.1 million as of March 31, 2012.

On January 10, 2012, Item 3.37, the Board approved the VEBA HSP Agreements with VEBA Service Group, LLC (VSG) for consulting services. The Human Resources Department was recently notified by VSG of their intent to create a business partnership with Gallagher Benefits Services, Inc., one of the premier benefits consulting firms in the U.S.

Gallagher Benefits Services, Inc. (GBS)

GBS was founded in 1927 and is an Employee Benefits subsidiary of Arthur J. Gallagher & Co. GBS is one of the world's largest insurance brokers, with over \$2 billion in revenue. As an employee benefits firm, GBS offers an array of resources and benefits expertise, including: third party administration (TPA), healthcare data analysis/benchmarking, compliance consulting and actuarial services.

The merger of VSG and GBS was finalized on May 9, 2012. The business combination is designed to maintain the continuity of VSG's management and services, and enhance resources and capabilities. If approved by the Board, the following attachments will finalize the assignment of Professional Services Agreement with GBS.

Attachment A - Assignment of the Professional Services Agreement

- Assigns GBS all rights, title and interest in, to and under the Professional Services Agreement between VSG and the County of Riverside.
- Confirms GBS will assume and perform all duties and obligations that VSG has under the Agreement and assumes all of the VSG liabilities under the Agreement.

Attachment B - First Amendment Professional Services Agreement

- The First Amendment ensures the parties to the Agreement are listed as Gallagher Benefits Services, Inc and the County of Riverside.

Attachment C - Ownership Interest

- Ensures the parties to the Agreement are accurately reflected on the Agreement.

Attachment D – Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement

- The HIPAA Business Associate Agreement (BAA), Addendum to the Agreement has been replaced to accurately reflect the County of Riverside and GBS.

There is no cost to the County for the recommended action.

ATTACHMENT A

ASSIGNMENT OF THE PROFESSIONAL SERVICES AGREEMENT

ASSIGNMENT OF THE PROFESSIONAL SERVICES AGREEMENT

This Assignment of the Professional Services Agreement (“Assignment”) is entered into by and between VEBA Service Group, LLC, a Washington limited liability company, and Gallagher Benefit Services, Inc., a Delaware corporation, and referred to collectively as the “Parties”.

WHEREAS, the Parties have entered into a merger transaction whereby Gallagher Benefit Services, Inc. will acquire substantially all assets of VEBA Services Group, LLC; and

WHEREAS, the Parties desire to assign certain contractual obligations;

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions, contained in this Assignment, the Parties agree to the following:

1. For value received, VEBA Service Group, LLC (“Assignor”) hereby assigns to Gallagher Benefit Services, Inc. (“Assignee”) all rights, title and interest in, to and under the Professional Services Agreement between VEBA Service Group, LLC and the County of Riverside, a political subdivision of the State of California, dated January 1, 2012, including all attachments and any amendments, (the “Agreement”).
2. Assignor assigns to Assignee: (i) all of Assignor’s duties and obligations of further and future performance of the Agreement; and (ii) all of Assignor’s liabilities under the Agreement.
3. By accepting this Assignment, Assignee agrees to assume and perform all duties and obligations that Assignor has under the Agreement, as if Assignee had been an original party to the Agreement. Assignee further agrees to assume all of Assignor’s liabilities under the Agreement.
4. This Assignment may be amended only by mutual written consent of the Parties and as approved by the Board of Supervisors of the County of Riverside.
5. If any term, provision, or application of the Assignment is held invalid or unenforceable, the remainder of this Assignment and any application of the terms and provisions shall not be affected thereby, but shall remain valid and enforceable.
6. The Assignment shall be governed by and construed in accordance with the laws of California. All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in the county of Riverside, State of California.
7. Notwithstanding the date of execution of Assignor and Assignee herein, this Assignment shall be effective **May 9, 2012**, upon execution of the Consent to Assignment by the County of Riverside.

8. The Parties certify that the individual signing herein has authority to execute this Assignment on their behalf, and may legally bind the Parties to the terms and conditions of this Assignment.

IN WITNESS WHEREOF, the Parties hereto have caused this Assignment to be executed as of the date set forth below.

ASSIGNOR

VEBA SERVICE GROUP, LLC,
a Washington limited liability company

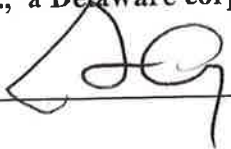
By: 

Title: Branch Manager

Date: 5/24/12

ASSIGNEE

GALLAGHER BENEFIT SERVICES, INC., a Delaware corporation

By: 

Title: Executive Vice President

Date: 5/24/12

CONSENT TO ASSIGNMENT

Pursuant to section 9 of the Agreement, the County of Riverside, a political subdivision of the State of California, hereby consents to the Assignment from Assignor herein to Assignee herein, of the contract rights, and the duties of performance as contained in the Agreement.

ATTEST:

Clerk of the Board
Kecia Harper-Ihem

By: _____
Deputy

Date: _____

COUNTY OF RIVERSIDE:

By: _____
Chairman, Board of Supervisors

Date: _____

Approved as to form:

Pamela J. Walls
County Counsel

By: 
Deputy County Counsel

FIRST AMENDMENT PROFESSIONAL SERVICES AGREEMENT

BETWEEN

COUNTY OF RIVERSIDE

AND

GALLAGHER BENEFIT SERVICES, INC.

- **Attachment B - First Amendment**
- **Attachment C – Ownership Information**
- **Attachment D – HIPAA Business Associate Agreement**

FIRST AMENDMENT
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
COUNTY OF RIVERSIDE
AND
GALLAGHER BENEFIT SERVICES, INC.

WHEREAS, by this First Amendment, the County of Riverside (“COUNTY”), a political subdivision of the State of California, and Gallagher Benefit Services, Inc. (“CONTRACTOR”), a Delaware corporation, (collectively referred to as “Parties”) agree to amend the Professional Services Agreement dated January 1, 2012 (the “Agreement”); and

WHEREAS, the Agreement was originally entered into between the COUNTY and VEBA Service Group, LLC (“VSG”), a Washington limited liability company; and

WHEREAS, pursuant to Section 9 of the Agreement and with the prior written consent of the COUNTY, the Agreement has been assigned to CONTRACTOR by VSG, effective May 9, 2012;

NOW THEREFORE, in consideration of the mutual covenants, promises and conditions contained in this First Amendment, the Parties agree as follows:

1. ATTACHMENT C – OWNERSHIP INTEREST is hereby deleted in its entirety and replaced by the new ATTACHMENT C – OWNERSHIP INTEREST, attached hereto and incorporated herein by this reference.
2. ATTACHMENT D – HIPAA Business Associate Agreement, Addendum to Contract, Between the County of Riverside and VEBA Services Group, LLC, is hereby deleted in its entirety and replaced by the new ATTACHMENT D – HIPAA Business Associate Agreement, Addendum to Contract, Between the County of Riverside and Gallagher Benefit Services, Inc., attached hereto and incorporated herein by this reference.
3. Notwithstanding the date of execution, unless otherwise referenced, this First Amendment shall be effective May 9, 2012.
4. All other terms and conditions of the Agreement, as amended, are to remain in full force and effect.

5. CONTRACTOR certifies that the individual signing herein has authority to execute this Amendment on behalf of CONTRACTOR, and may legally bind CONTRACTOR to the term and conditions of this Amendment, and any attachments hereto.

IN WITNESS WHEREOF, the Parties hereto have signed this Amendment as set forth below.

ATTEST:
Clerk of the Board
Kecia Harper-Ihem

COUNTY OF RIVERSIDE:

By: _____
Deputy

By: _____
Chairman, Board of Supervisors

Date: _____

Date: _____

Approved as to form:

Pamela J. Walls
County Counsel

By:  _____
Deputy County Counsel

CONTRACTOR: Gallagher Benefit Services, Inc.,
a Delaware corporation

By:  _____

Printed Name: Norbert Chung

Title: Executive Vice President

Date: 5/24/12

ATTACHMENT C

OWNERSHIP INFORMATION

Please indicate how your organization is legally organized (check one):

Corporation

Partnership

Sole Proprietorship

Other (please describe): _____

Please indicate the names of the owners that have greater than 10% ownership/interest of CONTRACTOR and their ownership interest. If corporation is publicly traded on a US stock market, indicate "Publicly Traded Corp."

<u>Name</u>	<u>Title</u>	<u>Ownership % (as applicable)</u>
Arthur J. Gallagher and Co.		100%

ATTACHMENT D

HIPAA Business Associate Agreement Addendum to Contract Between the County of Riverside and Gallagher Benefit Services, Inc.

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Professional Services Agreement for the Voluntary Employees' Beneficiary Association Post-Employment Health Savings Plan (the "Underlying Agreement") between the County of Riverside ("County"), a political subdivision of the State of California, and Gallagher Benefit Services, Inc. ("Contractor"), a Delaware corporation, and shall be effective as of May 9, 2012 (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the 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 created by or 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 of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or 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 creator or recipient of, or when they have access to, PHI and/or ePHI of County, is a business associate as defined in the Privacy Rule; and,

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

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

WHEREAS, the parties intend to enter into this Addendum to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply

to Contractor as a business associate of County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing services on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

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

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.
 - A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402. For purposes of this definition, "compromises the security or privacy of PHI" means poses a significant risk of financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:
 - (1) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.
 - (2) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
 - (3) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
 - B. "Data aggregation" has meaning given such term in 45 CFR §164.501.
 - C. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
 - D. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.

- E. "Electronic health record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- F. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- H. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").
- M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2) on the HHS web site.

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

- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:
 - (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,

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

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

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

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

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

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

(4) De-identify 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. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting 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.

3. **Prohibited Uses and Disclosures.**

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

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

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

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

- (1) Not to use or disclose PHI for fundraising or marketing purposes, unless pursuant to the Underlying Agreement and as permitted by and consistent with the requirements of 42 USC §17936;
- (2) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
- (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by 42 USC §17935(d)(2) and with the prior written consent of County. This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

- A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or 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 to 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 agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
- E. County agrees to 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 Underlying Agreement.

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

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.

- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
 - C. Use appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
 - D. Mitigate, to the extent practicable, 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.
 - E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware.
 - F. Require any subcontractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
 - G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
 - H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
 - I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
 - J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
 - K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
 - L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI and electronic health record.** Provide access to PHI in a designated record set to County or an individual as directed by County, within five (5) days of

request from County, to satisfy the requirements of 45 CFR §164.524. If Contractor uses or maintains electronic health records, Contractor shall, at the request of County, provide electronic health records in electronic format to enable County to fulfill its obligations under 42 USC §17935(e).

- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
- (1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
 - (2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
 - (3) Make available for County information required by this section for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
7. **Security of ePHI.** In the event Contractor needs to create, receive, or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §§164.314(a)(2)(i), and 164.306, Contractor shall:
- A. Implement the administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County as required by the Security Rule, including without limitations, each of the requirements of the Security Rule at 45 CFR §§164.308, 164.310, and 164.312;
 - B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
 - C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;

- D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
 - E. Ensure compliance by Contractor's workforce;
 - F. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement reasonable appropriate safeguards to protect it;
 - G. Report to County any security incident of which Contractor becomes aware; and,
 - H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
 - (1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
 - (2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
 - (a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
 - (b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
 - (c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
 - (d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;

- (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
 - (f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §§ 164.404, 164.406 and 164.408.
- C. Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.
- F. Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach.
- 9. Hold Harmless/Indemnification.**
- A.** Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of

Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.

- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. 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 County herein from third party claims arising from issues of this Addendum.
- D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
- E. 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.
10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.
11. **Termination.**
- A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the

Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

- (1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
- (2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.
- (3) If termination of the Underlying Agreement is not feasible, the non-breaching party may report the problem to the Secretary, and upon the non-breaching party's request, the breaching party at its own expense shall implement a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

B. Effect of Termination.

- (1) Upon termination of this Addendum, for any reason, Contractor shall return or destroy all PHI and/or ePHI received from County, or created or received by the 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 are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.
- (2) 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 that 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.

12. General Provisions.

- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **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 HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.

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

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

F. **Interpretation of Addendum.**

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

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

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

Name: Barbara A. Olivier
Title: Assistant CEO/Human Resources Director
Address: 4080 Lemon St. 7th floor
Riverside, CA 92502