

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

607



**FROM:** Riverside County Regional Medical Center (RCRMC)

**SUBMITTAL DATE:**  
July 31, 2012

**SUBJECT:** Professional Services Agreement with Vache Chakmakian, M.D.

**RECOMMENDED MOTION:** Move that the Board of Supervisors:

1. Ratify and authorize the Purchasing Agent to sign the Contract Agreement with Vache Chakmakian, M.D. without securing competitive bids; in accordance with Board Policy A-18 and Ordinance 459.4 to provide physician services for RCRMC's Detention Health effective July 1, 2012, with the option to renew annually for four additional years not to exceed \$35,000 annually.
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise renewal options, based on the availability of fiscal funding, and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation not to exceed ten percent above the annual aggregate amount of the contract.

(cont'd on page 2)

*Douglas D. Bagley*  
\_\_\_\_\_  
Douglas D. Bagley, Hospital Director

|                       |                               |          |                         |           |
|-----------------------|-------------------------------|----------|-------------------------|-----------|
| <b>FINANCIAL DATA</b> | Current F.Y. Total Cost:      | \$35,000 | In Current Year Budget: | Yes       |
|                       | Current F.Y. Net County Cost: | \$ 0     | Budget Adjustment:      | No        |
|                       | Annual Net County Cost:       | \$ 0     | For Fiscal Year:        | 2012/2013 |

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

**C.E.O. RECOMMENDATION:** APPROVE  
BY: *Debra Cournoyer*  
Debra Cournoyer

**County Executive Office Signature**

Consent     Policy  
 Consent     Policy

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

**Prev. Agn. Ref.:**

**District:** All

**Agenda Number:**

**3.53**

FORM APPROVED BY COUNTY COUNSEL  
 BY: *Max A. Kipnis* DATE: 7/31/12  
 NEAL R. KIPNIS  
 Departmental Concurrence  
 Purchasing: *Mark Seiler* Assistant Director

**BACKGROUND:**

In accordance with Board Policy A-18 and in accordance with Ordinance 459.4; the agreement for Vache Chakmakian, M.D. was developed without securing competitive bids for professional medical services in the amount not to exceed \$35,000 on an annual basis to provide physical exams and medical evaluations to patients of detention health services. RCRMC Detention Health requires that professional medical services be provided for sick call, medical evaluations and routine medical screenings to all patients held in the detention health centers throughout Riverside County. With limited full time physicians within the department covering sick call services, there is a critical need to request contracted physicians to assist in the provision of sick call services especially in the Blythe area. Dr. Vache Chakmakian has agreed to provide coverage at the Blythe location, as requested until additional recruitment and hiring of physicians could be completed by the hospital.

The hospital continues to process hiring full time physicians for the detention health unit. Once RCRMC establishes permanent physicians, it will alleviate the need for contracted physicians to provide this needed service.

Therefore, the Hospital Director requests that the Board approve the abovementioned motions.

**FINANCIAL IMPACT:**

100% Hospital Funds

**REVIEW/APPROVAL:**

County Purchasing  
County Counsel

DB:ns

Date: 06/22/12

From: Douglas Bagley, Hospital Director Department/Agency: RCRMC

To: Board of Supervisors/Purchasing Agent

Via: Purchasing Agent

Subject: Sole Source Procurement; Request for Detention Health Physician-  
Vache Chakmakian, MD

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

1. **Supply/Service being requested:** Detention Health Physician
2. **Supplier being requested:** Dr. Vache Chakmakian
3. **Alternative suppliers that can or might be able to provide supply/service:** None identified capable and interested in providing services in the remote area of Blythe (desert area)
4. **Extent of market search conducted:** Consultation with physicians listed with Human Resources.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** In accordance with Board Policy A-18 and in accordance with Ordinance 459.4; the agreement for Vache Chakmakian, M.D. was developed without securing competitive bids for professional medical services. Although the medical services being provided may not be unique, the area where the service is required is remote-- located in Blythe, and Dr. Chakmakian was the only physician interested in providing the service for the period needed.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** RCRMC Detention Health requires that professional medical services be provided for sick call, medical evaluations and routine medical screenings to all patients held in the detention health centers throughout Riverside County, which includes the jails in Blythe (desert area).
7. **Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** The hourly rate is equal to the physicians' rates with detention health's physicians providing the same service with juvenile hall at \$100/hour.
8. **Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source?** No
9. **Period of Performance:** July 1, 2012 through June 30, 2013, with the option to renew annually for four additional years.

A. Bagley 6/26/12  
Department Head Signature \_\_\_\_\_ Date \_\_\_\_\_

Purchasing Department Comments:

|                                |                                   |  |
|--------------------------------|-----------------------------------|--|
| <u>Approve</u>                 | Approve with Condition/s          | Disapprove   |
| Not to exceed: \$ <u>35000</u> | <input type="checkbox"/> One time | <input checked="" type="checkbox"/> Annual Amount through <u>6-30-2013</u> |
| <u>[Signature]</u>             | <u>7-2-12</u>                     | <u>13-027</u>  |
| Purchasing Agent               | Date                              | Approval Number<br>(Reference on Purchasing Documents)                     |

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND  
VACHE CHAKMAKIAN, M.D.**

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1           This Agreement is made and entered into by and between the County of  
2 Riverside, a political subdivision of the State of California, through its Medical Center,  
3 (Riverside County Regional Medical Center) hereinafter referred to as (“COUNTY”), and  
4 **Vache Chakmakian, M.D.**, hereinafter referred to as (“CONTRACTOR”).

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

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

10          NOW THEREFORE, in consideration of the mutual promises, covenants and  
11 conditions hereinafter contained the PARTIES hereto mutually agree as provided on  
12 pages 1 through 42, attached hereto and incorporated herein.

13           **1.0    HIPAA Business Associate Agreement**

14          The CONTRACTOR in this Agreement is subject to all relevant  
15 requirements contained in the Health Insurance Portability and Accountability Act of  
16 1996 (HIPAA), Public Law 104-91, enacted August 21, 1996, and the laws and  
17 regulations promulgated subsequent thereto. CONTRACTOR shall adhere to all terms  
18 and conditions as outlined and specified in **Attachment I**, attached hereto and by this  
19 reference incorporated herein.

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**2.0 DESCRIPTION OF SERVICES**

2.1 CONTRACTOR represents and maintains that it is skilled to perform all services, duties and obligations required by this Agreement to fully and adequately complete the project.

2.2 PRIMARY SITE – Blyth Jail: Provide sick call services at the Blythe Jail to provide professional medical services during sick call periods of approximately six (6) hours per week, Monday – Friday on days and times mutually acceptable to both parties. (Optional Saturday or Sunday services may be arranged subject to mutual agreement of both parties).

2.3 CONTRACTOR may provide coverage at other sites if approved by Detention Health Services Medical Director, on an as needed basis, not to exceed contracted hours.

2.4 CONTRACTOR shall perform history and physical examinations, review x-rays, laboratory reports, chart the progress of patients, and update the care plan as needed.

2.5 CONTRATOR shall prepare and maintain Detention Health Services reports and records, as required.

2.6 CONTRACTOR shall account for service time by signing attendance log. The log will be maintained in the nursing office. The log will be used to verify physician hours billed monthly.

2.7 CONTRACTOR will participate in staff development activities and attend Detention Health Services medical meetings and/or conferences as required.

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45                   2.8    CONTRACTOR agrees to accept telephone consultations with  
46 nursing staff as outlined in Detention Health Services Nursing Protocols.

47                   2.9    CONTRACTOR agrees to work and consult with Detention Health  
48 Services Medical Director regarding Detention Health Services policies, procedures,  
49 protocols, rules and regulations.

50                   2.10 CONTRACTOR shall perform the services and duties in  
51 conformance to and consistent with the standards generally recognized by  
52 professionals in the same discipline in the State of California.

53                   2.11 CONTRACTOR further represents and warrants that it has all  
54 licenses, permits, qualifications and approvals of whatever nature is legally required to  
55 practice its profession/services. CONTRACTOR further represents that it shall keep all  
56 such licenses and approvals in effect during the term of this Agreement.  
57 CONTRACTOR is not to perform services outside of this Agreement.

58                   **3.0    TERM AND TERMINATION**

59                   3.1    This Agreement shall be effective July 1, 2012 through the end of  
60 County fiscal year, June 30, 2013 and automatically continue on a year-to-year basis  
61 thereafter, unless terminated as specified in Section 3.2 below.

62                   3.2    Either party may terminate this Agreement with or without cause  
63 upon thirty (30) days written notice served upon either party stating the extent and  
64 effective date of termination.

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67           **4.0    COMPENSATION**

68                   4.1    The COUNTY will pay the CONTRACTOR for services performed  
69 and expenses incurred in accordance with the following:

70                           4.1.1 A sum of one hundred dollars (\$100) per hour for each hour  
71 of service performed.

72                   4.2    CONTRACTOR understands that the COUNTY's budget for these  
73 services from all contractors providing such services shall not exceed the aggregate  
74 amount of thirty five thousand dollars (\$35,000) annually.

75                   4.3    Said compensation shall be paid in accordance with an invoice  
76 submitted to COUNTY by CONTRACTOR, and COUNTY shall pay the invoice within  
77 thirty (30) working days of receipt of the invoice. Compensation is based upon hours  
78 worked.

79                   4.4    All invoices submitted by CONTRACTOR shall be addressed to,  
80 Riverside County Regional Medical Center, Accounts Payable, 26520 Cactus Avenue,  
81 Moreno Valley, CA. 92555.

82                   4.5    COUNTY reserves the right to correct errors on invoices, after prior  
83 notification and discussion with CONTRACTOR, and pay to CONTRACTOR only  
84 corrected amounts.

85           **5.0    POLICY AND PROCEDURE**

86                   CONTRACTOR hereby agrees that, where applicable, services provided  
87 hereunder will be performed in harmony with COUNTY policy and procedure.



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88           5.1     CONTRACTOR warrants that it is, and will remain, in compliance  
89 with all State and Federal laws and the standards of the Joint Commission on the  
90 Accreditation of Healthcare Organizations (JCAHO).

91           5.2     CONTRACTOR certifies that it is aware of the Occupational Safety  
92 and Health Administration (OSHA) regulations of the U.S. Department of Labor, the  
93 derivative Cal/OSHA standards and laws and regulations relating thereto, and shall  
94 comply therewith as to all relative elements under this Agreement.

95           **6.0     CONFIDENTIALITY**

96           6.1     CONTRACTOR agrees to protect from unauthorized disclosure of  
97 names and other identifying information concerning either persons receiving services  
98 under this Agreement or persons whose names or other identifying information  
99 becomes known to CONTRACTOR as a result of services performed under this  
100 Agreement, except statistical information not identifying any such person.

101          6.2     CONTRACTOR shall not disclose, except as otherwise specifically  
102 permitted by this Agreement or authorized by the client or client's representative, any  
103 such identifying information to anyone other than authorized COUNTY personnel  
104 without prior written authorization from the COUNTY.

105          6.3     For the purpose of this paragraph, "identify" shall include, but not  
106 limited to, name, identifying number, symbol, or other identifying particular assigned to  
107 the individual, such as finger or voiceprint or photograph.

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**7.0 HOLD HARMLESS/INDEMNIFICATION**

7.1 CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, claim, action, proceeding or damage 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 Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of CONTRACTOR, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. 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, the Indemnitees in any claim or action based upon such alleged acts or omissions.

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 own choice 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 Indemnitees as set forth herein.

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131           7.2   CONTRACTOR'S obligation hereunder shall be satisfied when  
132   CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving  
133   COUNTY from any liability for the action or claim involved. The specified insurance  
134   limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S  
135   obligations to indemnify and hold harmless the Indemnitees herein from third party  
136   claims.

137           7.3   In the event there is conflict between this clause and California Civil  
138   Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782.  
139   Such interpretation shall not relieve the CONTRACTOR from indemnifying the  
140   Indemnitees to the fullest extent allowed by law.

141           7.4   Liability resulting from Professional acts of the CONTRACTOR  
142   shall be subject to the terms of **Exhibit A**, consisting of six (6) pages, attached hereto  
143   and by this reference incorporated herein.

144           **8.0   INSURANCE**

145           8.1   Without limiting or diminishing the CONTRACTOR'S obligation to  
146   indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain  
147   or cause to be maintained, at its sole cost and expense, the following insurance  
148   coverage's during the term of this Agreement.

149           8.2   WORKERS' COMPENSATION:

150                   If the CONTRACTOR has employees as defined by the State of  
151   California, the CONTRACTOR shall maintain statutory Workers' Compensation  
152   Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall

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153 include Employers' Liability (Coverage B) including Occupational Disease with limits not  
154 less than **\$1,000,000** per person per accident. The policy shall be endorsed to waive  
155 subrogation in favor of The County of Riverside, and, if applicable, to provide a  
156 Borrowed Servant/Alternate Employer Endorsement.

157 **8.3 COMMERICAL GENERAL LIABILITY:**

158 Commercial General Liability insurance coverage, including but not  
159 limited to, premises liability, contractual liability, products and completed operations  
160 liability, personal and advertising injury, and cross liability coverage, covering claims  
161 which may arise from or out of CONTRACTOR'S performance of its obligations  
162 hereunder. Policy shall name the County of Riverside, its Agencies, Districts, Special  
163 Districts, and Departments, their respective directors, officers, Board of Supervisors,  
164 employees, elected or appointed officials, agents or representatives as Additional  
165 Insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence  
166 combined single limit. If such insurance contains a general aggregate limit, it shall  
167 apply separately to this agreement or be no less than two (2) times the occurrence limit.

168 **8.4 VEHICLE LIABILITY:**

169 If vehicles or mobile equipment are used in the performance of the  
170 obligations under this Agreement, then CONTRACTOR shall maintain liability insurance  
171 for all owned, non-owned or hired vehicles so used in an amount not less than  
172 \$1,000,000 per occurrence combined single limit. If such insurance contains a general  
173 aggregate limit, it shall apply separately to this agreement or be no less than two (2)  
174 times the occurrence limit. Policy shall name the County of Riverside, its Agencies,

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175 Districts, Special Districts, and Departments, their respective directors, officers, Board  
176 of Supervisors, employees, elected or appointed officials, agents or representatives as  
177 Additional Insureds.

178           8.5   GENERAL INSURANCE PROVISIONS - ALL LINES:

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

184           B.   The CONTRACTOR'S insurance carrier(s) must declare its  
185 insurance deductibles or self-insured retentions. If such deductibles or self-insured  
186 retentions exceed \$500,000 per occurrence such deductibles and/or retentions shall  
187 have the prior written consent of the County Risk Manager before the commencement  
188 of operations under this Agreement. Upon notification of deductibles or self insured  
189 retention's unacceptable to the COUNTY, and at the election of the Country's Risk  
190 Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such  
191 deductibles or self-insured retention's as respects this Agreement with the COUNTY, or  
192 2) procure a bond which guarantees payment of losses and related investigations,  
193 claims administration, and defense costs and expenses.

194           C.   CONTRACTOR shall cause CONTRACTOR'S insurance  
195 carrier(s) to furnish the County of Riverside with either 1) a properly executed original  
196 Certificate(s) of Insurance and certified original copies of Endorsements effecting

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197 coverage as required herein, or 2) if requested to do so orally or in writing by the County  
198 Risk Manager, provide original Certified copies of policies including all Endorsements  
199 and all attachments thereto, showing such insurance is in full force and effect. Further,  
200 said Certificate(s) and policies of insurance shall contain the covenant of the insurance  
201 carrier(s) that thirty (30) days written notice shall be given to the County of Riverside  
202 prior to any material modification, cancellation, expiration or reduction in coverage of  
203 such insurance. In the event of a material modification, cancellation, expiration, or  
204 reduction in coverage, this Agreement shall terminate forthwith, unless the County of  
205 Riverside receives, prior to such effective date, another properly executed original  
206 Certificate of Insurance and original copies of endorsements or certified original policies,  
207 including all endorsements and attachments thereto evidencing coverage's set forth  
208 herein and the insurance required herein is in full force and effect. **CONTRACTOR**  
209 ***shall not commence operations until the COUNTY has been furnished original***  
210 ***Certificate (s) of Insurance and certified original copies of endorsements or***  
211 ***policies of insurance including all endorsements and any and all other***  
212 ***attachments as required in this Section. An individual authorized by the***  
213 ***insurance carrier to do so on its behalf shall sign the original endorsements for***  
214 ***each policy and the Certificate of Insurance.***

215 D. It is understood and agreed to by the parties hereto that the  
216 CONTRACTOR'S insurance shall be construed as primary insurance, and the  
217 COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured  
218 programs shall not be construed as contributory.

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

228                   F.     CONTRACTOR shall pass down the insurance obligations  
229 contained herein to all tiers of subcontractors working under this Agreement.

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

232                   H.     CONTRACTOR agrees to notify COUNTY of any claim by a  
233 third party or any incident or event that may give rise to a claim arising from the  
234 performance of this Agreement.

235                   **9.0 AVAILABILITY OF FUNDING**

236                   The COUNTY obligation for payment of any contract beyond the current  
237 fiscal year end is contingent upon the availability of funding from which payment can be  
238 made. No legal liability on the part of the COUNTY shall arise for payment beyond June  
239 30 of the calendar year unless funds are made available for such performance.

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241           **10.0 RECORDS AND DOCUMENTS**

242           CONTRACTOR shall make available, upon written request by and duly  
243 authorized Federal, State or COUNTY agency, a copy of this Agreement and such  
244 books, documents and records as are necessary to certify the nature and extent of the  
245 costs of the services provided by CONTRACTOR. All such CONTRACTOR shall  
246 maintain books and records for at least five (5) years from the termination of this  
247 Agreement.

248           10.1 CONTRACTOR to provide COUNTY with reports and information  
249 relative to this Agreement and in accordance with terms set forth herein, as may be  
250 requested by COUNTY.

251           **11.0 MONITORING**

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

256           **12.0 LICENSE**

257           CONTRACTOR shall, through the term of this Agreement, maintain all  
258 licenses necessary for the provision of the services hereunder and required by the laws  
259 and regulations of the United States, the State of California, County of Riverside, and all  
260 other governmental agencies. CONTRACTOR shall notify COUNTY immediately, in  
261 writing, of inability to obtain or maintain such license. Said inability shall be cause for  
262 termination of this Agreement.



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263           12.1 CONTRACTOR shall ensure that CONTRACTOR'S employees,  
264 agents, and subcontractors performing services under the terms of this Agreement are  
265 in compliance with all relative licensing requirements. CONTRACTOR hereby agrees to  
266 notify COUNTY immediately, in writing, of inability of CONTRACTOR or any of  
267 CONTRACTOR'S employees, agents and subcontractors to obtain or maintain such  
268 license(s). Said inability shall be cause for termination of this Agreement.

269           12.2 COPY REQUIRED. A copy of each such license, permit, approval,  
270 waiver, exemption, registration, accreditation, and certificate shall be provided to  
271 Contracts Administration.

272           12.3 Further, CONTRACTOR hereby agrees to abide by the standards  
273 of medical practice of the profession when performing services hereunder.

274           **13.0 NONDISCRIMINATION AND ELIGIBILITY**

275           The CONTRACTOR shall not discriminate in the provision of services,  
276 allocation of benefits, accommodation in facilities, or employment of personnel, on the  
277 basis of ethnic group identification, race, color, creed, ancestry, religion, national origin,  
278 sexual preference, sex, age (over 40), marital status, medical attention, or physical or  
279 mental handicap, and shall comply with all other requirements of law regarding non  
280 discrimination and affirmative action including those laws pertaining to the prohibition of  
281 discrimination against qualified handicapped persons in all programs or activities.

282           13.1 For the purpose of this Agreement, distinctions on the grounds of  
283 race, religion, color, sex, national origin, age, or physical or mental handicap include but  
284 at not limited to the following:

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285                   A.     Denying an eligible person or providing to an eligible person  
286 any services or benefit which is different, or is provided in a different manner or at a  
287 different time from that provided to other eligible persons under this Agreement.

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

290                   C.     Restricting an eligible person differently in any way in the  
291 enjoyment of any advantage or privilege enjoyed by others receiving similar service or  
292 benefit.

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

297                   E.     The assignment of times or places for the provision of  
298 services on the basis of race, religion, color, sex, national origin, age, or physical or  
299 mental handicap of the eligible person to be served.

300                   **14.0 CONFLICT OF INTEREST**

301                   CONTRACTOR and CONTRACTOR'S employees shall have no interest,  
302 and shall nor acquire any interest, direct or indirect, which will conflict in any manner or  
303 degree with the performance of services required under this Agreement.

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**15.0 ALTERATION**

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

15.1 Only the County Board of Supervisors or County Purchasing Agent may authorize the alteration or revision of this Agreement. The parties expressly recognize that COUNTY personnel are without authorization to either change or waive any requirements of this Agreement.

**16.0 ASSIGNMENT**

CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without prior written consent of COUNTY provided, however, obligations undertaken by CONTRACTOR pursuant to this Agreement may be carried out by means of subcontracts if approved by COUNTY. No subcontract shall terminate or alter the responsibilities of the CONTRACTOR to COUNTY pursuant to this Agreement. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without prior written consent of COUNTY. Any attempted assignment or delegation in derogation of this paragraph shall be void. A change in the business structure of CONTRACTOR, including but not limited to, change in the majority ownership, change in the form of CONTRACTOR'S business organization, management of CONTRACTOR, CONTRACTOR'S ownership of other business dealing with CONTRACTOR under this Agreement, or filing of bankruptcy by CONTRACTOR, shall be deemed an assignment for purposes of this paragraph.

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VACHE CHAKMAKIAN, M.D.**

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329           **17.0 ADMINISTRATION**

330           The County of Riverside Purchasing Agent, or designee, shall administer  
331 this Agreement on behalf of the COUNTY. The Contracts Administration department is  
332 to serve as its liaison with CONTRACTOR in connection with this agreement.

333           **18.0 WAIVER**

334           Any waiver by COUNTY of any breach of any one or more of the terms of  
335 this Agreement shall not be construed to be a waiver of any subsequent or other breach  
336 of the same or of any other term thereof. Failure on the part of the COUNTY to require  
337 exact, full and complete compliance with any terms of this Agreement shall not be  
338 construed as in any manner changing the terms hereof or stopping COUNTY from  
339 enforcement hereof.

340           **19.0 JURISDICTION, VENUE, SEVERABILITY**

341           This Agreement and its construction and interpretation as to validity,  
342 performance and breach shall be construed under the laws of the State of California.  
343 Any legal action related to this Agreement shall be filed in the Superior Court of the  
344 State of California located in Riverside, California. In the event any provision in this  
345 Agreement is held by a court of competent jurisdiction to be invalid, void, or  
346 unenforceable, the remaining provisions will nevertheless continue in full force without  
347 being impaired or invalidated in any way.

348           **20.0 INDEPENDENT CONTRACTOR**

349           20.1 The CONTRACTOR is, for purposes arising out of this contract, an  
350 independent contractor and shall not be deemed an employee of the COUNTY. It is

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351 expressly understood and agreed that the CONTRACTOR shall in no event, as a result  
352 of this contract, be entitled to any benefits to which COUNTY employees are entitled,  
353 including but not limited to overtime, any retirement benefits, worker's compensation  
354 benefits, and injury leave or other leave benefits. CONTRACTOR hereby holds  
355 COUNTY harmless from any and all claims that may be made against COUNTY based  
356 upon any contention by any third party that an employer-employee relationship exists by  
357 reason of this agreement.

358           20.2 It is further understood and agreed by the parties hereto that  
359 CONTRACTOR in the performance of its obligation hereunder is subject to the control  
360 or direction of COUNTY merely as to the result to be accomplished by the services  
361 hereunder agreed to be rendered and performed and not as to the means and methods  
362 for accomplishing the results.

363           **21.0 SUBCONTRACT FOR WORK OR SERVICES**

364           No contract shall be made by the CONTRACTOR with any party for  
365 furnishing any of the work or services herein contained without the prior written approval  
366 of the COUNTY Contract Administrator but this provision shall not require the approval  
367 of contracts of employment between the CONTRACTOR and personnel assigned for  
368 services there under, or for parties named in the proposal and agreed to under any  
369 resulting contract.

370 //

371 //

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**22.0 INTEREST OF CONTRACTOR**

The CONTRACTOR covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The CONTRACTOR further covenants that in the performance of this contract, no person having any such interest shall be employed or retained by it under this contract.

**23.0 CONDUCT OF CONTRACTOR**

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

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

23.3 The CONTRACTOR shall not use for personal gain or make other improper use of privileged information, which is acquired in connection with his contract. In this connection, the term 'privileged information' includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or

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393 pricing actions; and knowledge of selection of CONTRACTOR or subcontractors in  
394 advance of official announcement.

395           23.4 The CONTRACTOR or employees thereof shall not offer gifts,  
396 gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

397           **24.0 DISALLOWANCE**

398           In the event the CONTRACTOR receives payment for services under this  
399 contract which is later disallowed for nonconformance with the terms and conditions  
400 herein by the COUNTY, the CONTRACTOR shall promptly refund the disallowed  
401 amount to the COUNTY on request, or at its option, the COUNTY may offset the  
402 amount disallowed from any payment due to the CONTRACTOR under any contract  
403 with the COUNTY.

404           **25.0 RIGHT TO ACQUIRE EQUIPMENT AND SERVICES**

405           Nothing in this agreement shall prohibit the COUNTY from acquiring the  
406 same type or equivalent equipment and/or service from other sources, when deemed by  
407 the COUNTY to be in its best interest.

408           **26.0 FORCE MAJEURE**

409           26.1 In the event CONTRACTOR is unable to comply with any provision  
410 of this agreement due to causes beyond their control such as acts of God, acts of war,  
411 civil disorders, or other similar acts, CONTRACTOR shall not be held liable to COUNTY  
412 for such failure to comply.

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413                   26.2 In the event COUNTY is unable to comply with any provision of this  
414 agreement due to causes beyond its control relating to acts of God, acts of war, civil  
415 disorders, or other similar acts, COUNTY shall not be held liable to CONTRACTOR for  
416 such failure to comply.

417                   **27.0 EDD REPORTING REQUIREMENTS**

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

424                   It is expressly understood that this data will be transmitted to  
425 governmental agencies charged with the establishment and enforcement of child  
426 support orders and for no other purposes and will be held confidential by those  
427 agencies. Failure of the contractor to timely submit the data and/or certificates required  
428 may result in contract being awarded to another Contractor. In the event a contract has  
429 been issued, failure of the Contractor to comply with all federal and state reporting  
430 requirements for child support enforcement or to comply with all lawfully served Wage  
431 and Earnings Assignments Orders and Notices of Assignment shall constitute a material  
432 breach of contract. Failure to cure such breach within 60 calendar days of notice from  
433 the County shall constitute grounds for termination of the contract.



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434           If you have any questions concerning this reporting requirement, please  
435 call (916) 657-0529. You may also contact your local Employment Tax Customer  
436 Service Office listed in your telephone directory in the State Government section under  
437 "Employment Development Department," or you may access their Internet site at  
438 [www.edd.ca.gov](http://www.edd.ca.gov).

439           **28.0 ENTIRE AGREEMENT**

440           This Agreement, including any Statement(s) of Work entered into pursuant  
441 to it, constitutes the entire agreement of the parties hereto with respect to its subject  
442 matter and supersedes all prior and contemporaneous representations, proposals,  
443 discussions and communications, whether oral or in writing. This contract may be  
444 modified only in writing and shall be enforceable in accordance with its terms when  
445 signed by each of the parties hereto.

446           **29.0 CAPTIONS AND PARAGRAPH HEADINGS**

447           Captions and paragraph headings used in this Agreement are for  
448 convenience only and are not a part of this Agreement and shall not be used in  
449 construing this Agreement.

450           **30.0 NOTICES**

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

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**VACHE CHAKMAKIAN, M.D.**

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471

**PROFESSIONAL LIABILITY INDEMNITY**

472 **1.0** As an additional element of compensation to the CONTRACTOR, the  
473 COUNTY shall indemnify the CONTRACTOR and provide Professional  
474 Liability insurance to the CONTRACTOR (upon approval of County Risk  
475 Management) as provided hereunder solely and exclusively to the extent  
476 that it pertains the professional medical services performed under this  
477 Agreement on behalf of COUNTY, in so long as the CONTRACTOR  
478 follows and does not intentionally ignore COUNTY policies and  
479 procedures and other regulatory agencies' rules, laws, and standards of  
480 care or commit willful or wanton acts of negligence.

481 **2.0** For the purposes of this Exhibit, the term "CONTRACTOR" shall include:

482 2.1 The CONTRACTOR itself;

483 2.2 The CONTRACTOR's physician employees and independent  
484 physician contractors; and

485 2.3 Physician extenders employed under this Agreement.

486 **3.0** The COUNTY shall, subject to the terms, limitations, exclusions, and  
487 conditions of this Agreement, including this Exhibit, indemnify, defend, and  
488 hold harmless the CONTRACTOR for any and all sums which the  
489 CONTRACTOR shall by law be held liable to pay for damages arising out  
490 of any demand for money or services by any patient or anyone claiming  
491 damages on account of bodily injury or mental injury to or death of any  
492 patient caused by or alleged to have been caused by error, omission, or

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493 negligence, active or passive, so long as it is not deemed a willful or  
494 wanton omission, error, or negligence, nor for punitive damage awards in  
495 professional services rendered or that should have been rendered by  
496 CONTRACTOR exclusively at HOSPITAL or on behalf of COUNTY,  
497 provided always that:

498 3.1 Such malpractice results in a claim being made or legal action  
499 commenced against the CONTRACTOR, and notice of such claim  
500 or action has been given in accordance with the provisions  
501 contained in Section 8 of this Exhibit.

502 3.2 There shall be no liability coverage provided hereunder for any  
503 claim or action against the CONTRACTOR for malpractice  
504 committed or alleged to have been committed prior to the effective  
505 date of the Agreement nor following termination of this Agreement  
506 except for services provided during the Term of the Agreement  
507 and/or for the CONTRACTOR or physician rendering services  
508 hereunder as described in Section 2 of this Exhibit.

509 **4.0** The indemnification promised hereby shall include all theories of liability  
510 against the CONTRACTOR regardless of whether said liability is founded  
511 on negligence or strict liability or any other rule or law attributing liability to  
512 the CONTRACTOR. Such indemnification as is afforded by this  
513 Agreement is extended to include the CONTRACTOR only while it is  
514 acting within the scope of duty pursuant to the terms of this Agreement

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515 and shall not apply to acts or omissions by or at the direction of the  
516 CONTRACTOR or if intentionally committed or committed with malice. In  
517 addition, the indemnification promised hereby shall not include any  
518 exemplary or punitive damages levied against the CONTRACTOR, any  
519 act committed in violation of any laws or ordinances resulting in a criminal  
520 conviction, professional services rendered while under the influence of  
521 intoxicants or narcotics, or any practice or service not required by the  
522 terms of this Agreement.

523 **5.0** In providing for such indemnification, it is not the intent of either party to  
524 waive any applicable statutory or other immunity from liability or any  
525 claims requirements of the Government Code. Such indemnification shall  
526 not exceed one million dollars (\$1,000,000) for any single act or omission  
527 identifiable hereunder, or the sum of three million dollars (\$3,000,000)  
528 aggregate for all acts or omissions identifiable hereunder per each  
529 physician member which occur in any single year of this Agreement.  
530 CONTRACTOR acknowledges and agrees that for any claims that exceed  
531 one million dollars (\$1,000,000) or three million dollars (\$3,000,000) in the  
532 aggregate, CONTRACTOR shall not seek indemnification from COUNTY,  
533 and CONTRACTOR shall assume all financial responsibility for such  
534 claims. For purposes of this Exhibit, said operating year shall begin with  
535 the date on which this Agreement is executed by the COUNTY and shall

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536 conclude on June 30 of that fiscal year, thereafter, each operating year  
537 shall run from July 1 to June 30.

538 **6.0** The COUNTY may provide the indemnification referred to above through a  
539 program of self-insurance. The CONTRACTOR shall follow the guidelines  
540 and procedures contained in any risk management and HOSPITAL plan,  
541 which may be established by COUNTY, and applicable federal and State  
542 law.

543 **7.0** As respects the indemnity afforded by this Agreement, the COUNTY shall,  
544 in the name of and on behalf of the CONTRACTOR, diligently investigate  
545 and defend any an all claims or suits made or brought against  
546 CONTRACTOR, shall retain legal counsel (attorney[ies]) skilled in  
547 investigation, defenses, and settlement of medical malpractice claims, and  
548 shall pay all costs and expenses incurred in any such investigation and  
549 defense, including, but not limited to, attorney's fees, expert witness fees,  
550 and court costs. In addition to, and not inconsistent with any other  
551 provision of this Exhibit, the CONTRACTOR shall cooperate at the  
552 discretion of the COUNTY in the investigation, settlement, or defense of  
553 any claim or suit against the CONTRACTOR. If the CONTRACTOR in  
554 any such claim or suit refuses to consent to any settlement recommended  
555 in writing by the COUNTY and elects to contest or continue any legal  
556 proceedings, the liability of the COUNTY shall not exceed the amount for  
557 which the claim or suit could have been so settled, plus reasonable costs

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558 with its consent up to the date of such refusal. Any judgment rendered  
559 against the CONTRACTOR in excess of the settlement amount  
560 recommended in writing by the COUNTY shall be the sole responsibility of  
561 the CONTRACTOR, including all costs and all attorney's fees relating to  
562 such excess amount.

563 **8.0** The following are conditions precedent to the right of the CONTRACTOR  
564 to be defended and/or indemnified under this Exhibit, provided that the  
565 COUNTY may not disclaim such defense and/or indemnification if it has  
566 not been materially prejudiced by the nonperformance of such conditions.

567 8.1 During the Term of this Agreement, the CONTRACTOR shall  
568 promptly, but no less than within two (2) business days, after  
569 receiving knowledge of any event described in this subsection (8.1)  
570 of this Section 8, give to the persons or persons designated by the  
571 County notice in writing of:

572 8.1.1 Any conduct or circumstances which the CONTRACTOR  
573 believes to give rise to a claim for malpractice being made  
574 against the CONTRACTOR; or

575 8.1.2 Any claims for malpractice made against the  
576 CONTRACTOR; or

577 8.1.3 The receipt of notice from any person of any intention to hold  
578 the CONTRACTOR responsible for any malpractice.

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579           8.2    The CONTRACTOR shall at all times without charge to the  
580           COUNTY:

581           8.2.1 Give to the COUNTY or its duly appointed representative  
582                    any and all information, assistance, and signed statements  
583                    as the COUNTY may require; and

584           8.2.2 Assist, without cost to the CONTRACTOR, in the COUNTY's  
585                    defense or any claim, including without limitation,  
586                    cooperating timely with the COUNTY; and, upon the  
587                    COUNTY's request, attend hearings and trials, assisting in  
588                    effecting settlements, securing and giving evidence,  
589                    obtaining the attendance of witnesses and in the conduct of  
590                    suits, and to provide current home and work contact  
591                    numbers until the full and final settlement of pay and all  
592                    cases involving persons mentioned in Section 2 of this  
593                    Exhibit.

594           8.3    The CONTRACTOR shall not, without the written consent of  
595           COUNTY's duly appointed representative, admit liability for, or  
596           settle any claim or:

597           8.3.1 Incur on behalf of the COUNTY any costs or expense in  
598                    connection with such claim, or

599           8.3.2 Give any material or oral or written statements to anyone in  
600                    connection with admitting or settling such claim.



HIPAA Business Associate Agreement  
Addendum to Contract Between the County of Riverside and  
**VACHE CHAKMAKIAN, M.D.**

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601 This HIPAA Business Associate Agreement (the "Addendum")  
602 supplements, and is made part of the Professional Services Agreement (the  
603 "Underlying Agreement") between the County of Riverside ("County") and **Vache**  
604 **Chakmakian, M.D.** ("Contractor") and shall be effective as of the date the  
605 Underlying Agreement is approved by both Parties (the "Effective Date").

606 RECITALS

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

613 WHEREAS, the provisions of the Health Insurance Portability and  
614 Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21,  
615 1996, and the Health Information Technology for Economic and Clinical Health  
616 Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public  
617 Law 111-5 enacted February 17, 2009, and the laws and regulations  
618 promulgated subsequent thereto, as may be amended from time to time, are  
619 applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant  
620 to the Underlying Agreement; and,

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

623 WHEREAS, Contractor when a creator or recipient of, or when they have  
624 access to, PHI and/or ePHI of County, is a business associate as defined in the  
625 Privacy Rule; and,

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

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

HIPAA Business Associate Agreement  
Addendum to Contract Between the County of Riverside and  
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636 WHEREAS, the parties intend to enter into this Addendum to address the  
637 requirements and obligations set forth in the Privacy Rule, Security Rule,  
638 HITECH and HIPAA as they apply to Contractor as a business associate of  
639 County, including the establishment of permitted and required uses and  
640 disclosures of PHI and/or ePHI created or received by Contractor during the  
641 course of performing services on behalf of County, and appropriate limitations  
642 and conditions on such uses and disclosures;

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

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

648 A. "Breach" when used in connection with PHI means the acquisition,  
649 access, use or disclosure of PHI in a manner not permitted by the Privacy  
650 Rule which compromises the security or privacy of the PHI, and shall have  
651 the meaning given such term in 45 CFR §164.402. For purposes of this  
652 definition, "compromises the security or privacy of PHI" means poses a  
653 significant risk of financial, reputational, or other harm to the individual,  
654 unless a use or disclosure of PHI does not include the identifiers listed at  
655 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:

656 (1) Any unintentional acquisition, access or use of PHI by a workforce  
657 member or person acting under the authority of a covered entity or  
658 business associate, if such acquisition, access or use was made in  
659 good faith and within the scope of authority and does not result in  
660 further use or disclosure in a manner not permitted under subpart E of  
661 the Privacy Rule.

662 (2) Any inadvertent disclosure by a person who is authorized to access  
663 PHI at a covered entity or business associate to another person  
664 authorized to access PHI at the same covered entity, business  
665 associate, or organized health care arrangement in which County  
666 participates, and the information received as a result of such disclosure  
667 is not further used or disclosed in a manner not permitted by subpart E  
668 of the Privacy Rule.

669 (3) A disclosure of PHI where a covered entity or business associate has a  
670 good faith belief that an unauthorized person to whom the disclosure  
671 was made would not reasonably have been able to retain such  
672 information.

HIPAA Business Associate Agreement  
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- 673 B. "Data aggregation" has meaning given such term in 45 CFR §164.501.
- 674 C. "Designated record set" as defined in 45 CFR §164.501 means a group of  
675 records maintained by or for a covered entity that may include: the  
676 medical records and billing records about individuals maintained by or for  
677 a covered health care provider; the enrollment, payment, claims  
678 adjudication, and case or medical management record systems  
679 maintained by or for a health plan; or, used, in whole or in part, by or for  
680 the covered entity to make decisions about individuals.
- 681 D. "Electronic protected health information" ("ePHI") as defined in 45 CFR  
682 §160.103 means protected health information transmitted by or  
683 maintained in electronic media.
- 684 E. "Electronic health record" means an electronic record of health-related  
685 information on an individual that is created, gathered, managed, and  
686 consulted by authorized health care clinicians and staff, and shall have the  
687 meaning given such term in 42 USC §17921(5).
- 688 F. "Health care operations" has the meaning given such term in 45 CFR  
689 §164.501.
- 690 G. "Individual" as defined in 45 CFR §160.103 means the person who is the  
691 subject of protected health information.
- 692 H. "Person" as defined in 45 CFR §160.103 means a natural person, trust or  
693 estate, partnership, corporation, professional association or corporation, or  
694 other entity, public or private.
- 695 I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160  
696 and 164, Subparts A and E.
- 697 J. "Protected health information" ("PHI") has the meaning given such term in  
698 45 CFR §160.103, which includes ePHI.
- 699 K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- 700 L. "Secretary" means the Secretary of the Department of Health and Human  
701 Services ("HHS").
- 702 M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts  
703 160 and 164, Subparts A and C.
- 704 N. "Unsecured protected health information" and "unsecured PHI" as defined  
705 in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or

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706 indecipherable to unauthorized individuals through use of a technology or  
707 methodology specified by the Secretary in the guidance issued under 42  
708 USC §17932(h)(2) on the HHS web site.

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

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

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

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

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

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

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

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

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

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

737 (4) De-identify all PHI and/or ePHI of County received by Contractor under  
738 this Addendum provided that the de-identification conforms to the

HIPAA Business Associate Agreement  
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739 requirements of the Privacy Rule and/or Security Rule and does not  
740 preclude timely payment and/or claims processing and receipt.

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

747 **3. Prohibited Uses and Disclosures.**

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

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

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

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

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

763 (2) Not to disclose PHI, except as otherwise required by law, to a health  
764 plan for purposes of carrying out payment or health care operations, if  
765 the individual has requested this restriction pursuant to 42 USC  
766 §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for  
767 the health care item or service to which the PHI solely relates; and,

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

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773 **4. Obligations of County.**

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

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

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

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

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

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

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

799 B. Not use or further disclose PHI and/or ePHI other than as permitted or  
800 required by this Addendum or as required by law. Contractor shall  
801 promptly notify County if Contractor is required by law to disclose PHI  
802 and/or ePHI.

803 C. Use appropriate safeguards to prevent use or disclosure of PHI and/or  
804 ePHI other than as provided for by this Addendum.

805 D. Mitigate, to the extent practicable, any harmful effect that is known to  
806 Contractor of a use or disclosure of PHI and/or ePHI by Contractor in  
807 violation of this Addendum.

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- 808 E. Report to County any use or disclosure of PHI and/or ePHI not provided  
809 for by this Addendum or otherwise in violation of HITECH, HIPAA, the  
810 Privacy Rule, and/or Security Rule of which Contractor becomes aware.
- 811 F. Require any subcontractors or agents to whom Contractor provides PHI  
812 and/or ePHI to agree to the same restrictions and conditions that apply to  
813 Contractor with respect to such PHI and/or ePHI, including the restrictions  
814 and conditions pursuant to this Addendum.
- 815 G. Make available to County or the Secretary, in the time and manner  
816 designated by County or Secretary, Contractor's internal practices, books  
817 and records relating to the use, disclosure and privacy protection of PHI  
818 received from County, or created or received by Contractor on behalf of  
819 County, for purposes of determining, investigating or auditing Contractor's  
820 and/or County's compliance with the Privacy Rule.
- 821 H. Request, use or disclose only the minimum amount of PHI necessary to  
822 accomplish the intended purpose of the request, use or disclosure in  
823 accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
- 824 I. Comply with requirements of satisfactory assurances under 45 CFR  
825 §164.512 relating to notice or qualified protective order in response to a  
826 third party's subpoena, discovery request, or other lawful process for the  
827 disclosure of PHI, which Contractor shall promptly notify County upon  
828 Contractor's receipt of such request from a third party.
- 829 J. Not require an individual to provide patient authorization for use or  
830 disclosure of PHI as a condition for treatment, payment, enrollment in any  
831 health plan (including the health plan administered by County), or eligibility  
832 of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and  
833 authorized in writing by County.
- 834 K. Use appropriate administrative, technical and physical safeguards to  
835 prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
- 836 L. Obtain and maintain knowledge of applicable laws and regulations related  
837 to HIPAA and HITECH, as may be amended from time to time.
- 838 6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor  
839 agrees to:
- 840 A. **Access to PHI and electronic health record.** Provide access to PHI in a  
841 designated record set to County or an individual as directed by County,  
842 within five (5) days of request from County, to satisfy the requirements of

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843 45 CFR §164.524. If Contractor uses or maintains electronic health  
844 records, Contractor shall, at the request of County, provide electronic  
845 health records in electronic format to enable County to fulfill its obligations  
846 under 42 USC §17935(e).

847 **B. Amendment of PHI.** Make PHI available for amendment and incorporate  
848 amendments to PHI in a designated record set County directs or agrees to  
849 at the request of an individual, within fifteen (15) days of receiving a  
850 written request from County, in accordance with 45 CFR §164.526.

851 **C. Accounting of disclosures of PHI and electronic health record.** Assist  
852 County to fulfill its obligations to provide accounting of disclosures of PHI  
853 under 45 CFR §164.528 and, where applicable, electronic health records  
854 under 42 USC §17935(c) if Contractor uses or maintains electronic health  
855 records. Contractor shall:

856 (1) Document such disclosures of PHI and/or electronic health records,  
857 and information related to such disclosures, as would be required for  
858 County to respond to a request by an individual for an accounting of  
859 disclosures of PHI and/or electronic health record in accordance with  
860 45 CFR §164.528.

861 (2) Within fifteen (15) days of receiving a written request from County,  
862 provide to County or any individual as directed by County information  
863 collected in accordance with this section to permit County to respond  
864 to a request by an individual for an accounting of disclosures of PHI  
865 and/or electronic health record.

866 (3) Make available for County information required by this section for six  
867 (6) years preceding the individual's request for accounting of  
868 disclosures of PHI, and for three (3) years preceding the individual's  
869 request for accounting of disclosures of electronic health record.

870 **7. Security of ePHI.** In the event Contractor needs to create, receive, or have  
871 access to County ePHI, in accordance with 42 USC §17931 and 45 CFR  
872 §§164.314(a)(2)(i), and 164.306, Contractor shall:

873 A. Implement the administrative, physical, and technical safeguards that  
874 reasonably and appropriately protect the confidentiality, integrity, and  
875 availability of ePHI that Contractor creates, receives, maintains, or  
876 transmits on behalf of County as required by the Security Rule, including  
877 without limitations, each of the requirements of the Security Rule at 45  
878 CFR §§164.308, 164.310, and 164.312;



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- 879 B. Comply with each of the requirements of 45 CFR §164.316 relating to the  
880 implementation of policies, procedures and documentation requirements  
881 with respect to ePHI;
- 882 C. Protect against any reasonably anticipated threats or hazards to the  
883 security or integrity of ePHI;
- 884 D. Protect against any reasonably anticipated uses or disclosures of ePHI  
885 that are not permitted or required under the Privacy Rule;
- 886 E. Ensure compliance by Contractor’s workforce;
- 887 F. Ensure that any agent, including a subcontractor, to whom it provides  
888 ePHI agrees to implement reasonable appropriate safeguards to protect it;
- 889 G. Report to County any security incident of which Contractor becomes  
890 aware; and,
- 891 H. Comply with any additional security requirements that are applicable to  
892 covered entities in Title 42 (Public Health and Welfare) of the United  
893 States Code, as may be amended from time to time, including but not  
894 limited to HITECH.

895 8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI,  
896 Contractor shall comply with the applicable provisions of 42 USC §17932 and  
897 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.

898 A. **Discovery and notification.** Following the discovery of a breach of  
899 unsecured PHI, Contractor shall notify County in writing of such breach  
900 without unreasonable delay and in no case later than 60 calendar days  
901 after discovery of a breach, except as provided in 45 CFR §164.412.

902 (1) **Breaches treated as discovered.** A breach is treated as discovered  
903 by Contractor as of the first day on which such breach is known to  
904 Contractor or, by exercising reasonable diligence, would have been  
905 known to Contractor, which includes any person, other than the person  
906 committing the breach, who is an employee, officer, or other agent of  
907 Contractor (determined in accordance with the federal common law of  
908 agency).

909 (2) **Content of notification.** The written notification to County relating to  
910 breach of unsecured PHI shall include, to the extent possible, the  
911 following information if known (or can be reasonably obtained) by  
912 Contractor:

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- 913 (a) The identification of each individual whose unsecured PHI has  
914 been, or is reasonably believed by Contractor to have been  
915 accessed, acquired, used or disclosed during the breach;
  
- 916 (b) A brief description of what happened, including the date of the  
917 breach and the date of the discovery of the breach, if known;
  
- 918 (c) A description of the types of unsecured PHI involved in the breach,  
919 such as whether full name, social security number, date of birth,  
920 home address, account number, diagnosis, disability code, or other  
921 types of information were involved;
  
- 922 (d) Any steps individuals should take to protect themselves from  
923 potential harm resulting from the breach;
  
- 924 (e) A brief description of what Contractor is doing to investigate the  
925 breach, to mitigate harm to individuals, and to protect against any  
926 further breaches; and,
  
- 927 (f) Contact procedures for individuals to ask questions or learn  
928 additional information, which shall include a toll-free telephone  
929 number, an e-mail address, web site, or postal address.

930 **B. Cooperation.** With respect to any breach of unsecured PHI reported by  
931 Contractor, Contractor shall cooperate with County and shall provide  
932 County with any information requested by County to enable County to  
933 fulfill in a timely manner its own reporting and notification obligations,  
934 including but not limited to providing notice to individuals, media outlets  
935 and the Secretary in accordance with 42 USC §17932 and 45 CFR §§  
936 164.404, 164.406 and 164.408.

937 **C. Breach log.** To the extent breach of unsecured PHI involves less than  
938 500 individuals, Contractor shall maintain a log or other documentation of  
939 such breaches and provide such log or other documentation on an annual  
940 basis to County not later than fifteen (15) days after the end of each  
941 calendar year for submission to the Secretary.

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

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

956 F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event  
957 Contractor's use or disclosure of PHI and/or ePHI violates the Privacy  
958 Rule, Contractor shall maintain documentation sufficient to demonstrate  
959 that all notifications were made by Contractor as required by 45 CFR Part  
960 164, Subpart D, or that such use or disclosure did not constitute a breach.

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

962 A. Contractor agrees to indemnify and hold harmless County, all Agencies,  
963 Districts, Special Districts and Departments of County, their respective  
964 directors, officers, Board of Supervisors, elected and appointed officials,  
965 employees, agents and representatives from any liability whatsoever,  
966 based or asserted upon any services of Contractor, its officers,  
967 employees, subcontractors, agents or representatives arising out of or in  
968 any way relating to this Addendum, including but not limited to property  
969 damage, bodily injury, death, or any other element of any kind or nature  
970 whatsoever arising from the performance of Contractor, its officers,  
971 agents, employees, subcontractors, agents or representatives from this  
972 Addendum. Contractor shall defend, at its sole expense, all costs and  
973 fees, including but not limited to attorney fees, cost of investigation,  
974 defense and settlements or awards, of County, all Agencies, Districts,  
975 Special Districts and Departments of County, their respective directors,  
976 officers, Board of Supervisors, elected and appointed officials, employees,  
977 agents or representatives in any claim or action based upon such alleged  
978 acts or omissions.

979 B. With respect to any action or claim subject to indemnification herein by  
980 Contractor, Contractor shall, at their sole cost, have the right to use  
981 counsel of their choice, subject to the approval of County, which shall not  
982 be unreasonably withheld, and shall have the right to adjust, settle, or  
983 compromise any such action or claim without the prior consent of County;  
984 provided, however, that any such adjustment, settlement or compromise in  
985 no manner whatsoever limits or circumscribes Contractor's indemnification  
986 to County as set forth herein. Contractor's obligation to defend, indemnify  
987 and hold harmless County shall be subject to County having given

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988 Contractor written notice within a reasonable period of time of the claim or  
989 of the commencement of the related action, as the case may be, and  
990 information and reasonable assistance, at Contractor's expense, for the  
991 defense or settlement thereof. Contractor's obligation hereunder shall be  
992 satisfied when Contractor has provided to County the appropriate form of  
993 dismissal relieving County from any liability for the action or claim  
994 involved.

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

999 D. In the event there is conflict between this clause and California Civil Code  
1000 §2782, this clause shall be interpreted to comply with Civil Code §2782.  
1001 Such interpretation shall not relieve the Contractor from indemnifying  
1002 County to the fullest extent allowed by law.

1003 E. In the event there is a conflict between this indemnification clause and an  
1004 indemnification clause contained in the Underlying Agreement of this  
1005 Addendum, this indemnification shall only apply to the subject issues  
1006 included within this Addendum.

1007 **10. Term.** This Addendum shall commence upon the Effective Date and shall  
1008 terminate when all PHI and/or ePHI provided by County to Contractor, or  
1009 created or received by Contractor on behalf of County, is destroyed or  
1010 returned to County, or, if it is infeasible to return or destroy PHI and/ePHI,  
1011 protections are extended to such information, in accordance with section 11.B  
1012 of this Addendum.

1013 **11. Termination.**

1014 **A. Termination for Breach of Contract.** A breach of any provision of this  
1015 Addendum by either party shall constitute a material breach of the  
1016 Underlying Agreement and will provide grounds for terminating this  
1017 Addendum and the Underlying Agreement with or without an opportunity  
1018 to cure the breach, notwithstanding any provision in the Underlying  
1019 Agreement to the contrary. Either party, upon written notice to the other  
1020 party describing the breach, may take any of the following actions:

1021 (1) Terminate the Underlying Agreement and this Addendum, effective  
1022 immediately, if the other party breaches a material provision of this  
1023 Addendum.

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1024 (2) Provide the other party with an opportunity to cure the alleged material  
1025 breach and in the event the other party fails to cure the breach to the  
1026 satisfaction of the non-breaching party in a timely manner, the non-  
1027 breaching party has the right to immediately terminate the Underlying  
1028 Agreement and this Addendum.

1029 (3) If termination of the Underlying Agreement is not feasible, the non-  
1030 breaching party may report the problem to the Secretary, and upon the  
1031 non-breaching party's request, the breaching party at its own expense  
1032 shall implement a plan to cure the breach and report regularly on its  
1033 compliance with such plan to the non-breaching party.

1034 **B. Effect of Termination.**

1035 (1) Upon termination of this Addendum, for any reason, Contractor shall  
1036 return or destroy all PHI and/or ePHI received from County, or created  
1037 or received by the Contractor on behalf of County, and, in the event of  
1038 destruction, Contractor shall certify such destruction, in writing, to  
1039 County. This provision shall apply to all PHI and/or ePHI which are in  
1040 the possession of subcontractors or agents of Contractor. Contractor  
1041 shall retain no copies of PHI and/or ePHI, except as provided below in  
1042 paragraph (2) of this section.

1043 (2) In the event that Contractor determines that returning or destroying the  
1044 PHI and/or ePHI is not feasible, Contractor shall provide written  
1045 notification to County of the conditions that make such return or  
1046 destruction not feasible. Upon determination by Contractor that return  
1047 or destruction of PHI and/or ePHI is not feasible, Contractor shall  
1048 extend the protections of this Addendum to such PHI and/or ePHI and  
1049 limit further uses and disclosures of such PHI and/or ePHI to those  
1050 purposes which make the return or destruction not feasible, for so long  
1051 as Contractor maintains such PHI and/or ePHI.

1052 **12. General Provisions.**

1053 **A. Retention Period.** Whenever Contractor is required to document or  
1054 maintain documentation pursuant to the terms of this Addendum,  
1055 Contractor shall retain such documentation for 6 years from the date of its  
1056 creation or as otherwise prescribed by law, whichever is later.

1057 **B. Amendment.** The parties agree to take such action as is necessary to  
1058 amend this Addendum from time to time as is necessary for County to  
1059 comply with HITECH, the Privacy Rule, Security Rule, and HIPAA  
1060 generally.

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- 1061 C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9,  
1062 11.B and 12.A of this Addendum shall survive the termination or expiration  
1063 of this Addendum.
- 1064 D. **Regulatory and Statutory References.** A reference in this Addendum to  
1065 a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule  
1066 means the section(s) as in effect or as amended.
- 1067 E. **Conflicts.** The provisions of this Addendum shall prevail over any  
1068 provisions in the Underlying Agreement that conflict or appear inconsistent  
1069 with any provision in this Addendum.
- 1070 F. **Interpretation of Addendum.**
- 1071 (1) This Addendum shall be construed to be part of the Underlying  
1072 Agreement as one document. The purpose is to supplement the  
1073 Underlying Agreement to include the requirements of the Privacy Rule,  
1074 Security Rule, HIPAA and HITECH.
- 1075 (2) Any ambiguity between this Addendum and the Underlying Agreement  
1076 shall be resolved to permit County to comply with the Privacy Rule,  
1077 Security Rule, HIPAA and HITECH generally.
- 1078 G. **Notices to County.** All notifications required to be given by Contractor  
1079 pursuant to the terms of this Addendum shall be in writing and delivered to  
1080 the County by either registered or certified mail return receipt requested or  
1081 guaranteed overnight mail with tracing capability at the address listed  
1082 below, or at such other address as County may hereafter designate. All  
1083 notices provided by Contractor pursuant to this Section shall be deemed  
1084 given or made when received by County.
- 1085 Name: Riverside County Regional Medical Center, Compliance  
1086 Department
- 1087 Title: Compliance and Privacy Officer
- 1088 Address: 26520 Cactus Avenue, Moreno Valley, CA 92555