

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

686



FROM: Executive Office

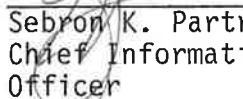
SUBMITTAL DATE:
September 5, 2013

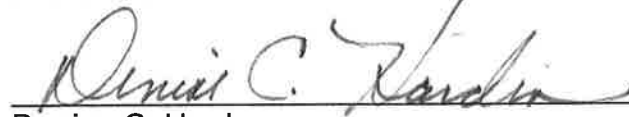
SUBJECT: Revised Board Policy No. B-23 pertaining to Health Privacy and Security

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve revised Board Policy B-23 as set forth in Exhibit A, including designation of the County's Chief Information Security Officer as the County HIPAA Privacy Official;
2. Approve the revised English language version of the County's notice of privacy practices, which is Attachment 1.a to Board Policy B-23, as set forth in Exhibit B, and direct that a Spanish translation of it be prepared to replace Attachment 1.b to Board Policy B-23; and,
3. Approve amending the County's standard business associate agreement, which is Attachment 3 to Board Policy B-23, as set forth in Exhibit C.

(Continued on page 2)


Sebron K. Partridge
Chief Information Security
Officer


Denise C. Harden
Principal Management Analyst

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

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

C.E.O. RECOMMENDATION:

APPROVE

BY: 
Ivan M. Chand 9/5/2013

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY:  TAMMY V. LIEU 9/5/13 DATE

Approved by Barbara A. Oliver,
Asst. County Executive Officer/
Human Resources Director
 9/5/13
Department of Contracting

Consent Policy
 Consent Policy

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

Prev. Agn. Ref.: 12/14/10 #3.4;
04/10/07 #3.4; 05/03/05 #3.4;
03/18/03 #3.26 District: All Agenda Number:

3-98

BACKGROUND: On March 18, 2003, the Board adopted Board Policy B-23 to protect the privacy of individually identifiable health information, as required by the Health Insurance Portability and Accountability Act ("HIPAA"). On May 03, 2005, Board Policy B-23 was subsequently revised to appoint the Chief Information Security Officer ("CISO") as the County HIPAA Security Officer to protect the security of electronic health information. On December 14, 2010, Board Policy B-23 was further revised to address interim regulations issued by the U.S. Department of Health and Human Services ("HHS") pursuant to the passage of the Health Information Technology for Economic and Clinical Health Act ("HITECH").

HHS recently issued final regulations to implement HITECH. Effective September 23, 2013, these final regulations necessitate additional revisions to Board Policy B-23, the County's notice of privacy practices, and the County's standard business associate agreement. Specifically, the proposed revisions:

- Require the County to notify the affected individual, HHS, and if applicable, the media regarding breach of unsecured health information;
- Require a valid authorization for use and disclosure related to mental health records and psychotherapy notes, marketing, and sale of health information, unless an exception applies under law;
- Allow the County to use or disclose limited health information for fundraising without an authorization, if legal requirements are satisfied;
- Recognize the individual's right to restrict disclosure of health information to a health plan for payment or health care operation purposes if certain requirements are satisfied;
- Prohibit health plans from using genetic information for underwriting purposes; and,
- Clarify existing HIPAA requirements.

In addition, subject to the Board's approval, the CISO and Human Resources ("HR") mutually agreed to transfer the organizational responsibility for the HIPAA Privacy Official from HR to the CISO. The intent of consolidating oversight of the HIPAA privacy and security functions is to better streamline and coordinate implementation of HIPAA and HITECH within the County.

Exhibit A

COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject:
HEALTH PRIVACY AND SECURITY POLICY

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Policy:

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

- Keep individually identifiable health information private;
- Provide notice of legal duties and privacy practices with respect to health information;
- Follow the terms of the notice currently in effect; and,
- With respect to any breach of unsecured protected health information, notify affected individuals, the Secretary of the United States Department of Health and Human Services, and prominent media outlets, if applicable.

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

A. Use and Disclosure – General

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

1. For treatment;
2. For payment;
3. For health care operations;
4. For health plan administration, except for genetic information which by law the County health plan may not use or disclose for underwriting purposes; and,
5. For fundraising, provided that legal requirements are satisfied.

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B. Use and Disclosure Generally Requiring Authorization

Unless an exception applies under state and/or federal law, the County may use and disclose health information as follows only with a valid authorization:

1. From mental health records and psychotherapy notes;
2. From or pertaining to some substance abuse treatment programs;
3. For marketing; and,
4. For sale of health information.

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

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

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

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

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

1. As required by law;
2. For public health activities;
3. To report victims of abuse, neglect or domestic violence;
4. For health oversight activities;
5. To the minimum extent necessary to comply with judicial and administrative proceedings when compelled by an order of a court or administrative tribunal, or in response to a subpoena, discovery request or other lawful process as allowed by law;
6. For law enforcement purposes;
7. To coroners, medical examiners and funeral directors;
8. Regarding a deceased person for organ, eye or tissue donation and transplantation;

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9. For research purposes in compliance with required conditions approved by an institutional review board;
10. To avert serious threats to health and safety;
11. On armed forces and foreign military personnel for activities deemed necessary by appropriate military command authorities to assure proper execution of a military mission;
12. To determine eligibility for or entitlement to veterans benefits;
13. To authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities;
14. To authorized federal officials to provide protection to the President, other authorized persons, or foreign heads of state, or to investigate threats against the President or other authorized persons;
15. To correctional institutions and other law enforcement custodial situations;
16. To determine eligibility for or enrollment in a government health plan program, or to coordinate and improve administration of benefits for such government plans; and,
17. To the minimum extent necessary to comply with workers' compensation laws or similar programs providing benefits for work-related injuries or illnesses.

The County will not disclose individuals' health information to outside parties for any other reasons not covered by this policy without prior written authorization.

E. Rights and Responsibilities

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

1. Right to request restrictions on certain uses and disclosures;
2. Right to restrict disclosure to a health plan if the disclosure is for payment or health care operation purposes, is not otherwise required by law, and such health information pertains solely to a health care item or service paid in full by the individual, or a person (other than the health plan) on behalf of the individual;
3. Right to confidential communications;
4. Right to request to inspect and copy records;
5. Right to amend health records;
6. Right to an accounting of certain disclosures;
7. Right to obtain a paper copy of the required notice of privacy practices upon request; and,
8. Right to file complaints without fear of retaliation.

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F. HIPAA Officers

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

The County designates the CISO as the HIPAA Privacy Official and HIPAA Security Official of the County to develop and implement HIPAA policies and procedures for the County in consultation with the County Executive Office, County Counsel, and affected departments. Individuals may choose to direct inquiries and complaints regarding health privacy issues to designees within departments, to the County HIPAA Privacy Official, or to the Secretary of the Department of Health and Human Services. Under no circumstances will the County allow or enable retaliation or reprisal against individuals who file such complaints.

G. Organized Health Care Arrangement

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

H. Business Associates

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

I. Effective Date

This policy took initial effect on April 14, 2003.

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Minute Order 3.4 of 12/14/10

Attachment 1.a – Notice of Privacy Practices – English

Attachment 1.b – Notice of Privacy Practices – Spanish

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

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

Attachment 3 – Business Associate Agreement Template

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Policy:

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

- Keep individually identifiable health information private;
- Provide notice of legal duties and privacy practices with respect to health information; ~~and~~,
- Follow the terms of the notice currently in effect; and,
- With respect to any breach of unsecured protected health information, notify affected individuals, the Secretary of the United States Department of Health and Human Services, and prominent media outlets, if applicable.

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

A. Use and Disclosure – General

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

1. For treatment;
2. For payment;
3. For health care operations; ~~and~~
4. For health plan administration, except for genetic information which by law the County health plan may not use or disclose for underwriting purposes; ~~and,~~
5. For fundraising, provided that legal requirements are satisfied.

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B. Use and Disclosure Generally Requiring Authorization

~~On a limited basis~~ Unless an exception applies under state and/or federal law, the County may use and disclose health information as follows only with a valid authorization, ~~as allowed under state and federal law~~:

1. From mental health records and psychotherapy notes; ~~and~~,
2. From or pertaining to some substance abuse treatment programs;
3. For marketing; and,
4. For sale of health information.

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

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

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

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

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

1. As required by law;
2. For public health activities;
3. To report victims of abuse, neglect or domestic violence;
4. For health oversight activities;
5. To the minimum extent necessary to comply with judicial and administrative proceedings when compelled by an order of a court or administrative tribunal, or in response to a subpoena, discovery request or other lawful process as allowed by law;
6. For law enforcement purposes;
7. To coroners, medical examiners and funeral directors;
8. ~~On-Regarding~~ Regarding a deceased person for organ, eye or tissue donation and transplantation;

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9. For research purposes in compliance with required conditions approved by an institutional review board;
10. To avert serious threats to health and safety;
11. On armed forces and foreign military personnel for activities deemed necessary by appropriate military command authorities to assure proper execution of a military mission;
12. To determine eligibility for or entitlement to veterans benefits;
13. To authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities;
14. To authorized federal officials to provide protection to the President, other authorized persons, or foreign heads of state, or to investigate threats against the President or other authorized persons;
15. To correctional institutions and other law enforcement custodial situations;
16. To determine eligibility for or enrollment in a government health plan program, or to coordinate and improve administration of benefits for such government plans; and,
17. To the minimum extent necessary to comply with workers' compensation laws or similar programs providing benefits for work-related injuries or illnesses.

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

E. Rights and Responsibilities

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

1. Right to request restrictions on certain uses and disclosures;
2. Right to restrict disclosure to a health plan if the disclosure is for payment or health care operation purposes, is not otherwise required by law, and such health information pertains solely to a health care item or service paid in full by the individual, or a person (other than the health plan) on behalf of the individual;
23. Right to confidential communications;
34. Right to request to inspect and copy records;
45. Right to amend health records;
56. Right to an accounting of certain disclosures;
67. Right to obtain a paper copy of the required notice of privacy practices upon request; and,

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78. Right to file complaints without fear of retaliation.

F. HIPAA Officers

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

The County designates the ~~Human Resources Department~~**CISO** as the ~~official~~-HIPAA Privacy Official and HIPAA Security Official of the County to develop and implement HIPAA policies and procedures for the County in consultation with the County Executive Office, County Counsel, and affected departments. Individuals may choose to direct inquiries and complaints regarding health privacy issues to designees within departments, to the County HIPAA Privacy Official, or to the Secretary of the Department of Health and Human Services. Under no circumstances will the County allow or enable retaliation or reprisal against individuals who file such complaints.

G. Organized Health Care Arrangement

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

H. Business Associates

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

I. Effective Date

This policy ~~shall take~~ took initial effect on April 14, 2003.

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Reference:

Minute Order 3.26 of 03/18/03

Minute Order 3.4 of 05/03/05

Minute Order 3.4 of 04/10/07

Minute Order 3.4 of 12/14/10

Attachment 1.a – Notice of Privacy Practices – English

Attachment 1.b – Notice of Privacy Practices – Spanish

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

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

Attachment 3 – Business Associate Agreement Template

Exhibit B



**THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION
~~COUNTY OF RIVERSIDE~~ ABOUT YOU MAY BE USED AND DISCLOSED
YOUR PERSONAL HEALTH INFORMATION AND HOW
YOU CAN OBTAIN ACCESS TO THIS INFORMATION.
PLEASE REVIEW IT CAREFULLY.**

EFFECTIVE DATE: APRIL 14, 2003

The County creates records of health care to provide quality care and comply with legal requirements. The County understands your health information is personal and private, and commits to safeguarding it to the extent reasonably possible. The law requires the County to keep your health information private and to provide you this notice of our legal duties and privacy practices. The law also requires the County to follow the terms of this notice.

This notice outlines the limits on how the County will handle your health information. Under federal law, the County must provide a copy of this notice when you receive health care and related services from the County, or participate in certain health plans administered or operated by the County. The County reserves the right to change practices and make new provisions effective for all health information it maintains. You may request an updated copy of this notice at any time.

A. Use and Disclosure – General

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

1. **For treatment.** The County uses and discloses health information to provide you health care and related services. For instance:
 - Nurses, doctors, or other County employees may record your health information, and they may share such information with other County employees involved in your treatment.
 - The County may disclose health information to people outside the County involved in your care who provide treatment and related services.
 - The County may use and disclose health information to contact you to remind you about appointments for treatment or health care-related services.
 - In emergencies, the County may use or disclose health information to provide you treatment. The County will make its best effort to obtain your permission to use or disclose your health information as soon as reasonably practical.
2. **For payment.** The County may bill you, insurance companies, or third parties. Information on or accompanying these bills may identify you, as well as diagnoses, assessments, procedures performed, and medical supplies used.
3. **For health care operations.** The County may use information in your health record to assess the care and outcomes in your case to improve our services, and in administrative processes such as purchasing medical devices, or for auditing financial data.
4. **For health plan administration.** As administrator of certain health plans, such as Medicare, Medi-Cal, and Exclusive Care, the County may disclose limited information to plan sponsors. The law only allows using such information for purposes such as plan eligibility and enrollment, benefits administration, and payment of health care expenses. The law specifically prohibits use for employment-related actions or decisions.
5. **Underwriting purposes.** County health plan may use or disclose your health information for underwriting purposes, but is prohibited from using or disclosing your genetic information for such purposes.
6. **Fundraising activities.** County may use information about you, or disclose such information to a business associate or foundation related to the County, to contact you in an effort to raise funds for the County. You have the right to opt out of receiving fundraising communications. If you receive fundraising communications, it will tell you how to opt out.

B. Use and Disclosure Generally Requiring Your Authorization

~~On a limited basis~~Except in certain circumstances, the County may use and disclose health information only with your permission, ~~as required by state and federal law:~~

1. From mental health records and psychotherapy notes;

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2. From substance abuse treatment records;
3. For marketing purposes; and,
4. For sales of health information.

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

In certain cases, the County may use and disclose health information only if it informs you in advance and provides an opportunity to agree or object, as required by state and federal law:

1. The County may include your name, location in the facility, general condition, and religious affiliation in a facility directory while you are a patient so your family, friends and clergy can visit you and generally know how you are doing. Your religious affiliation may be given only to clergy.
2. To individuals involved in your health care or assisting with your treatment or payment for your health care.
3. To assist with disaster relief efforts to notify your family about you.

D. Use and Disclosure NOT Requiring Permission or an Opportunity for You to Agree or Object

In specific cases, the County may use and disclose ~~the following~~ health information without your permission and without providing you the opportunity to agree or object:

1. As required by law.
2. For public health activities, which may include the following:
 - Preventing or controlling disease, injury or disability;
 - Reporting births and deaths;
 - Reporting abuse or neglect of children, elders and dependent adults;
 - Reporting reactions to medications or problems with products;
 - Notifying people of recalls of products they may use; or,
 - Notifying a person exposed to or at risk to contract or spread a disease or condition.
3. For mandated reporting of abuse, neglect or domestic violence.
4. For health oversight activities necessary for the government to monitor the health care system, government programs and compliance with civil rights laws.
5. To the minimum extent necessary to comply with judicial and administrative proceedings when compelled by court order, or in response to a subpoena, discovery request or other lawful process as allowed by law.
6. To law enforcement:
 - In response to a court order, subpoena, warrant, summons or similar legal process;
 - To identify or locate a suspect, fugitive, material witness, or missing person;
 - About the victim of a crime if, under certain limited circumstances, we are the County is unable to obtain the person's agreement;
 - About a death we believe the County believes may be the result of criminal conduct;
 - About criminal conduct that occurred on at the hospital/County's premises; or,
 - In emergency circumstances to report a crime, the location of a crime or crime victims, or the identity, description or location of a person who may have committed a crime.
7. To coroners, medical examiners and funeral directors as necessary for them to carry out their duties.
8. For organ, eye and tissue donation once you are deceased.
9. For ~~public~~ health research in compliance with strict conditions approved and monitored by an Institutional Review Board.
10. To avert serious threats to the health and safety of you or others.

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11. Regarding military personnel for activities deemed necessary by appropriate military command authorities to assure proper execution of a military mission.
12. To determine your eligibility for or entitlement to veterans benefits.
13. To authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities.
- ~~13.14.~~ To authorized federal officials so they may provide protection to the President, other authorized persons, or foreign heads of state or investigate threats against the President or other authorized persons.
- ~~14.15.~~ To correctional institutions and/or other law enforcement officials custodial situations for certain purposes such as protecting your health and safety or the health and safety of others, if you are an inmates of the correctional institutions or for those in custody of a law enforcement official.
- ~~15.16.~~ To determine your eligibility for or enroll you in government health programs.
- ~~16.17.~~ For Workers Compensation or similar programs, to the minimum extent necessary.

E. Other Uses and Disclosures of Health Information

The County will not disclose your health information for ~~marketing, fundraising, or other reasons not listed above covered by this notice~~ without your prior written permission, and you may withdraw that permission in writing at any time. If you do, the County will no longer use or disclose health information about you for the reasons you permitted. You understand the County is unable to retract disclosures already made with your permission, and must retain records of care already provided.

E.F. Rights and Responsibilities

With regard to health information, the County recognizes and commits to safeguard your:

1. **Right to request restrictions on certain use and disclosure.** You have the right to request a restriction or limitation on the health information the County uses or discloses for treatment, payment or health care operations. Requests must be in writing and state: the information you want to limit; whether to limit use, disclosure, or both; and, to whom limits apply. For instance, you may ask the County not to disclose information about your surgery to a family member. ~~though~~ Except as described below, the law does not require the County to agree to your request. If the County agrees, it will comply except to provide emergency treatment. Unless otherwise required by law, the County will agree to your request to restrict disclosure to a health plan for payment or health care operations purposes if you, or someone else on your behalf (other than the health plan), has paid for the health care item or service out of pocket in full. Requests must be in writing and state: the information you want to limit; whether to limit use, disclosure, or both; and, to whom limits apply. For instance, you may ask not to disclose to your spouse.
2. **Right to confidential communications.** You have the right to ask the County to communicate with you in a certain way, or at a certain location. For example, you can ask that the County only contact you at work or by mail.
3. **Right to request to inspect and copy records.** You have the right to request to inspect and obtain copies of your health information. Requests may be required in writing, and the County may charge you a fee for the costs of fulfilling your request. The County may deny requests to inspect or copy psychotherapy notes, mental health records, or materials for legal proceedings. You may ask for review of a denial by another health care professional chosen by the County. The County will comply with the results of that review.
4. **Right to amend health records.** If information the County has about you is incorrect or incomplete, you may ask to amend it. Requests must be in writing, and provide a reason supporting your request. The County may deny your request if it is not in writing, or does not include a reason supporting it. The County may deny requests if the information:
 - Was not created by the County;
 - Is not health information kept by or for the County;
 - Is not information you are permitted to inspect and copy; or,
 - Is accurate and complete.

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Notice of Privacy Practices**

If County health care provider denies your request for amendment, you have the right to submit a written addendum, not to exceed 250 words, with respect to any item or statement in your record you believe is incomplete or incorrect. If you clearly indicate in writing that you want the addendum to be made part of your medical record, County health care provider will attach it to your records and include it whenever a disclosure is made of the item or statement you believe to be incomplete or incorrect.

5. **Right to an accounting of certain disclosures.** You have the right to ask for a listing of the last six years of disclosures of your health information ~~since April 14, 2003,~~ not pertaining to treatment, payment or health care operations and other exceptions pursuant to law. Requests must be in writing. The first list you request in a twelve-month period is free. The County may charge you the cost of providing or reproducing additional lists. When told the cost, you may withdraw or modify your request. In addition, the County will notify you following a breach of your unsecured health information as required by law.
6. **Right to obtain a paper copy of the notice of privacy practices upon request.** Even if you have agreed to receive this notice electronically, you are still entitled to a paper copy of this notice.
7. **Right to file complaints without fear of retaliation.** Under law, the County cannot penalize you for filing a complaint. If you believe the County violated your privacy rights, you may file a complaint with the department privacy officer, County privacy office, or with the U.S. Secretary of Health and Human Services.

PRIVACY COMPLAINT CONTACTS

**Riverside County
Regional Medical Center Health
System**
Compliance and Privacy Officer
26520 Cactus Avenue
Moreno Valley, CA 92555
(951) 486-4659

Public Health
Privacy Officer
4065 County Circle Drive
Riverside, CA 92503
(951) 358-5000

Mental Health
Compliance Officer
4095 County Circle Drive
Riverside, CA 92503
(800) 413-9990

Office on Aging
6296 Rivercrest Drive, Suite K
Riverside, CA 92507
(800) 510-2020

Public Social Services
Privacy Officer
10281 Kidd Street
Riverside, CA 92503
(951) 358-3030

Veterans Services
4360 Orange Street
Riverside, CA 92501
(951) 276-3060

**Employee Assistance
Program Services**
3600 Lime Street, Suite 314
Riverside, CA 92501
(951) 778-3970

★ **County Privacy Office** ★
P.O. Box 1569
Riverside, CA 92502
(951) 955-4005757

Exclusive Care Plan
P.O. Box 1508
Riverside, CA 92502
(800) 962-1133

U.S. Department of Health & Human Services

Region IX Office of Civil Rights

90 7th Street, Suite 4-100
San Francisco, CA 94103

TEL: (800) 368-1019 • TDD: (800) 537-7697 • FAX: (202) 619-3818

Exhibit C

1 HIPAA Business Associate Agreement

2 Addendum to Contract

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

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

9 RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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22 (2) Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 4. **Obligations of County.**

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

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

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

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

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

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

1 L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and
2 HITECH, as may be amended from time to time.

3 M. Comply with the requirements of the Privacy Rule that apply to the County to the extent
4 Contractor is to carry out County's obligations under the Privacy Rule.

5 N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of
6 which Contractor becomes aware that constitute a material breach or violation of the
7 subcontractor's obligations under the business associate contract with Contractor, and if such
8 steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if
9 feasible.

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

11 A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained
12 electronically, in a designated record set to County or an individual as directed by County, within
13 five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.

14 B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI
15 in a designated record set County directs or agrees to at the request of an individual, within
16 fifteen (15) days of receiving a written request from County, in accordance with 45 CFR
17 §164.526.

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

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

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

30 (3) Make available for County information required by this Section 6.C for six (6) years
31 preceding the individual's request for accounting of disclosures of PHI, and for three (3)
32 years preceding the individual's request for accounting of disclosures of electronic health
33 record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 11. **Termination.**

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

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

21 B. **Effect of Termination.**

- 22 (1) Upon termination of this Addendum, for any reason, Contractor shall return or, if agreed to in
23 writing by County, destroy all PHI and/or ePHI received from County, or created or received
24 by the Contractor on behalf of County, and, in the event of destruction, Contractor shall
25 certify such destruction, in writing, to County. This provision shall apply to all PHI and/or
26 ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall
27 retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this
28 section.
- 29 (2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is
30 not feasible, Contractor shall provide written notification to County of the conditions that
31 make such return or destruction not feasible. Upon determination by Contractor that return
32 or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of
33 this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI
34 and/or ePHI to those purposes which make the return or destruction not feasible, for so long
35 as Contractor maintains such PHI and/or ePHI.

36 12. **General Provisions.**

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

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

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

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

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

10 F. **Interpretation of Addendum.**

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

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

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

23 County HIPAA Privacy Officer: HIPAA Privacy Manager

24 County HIPAA Privacy Officer Address: _____

25 County HIPAA Privacy Officer Fax: _____

26

27

28 County Departmental Officer: _____

29 County Departmental Officer Title: _____

30 County Department Address: _____

31 County Department Fax Number: _____

1 HIPAA Business Associate Agreement

2 Addendum to Contract

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

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

9 RECITALS

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

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

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

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

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

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

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

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

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

6 A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of
7 PHI in a manner not permitted ~~by under subpart E of~~ the Privacy Rule which compromises the
8 security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.
9 ~~For purposes of this definition, "compromises the security or privacy of PHI" means poses a~~
10 ~~significant risk of financial, reputational, or other harm to the individual, unless a use or~~
11 ~~disclosure of PHI does not include the identifiers listed at 45 CFR §164.514(e)(2), date of birth~~
12 ~~and zip code.~~

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

17 (a) The nature and extent of the PHI involved, including the types of identifiers and the
18 likelihood of re-identification;

19 (b) The unauthorized person who used the PHI or to whom the disclosure was made;

20 (c) Whether the PHI was actually acquired or viewed; and

21 (d) The extent to which the risk to the PHI has been mitigated.

22 (2) Breach excludes:

23 (a) Any unintentional acquisition, access or use of PHI by a workforce member or person
24 acting under the authority of a covered entity or business associate, if such acquisition,
25 access or use was made in good faith and within the scope of authority and does not
26 result in further use or disclosure in a manner not permitted under subpart E of the
27 Privacy Rule.

28 (b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered
29 entity or business associate to another person authorized to access PHI at the same
30 covered entity, business associate, or organized health care arrangement in which
31 County participates, and the information received as a result of such disclosure is not
32 further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.

33 (c) A disclosure of PHI where a covered entity or business associate has a good faith belief
34 that an unauthorized person to whom the disclosure was made would not reasonably
35 have been able to retain such information.
36

37 B. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not
38 limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf
39 of the business associate.
40
41
42

1 | B.C. _____ “Data aggregation” has the meaning given such term in 45 CFR §164.501.

2 | C.D. _____ “Designated record set” as defined in 45 CFR §164.501 means a group of records
3 | maintained by or for a covered entity that may include: the medical records and billing records
4 | about individuals maintained by or for a covered health care provider; the enrollment, payment,
5 | claims adjudication, and case or medical management record systems maintained by or for a
6 | health plan; or, used, in whole or in part, by or for the covered entity to make decisions about
7 | individuals.

8 | D.E. _____ “Electronic protected health information” (“ePHI”) as defined in 45 CFR §160.103
9 | means protected health information transmitted by or maintained in electronic media.

10 | E.F. _____ “Electronic health record” means an electronic record of health-related information on an
11 | individual that is created, gathered, managed, and consulted by authorized health care clinicians
12 | and staff, and shall have the meaning given such term in 42 USC §17921(5).

13 | F.G. _____ “Health care operations” has the meaning given such term in 45 CFR §164.501.

14 | G.H. _____ “Individual” as defined in 45 CFR §160.103 means the person who is the subject of
15 | protected health information.

16 | H.I. _____ “Person” as defined in 45 CFR §160.103 means a natural person, trust or estate,
17 | partnership, corporation, professional association or corporation, or other entity, public or
18 | private.

19 | I.J. _____ “Privacy Rule” means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A
20 | and E.

21 | J.K. _____ “Protected health information” (“PHI”) has the meaning given such term in 45 CFR
22 | §160.103, which includes ePHI.

23 | K.L. _____ “Required by law” has the meaning given such term in 45 CFR §164.103.

24 | M. _____ “Secretary” means the Secretary of the U.S. Department of Health and Human Services
25 | (“HHS”).

26 | N. _____ “Security incident” as defined in 45 CFR §164.304 means the attempted or successful
27 | unauthorized access, use, disclosure, modification, or destruction of information or interference
28 | with system operations in an information system.

29 | O. _____ “Security Rule” means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts
30 | A and C.

31 | M.P. _____ “Subcontractor” as defined in 45 CFR §160.103 means a person to whom a business
32 | associate delegates a function, activity, or service, other than in the capacity of a member of the
33 | workforce of such business associate.

34 | N.Q. _____ “Unsecured protected health information” and “unsecured PHI” as defined in 45 CFR
35 | §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized
36 | individuals-persons through use of a technology or methodology specified by the Secretary in the
37 | guidance issued under 42 USC §17932(h)(2) ~~on the HHS web site.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 ~~(1)~~ Not to use or disclose PHI for fundraising ~~or marketing purposes~~, unless pursuant to the
7 Underlying Agreement and only if as permitted by and consistent in compliance with the
8 requirements of ~~42 USC §1793645 CFR §164.514(f) or 45 CFR §164.508~~;

9 ~~(1)(2)~~ Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant
10 to the Underlying Agreement and only if permitted by and in compliance with the
11 requirements of 45 CFR §164.508(a)(3);

12 ~~(2)(3)~~ Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of
13 carrying out payment or health care operations, if the individual has requested this restriction
14 pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for
15 the health care item or service to which the PHI solely relates; and,

16 ~~(3)(4)~~ Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any
17 act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless
18 permitted by the Underlying Agreement and in compliance with the requirements of a valid
19 authorization under 45 CFR §164.508(a)(4) permitted by 42 USC §17935(d)(2) and with the
20 prior written consent of County. This prohibition shall not apply to payment by County to
21 Contractor for services provided pursuant to the Underlying Agreement.

22 4. **Obligations of County.**

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

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

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

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

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

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

1 L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and
2 HITECH, as may be amended from time to time.

3 M. Comply with the requirements of the Privacy Rule that apply to the County to the extent
4 Contractor is to carry out County's obligations under the Privacy Rule.

5 L.N. Take reasonable steps to cure or end any pattern of activity or practice of its
6 subcontractor of which Contractor becomes aware that constitute a material breach or violation
7 of the subcontractor's obligations under the business associate contract with Contractor, and if
8 such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if
9 feasible.

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

11 A. **Access to PHI and electronic health record, including ePHI.** Provide access to PHI,
12 including ePHI if maintained electronically, in a designated record set to County or an individual
13 as directed by County, within five (5) days of request from County, to satisfy the requirements of
14 45 CFR §164.524. ~~If Contractor uses or maintains electronic health records, Contractor shall, at~~
15 ~~the request of County, provide electronic health records in electronic format to enable County to~~
16 ~~fulfill its obligations under 42 USC §17935(e).~~

17 B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI
18 in a designated record set County directs or agrees to at the request of an individual, within
19 fifteen (15) days of receiving a written request from County, in accordance with 45 CFR
20 §164.526.

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

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

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

33 (3) Make available for County information required by this Section 6.C for six (6) years
34 preceding the individual's request for accounting of disclosures of PHI, and for three (3)
35 years preceding the individual's request for accounting of disclosures of electronic health
36 record.

- 1 | 7. **Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create,
2 | receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and
3 | 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:
- 4 | A. Comply with the applicable requirements of the Security Rule. Implement and implement the
5 | administrative, physical, and technical safeguards that reasonably and appropriately protect the
6 | confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or
7 | transmits on behalf of County ~~as required by the Security Rule, including without limitations,~~
8 | ~~each of the requirements of the Security Rule at~~ in accordance with 45 CFR §164.308,
9 | §164.310, and §164.312;
- 10 | B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of
11 | policies, procedures and documentation requirements with respect to ePHI;
- 12 | C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
- 13 | D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or
14 | required under the Privacy Rule;
- 15 | E. Ensure compliance with the Security Rule by Contractor's workforce;
- 16 | F. ~~Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement~~
17 | ~~reasonable appropriate safeguards to protect it~~ In accordance with 45 CFR §164.308(b)(2),
18 | require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf
19 | of Contractor agree through contract to the same restrictions and requirements contained in this
20 | Addendum and comply with the applicable requirements of the Security Rule;
- 21 | G. Report to County any security incident of which Contractor becomes aware, including breaches
22 | of unsecured PHI as required by 45 CFR §164.410; and,
- 23 | H. Comply with any additional security requirements that are applicable to covered entities in Title
24 | 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time,
25 | including but not limited to HITECH.
- 26 | 8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with
27 | the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not
28 | limited to 45 CFR §164.410.
- 29 | A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor
30 | shall notify County in writing of such breach without unreasonable delay and in no case later
31 | than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
- 32 | (1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the
33 | first day on which such breach is known to Contractor or, by exercising reasonable diligence,
34 | would have been known to Contractor, which includes any person, other than the person
35 | committing the breach, who is an employee, officer, or other agent of Contractor (determined
36 | in accordance with the federal common law of agency).
- 37 | (2) **Content of notification.** The written notification to County relating to breach of unsecured
38 | PHI shall include, to the extent possible, the following information if known (or can be
39 | reasonably obtained) by Contractor:

- 1 (a) The identification of each individual whose unsecured PHI has been, or is reasonably
2 believed by Contractor to have been accessed, acquired, used or disclosed during the
3 breach;
- 4 (b) A brief description of what happened, including the date of the breach and the date of the
5 discovery of the breach, if known;
- 6 (c) A description of the types of unsecured PHI involved in the breach, such as whether full
7 name, social security number, date of birth, home address, account number, diagnosis,
8 disability code, or other types of information were involved;
- 9 (d) Any steps individuals should take to protect themselves from potential harm resulting
10 from the breach;
- 11 (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm
12 to individuals, and to protect against any further breaches; and,
- 13 (f) Contact procedures for individuals to ask questions or learn additional information, which
14 shall include a toll-free telephone number, an e-mail address, web site, or postal address.

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

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

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

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

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

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

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

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

18 9. Hold Harmless/Indemnification.

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

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

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

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

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

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

14 11. **Termination.**

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

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

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

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

32 B. **Effect of Termination.**

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

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

8 **12. General Provisions.**

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

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

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

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

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

21 **F. Interpretation of Addendum.**

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

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

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

34 County HIPAA Privacy Officer: HIPAA Privacy Manager

35 County HIPAA Privacy Officer Address: _____

36 County HIPAA Privacy Officer Fax: _____

1
2
3
4
5

Name County Departmental Officer:

County Departmental Officer Title:

County Department Address:

County Department Fax Number: