

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



368

FROM: Riverside County Regional Medical Center

SUBMITTAL DATE:
June 18, 2015

SUBJECT: Approve the Professional Services Agreement with Talyst, Inc. for software services to manage RCRMC 340B programs, for 10 years; All District; \$1,629,800, Hospital Enterprise Fund

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and authorize the Purchasing Agent to execute the Professional Services Agreement between Riverside County Regional Medical Center and Talyst, Inc. for software services to manage the 340B programs for 10 years, effective July 7, 2015 not to exceed \$171,800 for year one and \$162,000 annually for subsequent years; and,
2. Approve and authorize the Purchasing Agent to execute the Talyst Inc., negotiated agreements with the external pharmacies for a monthly fee of \$250 per pharmacy, with estimated revenue from these contracted pharmacies for eligible dispense/replenished fees ranging from \$0.50 to \$3.00 per occurrence; and,
3. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise annual renewal options, based on the availability of fiscal funding, to sign amendments that do not change the substantive terms of the agreement, and to allow the Purchasing Agent to increase the compensation amount not more than ten percent of the aggregate amount, as approved by County Counsel.

(continued on next page)


Zareh H. Sarrafian, Hospital CEO

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 171,800	\$ 162,000	\$ 1,629,800	\$	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: Hospital Enterprise Fund - 40050				Budget Adjustment: No	
				For Fiscal Year: 15/16-24/25	

C.E.O. RECOMMENDATION:

APPROVE

BY: 

County Executive Office Signature

Christopher M. Hans

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL
DATE 6-17-15
BY: ANITA C. WILLIS
Departmental Concurrence

PURCHASING & FLEET SERVICES
Lisa Brandl, Director

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.:

District: ALL

Agenda Number:

3-16

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

FORM 11: Approve the Professional Services Agreement with Talyst, Inc. for 10 years; All District; [\$320,800]; Enterprise Fund

DATE: June 18, 2015

PAGE: Page 2 of 2

BACKGROUND:

Summary

If approved, this software service will provide an efficient and accurate method to split our prescription drug orders between 340B and other prices in full compliance with strict Health Resources and Services Administration (HRSA) regulations governing the 340B program. In addition, Talyst will help manage most facets of RCRMC's 340B program, allowing RCRMC and their contract pharmacies to boost savings by having dedicated 340B experts run the program.

The 340B Drug Pricing Program requires drug manufacturers to provide outpatient drugs to eligible healthcare organizations / covered entities at significantly reduced prices. The 340B Drug Pricing Program requires drug manufacturers to provide outpatient drugs to eligible healthcare organizations / covered entities at significantly reduced prices. The program enables covered entities such as Riverside County Regional Medical Center (RCRMC) to maintain services and help lower medication costs for patients. Its intent allows RCRMC to stretch scarce resources, reaching more eligible patients and providing more comprehensive services. To ensure random and targeted audits are conducted of health systems that participate in the 340B drug pricing program, the Government of Accountability Office (GAO) instructed this task to the Health Resources and Services Administration (HRSA)—Office of Pharmacy Affairs. Therefore, it is critical for RCRMC to have the appropriate 340B solution to help maintain compliance and be audit ready. This software will provide an efficient and accurate method to split our replenishment orders between 340b, GPO and WAC prices in full compliance with HRSA regulations governing the 340b program.

In addition to the software service, Talyst's AutoSplit® Fully Managed Solution, will help manage most facets of RCRMC's 340B program, allowing RCRMC and their contract pharmacies to boost savings by having dedicated 340B experts run the program. Talyst uses their 340B expertise to help increase savings by finding savings opportunities that may often be missed. Talyst's fully-managed solution tracks all savings opportunities and helps our health system stay compliant with federal regulations. Some of the features include but is not limited to: i) Manage most of the details of RCRMC's 340B program to help maximize savings; ii) Perform important compliance checks to help meet our compliance obligations; and iii) Provide complete reporting and periodic updates giving RCRMC full visibility of our 340B program results.

Impact on Citizens and Businesses

This service impacts the patients in Riverside County receiving care from the hospital at Riverside County Regional Medical Center and allows other specialty and retail pharmacies within the community to expand its business to these eligible patients.

Contract History and Price Reasonableness

On behalf of RCRMC, County Purchasing released a Request for Proposal (RFP #MCARC-264), to secure for 340B management solutions. Solicitations were sent to four prospective vendors specializing in these services and advertised on the County's Internet/Website.

Three (3) proposals were received and evaluated by the Pharmacy department and Information Technology (IT) department. The evaluation team reviewed and scored each proposal based on the evaluation criteria as specified in the RFP. The suppliers who received the two highest scores were given the opportunity to submit their Best and Final Offer (BAFO) to the County and conduct a demonstration of their product to the evaluation committee. The final scores ranged from 78.2% (lowest score) to 89.5% (highest score); with Talyst, Inc. receiving the highest score of 89.5%.

Proposed total costs ranged from \$110,500 to \$133,800 (setup cost plus annual usage cost). Negotiations with Talyst resulted in a proposed cost of \$1,629,800 over 10 yrs. The evaluation team with the guidance of Huron Consulting and County Purchasing determined Talyst, Inc. met the needs of RCRMC and have determined Talyst as the most responsible/responsive vendor.

PHARMACY 340B SERVICES AGREEMENT

Agreement Summary

DATE OF OFFER: JUNE 1, 2015

The pricing and terms herein are valid for 90 days from the Date of Offer.

EFFECTIVE DATE: July 7, 2015

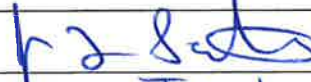
This PHARMACY 340B SERVICES AGREEMENT ("**Agreement**") is entered into as of the Effective Date by and between the following parties:

"Talyst"	"Licensee"
Talyst Inc.	Riverside County
11335 NE 122 nd Way, Suite 200	26520 Cactus Ave
Kirkland, Washington 98034	Moreno Valley, CA, 92555
Attention: General Counsel	Attention: Gregory Prouty
Phone: (425) 289-5400	Phone: (951) 486-4529
Fax: (425) 289-5401	Fax: (951) 486-4540
Email: salesops@talyst.com	Email: GProuty@rivcormc.org
Licensee A/P and Billing Information	Billing Address if Different from Above
AP/Billing Contact: Fiscal/Accounts Payable	Address:
Phone: (951) 486-4355	City/State/Zip:

This Agreement is comprised of the following documents and is entered into by the parties as of the Effective Date set forth above:

1. Agreement Summary
2. Recitals, Standard Terms and Conditions
3. Exhibit A: AutoSplit 340B Fully Managed Service Plan
4. Exhibit B: AutoSplit 340B Retail / Contract Pharmacy Processor Plan
5. Exhibit C: Pricing and Payment Terms
6. Exhibit D: Other Terms and Conditions
7. Exhibit E: Covered Entity Data Specifications- Retail/Contract Pharmacy Processing
8. Exhibit F: Business Associate Agreement
9. Attachment 1: Authorization to Pay by ACH – Additional Terms

Each party causes this Agreement to be executed by its duly authorized representative.

By: 	By: _____
Printed Name: <u>Jon L Scotland</u>	Printed Name: _____
Title: <u>VP of Finance</u>	Title: _____
Date: <u>6/16/15</u>	Date: _____
TALYST INC.	Riverside County

To Execute this Contract:

- 1 – Please fax a copy of the signed contract to 425-289-5633 or email to SalesOps@Talyst.com.
- 2 – Please print out 2 original complete documents sign them both and return them to our office location listed above, Attn: Sales Operations.
- 3 – Talyst will then counter sign and mail back to your facility at the address indicated on the signed contract unless otherwise specified.

FORM APPROVED COUNTY COUNSEL

BY: 
ANITA C. WILLIS

DATE: 6-17-15

15-34003FM

RFP# MCARC-264 BOS Agenda # _____ Dated: _____

Recitals

- A. Section 602 of Public Law 102-585, the Veteran's Health Care Act of 1992, enacted Section 340B of the Public Health Services Act (the "340B Act"), providing for the limitation of pricing on certain drugs purchased by qualifying entities.
- B. The 340B Act classifies certain health care facilities as "covered entities" eligible to purchase outpatient prescription drugs at preferential prices from drug manufacturers that have entered into drug purchasing agreements with the United States Department of Health and Human Services and to dispense, either directly or through the use of a contracted pharmacy (a "Contract Pharmacy") such prescription drugs for use by certain qualifying patients of the covered entity as determined by covered entity.

Standard Terms and Conditions

- A. Talyst provides 340B Program Services to covered entities to support their Pharmacy 340B Program operations.
- B. Licensee wishes to subscribe to Talyst's 340B Services pursuant to the terms of this Agreement. In consideration of the mutual promises and covenants in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:
- Definitions.
 - "340B Services"** means the Talyst AutoSplit 340B Fully Managed Service Plan as specified on Exhibit A and the Talyst AutoSplit Retail/Contract Pharmacy Processing Services as specified on Exhibit B.
 - "County"** refers to the County of Riverside and its Agencies, Districts, Special Districts and Departments.
 - "Confidential Information"** means: (a) any information marked confidential or proprietary; (b) the Software and any trade secrets relating to either party's software, business plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research development or know-how; and (c) the terms, conditions and existence of this Agreement. "Confidential Information" does not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of, or inducement by the receiving party; (ii) is known and has been reduced to tangible form by the receiving party prior to the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by the receiving party; or (iv) is lawfully obtained from a third party that has the right to make such disclosure.
 - "Documentation"** means the Exhibit A and Exhibit B description of the Services along with any applicable published guides or manuals which is made generally available to its customers.
 - "Effective Date"** means that date on which this Agreement is entered into as described on the Agreement Summary, in the event an Effective Date is not designated, the Effective Date shall be considered the last date on which a party executed this Agreement.
 - "Implementation Date"** means the date the 340B Services are performing per the Documentation for a Location.
 - "Location"** means the physical site which is enrolled in the 340B Services. Location may include covered entities, shipping addresses and contract pharmacies.
 - "Setup Fee"** means one time installation charge as described in Exhibit C: Pricing and Payment Terms.
 - "Subscription Fees"** means the fees paid in exchange for the 340B Services, as described in Exhibit C: Pricing and Payment Terms.

All other capitalized terms have the meanings assigned to them in this Agreement.

2. Term.

This Agreement shall commence as of the Effective Date and shall remain in effect for an initial term of one hundred and twenty (120) months from the Implementation Date, unless terminated earlier as provided in Section 11.

3. Implementation & Feedback.

3.1. Talyst will provide setup, implementation and testing of the 340B Services pursuant to Exhibit A and Licensee agrees to promptly provide any and all assistance that Talyst may reasonably request in connection with Talyst's performance of its obligations under this Agreement, including without limitation, setup, implementation, testing and performance of the 340B Services.

3.2. Licensee may provide suggestions, comments or other input to Talyst relating to the 340B Services ("**Feedback**"). Between the parties, Talyst will own all Feedback but such use is limited to Talyst's internal review of its 340B Services and Talyst may not use the Feedback in any other way, shape or form.

4. Payments.

4.1. Licensee will pay to Talyst a one-time Setup Fee and monthly Subscription Fees during the term of the Agreement as described in Exhibit C: Pricing and Payment Terms.

4.2. All payments made pursuant to this Agreement will be in United States dollars.

4.3. Default. If (i) Licensee fails to make any payment to Talyst when due and payable under this Agreement and fails to pay within 15 days of the date of its receipt of written notice from Talyst of such failure or (ii) either party breaches any provision of this Agreement and such breach has not been cured within 30 days after written notice thereof has been given to the breaching party (collectively, a "Default"), then the non-breaching party will, in addition to any and all other rights available under applicable law, have the right to immediately terminate this Agreement by giving written notice to the breaching party thereof.

5. Confidentiality. Each party will protect the other's Confidential Information from unauthorized dissemination and use the same degree of care that such party uses to protect its own like information, but in no event less than a commercially reasonable degree of care. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Neither party will disclose to third parties the other's Confidential Information without the prior written consent of the other party. No ownership or license rights are granted in any Confidential Information. Notwithstanding the foregoing, either party may disclose any information in accordance with judicial or other governmental order, provided that the receiving party gives the disclosing party reasonable notice prior to such disclosure and will comply with any protective order or equivalent.

6. Representations and Warranties.

6.1. Talyst shall perform the 340B Program Services in a professional and workmanlike manner and in accordance with the terms set forth in this Agreement

6.2. County shall provide Talyst with all information that may be necessary for Talyst to meet its obligations under this Agreement

6.3. County will at all times comply with all federal, state and local laws, rules and regulations applicable to its obligations and responsibilities under the 340B Act and this Agreement

6.4. All County data shall conform to the specification described in Data Specifications, and Talyst assumes no responsibility for any errors that result from the data or information that is incorrect, incomplete or not in conformance with the Data Specifications

6.5. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, will not conflict, or result in any violation of or default under (with or without notice or lapse of time, or both) any other contract

6.6. Each party represents and warrants for the benefit of the other party that it is duly organized and validly existing under the laws of the state of its incorporation, has full corporate power and authority to enter into this Agreement and is duly authorized to execute and deliver this Agreement and to perform its obligations.

6.7. County represents and warrants that its use of the 340B Services will comply with all applicable laws and regulations.

6.8. County represents and warrants that the data provided to Talyst is correct and accurate and in compliance with 340B guidelines.

6.9. Talyst warrants that the 340B Services will be performed substantially in accordance with the Documentation.

7. Disclaimer of Warranty. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 6, THE 340B SERVICES ARE PROVIDED WITHOUT WARRANTIES EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. EXCEPT AS SET FORTH IN SECTION 6, TALYST DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTY THAT THE 340B SERVICES WILL CAPTURE ALL AVAILABLE 340B ELIGIBLE DISPENSES OR ANY WARRANTY THAT A DRUG IS COMMERCIALY AVAILABLE (I.E SUBJECT TO A DRUG SHORTAGE). Without limiting the foregoing, Licensee acknowledges that it has selected the 340B Services based on its own knowledge of its internal use and legal requirements, and Talyst will not be responsible for any Claims caused, directly or indirectly, by the data provided by Licensee to Talyst for the 340B Services, the interruption or loss of use of the 340B Service.

8. Limitation of Liability and Limitation on Damages.

8.1. TALYST'S MAXIMUM LIABILITY FOR DIRECT DAMAGES TO LICENSEE AND THE EXCLUSIVE REMEDY AVAILABLE TO LICENSEE IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO THE AMOUNT OF THE LICENSE FEES PAID TO TALYST UNDER THIS AGREEMENT ON AN ANNUAL BASIS.

8.2. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR LOSS OF DATA) ARISING OUT OF THIS AGREEMENT, THE USE OF OR INABILITY TO USE THE PRODUCTS OR IN ANY OTHER WAY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.3. Exceptions. The foregoing limitations on liability shall not apply to claims caused by Talyst's gross negligence or willful misconduct.

8.4. Basis of Bargain. The parties acknowledge and agree that the limited warranty, exclusive remedies and limited liability set forth in this Agreement are fundamental elements of the basis of the bargain between Talyst and Licensee, and that Talyst would not be able to provide the Products on an economic basis without such limitations.

9. Hold Harmless/Indemnification.

9.1. Talyst shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon any services of Talyst, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating Talyst's recklessly negligent acts or omissions under this Agreement, including but not limited to property

damage, bodily injury, or death or any other element of any kind or nature. Talyst shall defend, at its sole expense, all third party costs, and fees including, but not limited, to reasonable attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

9.2. With respect to any action or claim subject to indemnification herein by Talyst, Talyst shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Talyst's indemnification to Indemnitees as set forth herein.

9.3. Talyst's obligation hereunder shall be satisfied when Talyst has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

9.4. The specified insurance limits required in this Agreement shall in no way limit or circumscribe Talyst's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

10. Insurance

10.1. Without limiting or diminishing Talyst's obligation to indemnify or hold the County harmless, Talyst shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the County herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

If Talyst has employees as defined by the State of California, Talyst shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Talyst's performance of its obligations hereunder. Policy shall name the County as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then Talyst shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the County as Additional Insureds.

D. General Insurance Provisions - All lines:

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

2) Talyst must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the County, and at the election of the County's Risk Manager, Talyst carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the County, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) Talyst shall cause Talyst's insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Talyst shall not commence operations until the County has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the parties hereto that Talyst insurance shall be construed as primary insurance, and the County insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the County reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by Talyst has become inadequate.

6) Talyst shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the County.

8) Talyst agrees to notify County of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

11. Termination.

11.1. County may terminate this Agreement without cause upon 30 days written notice served upon Talyst stating the extent and effective date of termination (no prorated months).

11.2. Talyst may terminate this Agreement without cause upon 180 days written notice served upon the County stating the intent and effective date of termination. Talyst will return funds to County on a pro-rata basis, if applicable (in full months only (i.e. no proration for partial months).

11.3. Either party may, upon fifteen (15) days written notice terminate this Agreement for a default, if the defaulting party refuses or fails to comply with the terms of this Agreement or fails to make progress that may endanger performance and does not immediately cure such failure.

11.4. After receipt of the notice of termination, Talyst shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to County and deliver in the manner as directed by County any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to County.

11.5. After termination, County shall make payment only for Talyst's performance up to the date of termination in accordance with this Agreement.

11.6. Talyst is not debarred from the System for Award Management (SAM). If the Agreement is federally or State funded, Talyst must notify the County immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

11.7. The rights and remedies of County provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

12. Confidentiality

12.1 Talyst shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; County information or data which is not subject to public disclosure; County operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

13. Administration/Contract Liaison. The County Purchasing Agent, or designee, shall administer this Agreement on behalf of the County. The Purchasing Department is to serve as the liaison with Talyst in connection with this Agreement.

14. Business Associate Agreement. Covered Entity and Talyst shall execute and deliver a Business Associate Agreement, in the form attached hereto as Exhibit F, prior to the commencement of the Processor Services

15. Records and Documents. Talyst shall make available, upon written request by any duly authorized Federal, State, or County agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of Talyst's costs related to this Agreement. All such books, documents and records shall be maintained by Talyst for at least five years following termination of this Agreement and be available for audit by the County. Talyst shall provide to the County reports and information related to this Agreement as requested by County.

16. Ownership/Use of Contract Materials and Products. Talyst agrees that all materials, reports or products in any form, including electronic, created by Talyst for which Talyst has been compensated by County pursuant to this Agreement shall be the sole property of the County. The material, reports or products may be used by the County for any purpose that the County deems to be appropriate, including, but not limit to, duplication and/or distribution within the County or to third parties. Talyst agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the County.

17. Talyst Materials; Disclaimer of Legal Advice. In the course of providing the Processor Services, Talyst employees may (a) give advice or opinions regarding the 340B Act and the impact of the 340B Act on County's business operations, and (b) provide and/or present materials, reference information, forms, tools, presentations, brochures, and training related materials and information (collectively, "Talyst Materials") for Covered Entity's use, at County's risk and in County's sole discretion. County's is hereby put on notice that Talyst is not a law firm, it does not engage in the practice of law, and it does not render any legal advice. Therefore, County is hereby advised to seek its own legal counsel regarding any legal issues relating to its business, including but not limited to, legal issues relating to the 340B Act, the Talyst Materials, and the Processor Services. All Talyst Materials shall remain the exclusive property of Talyst. No part of the Talyst Materials may be reproduced, stored in a retrieval system, or transmitted outside of Covered Entity in any form or by any means, without the prior written consent of Talyst.- Talyst claims copyright protection on all Talyst Materials provided to County. Notwithstanding the foregoing, any information or materials provided by Talyst that are specifically attributed to and prepared by any U.S. federal or state government department or agency are in the public domain and may be freely redistributed to third parties without the consent of Talyst. Any third-party links included in the Talyst Materials are provided as a convenience to County. Talyst does not control and is not responsible for any of these sites or their content.

18. Audits. Each party shall maintain all records and other information relating to the performance of its obligations under this Agreement in a manner and for a period of time as required by law, but no less than five (5) years. Talyst acknowledges that County is subject to audits by the Health Resources and Services Administration ("HRSA") and by drug manufacturers that supply inventory to County and Retail/Contract Pharmacies. Talyst shall use commercially reasonable efforts to respond to requests for records in the event of any such audit and to provide remote assistance to County to the extent reasonably requested by County in the event of such audit.

19. Notices and Requests. All notices, authorizations, reports, statements and requests in connection with this Agreement will be deemed received: (a) five days after the day they are deposited in the U.S. mails, postage prepaid, certified or registered, return receipt requested; or (b) sent by overnight courier, charges prepaid; and addressed as to each of the parties at the addresses listed in the Agreement Summary attached hereto.

19.1. All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE
Attn: County Counsel
3960 Orange St. (5th Floor)
Riverside, CA 92501

TALYST INC.
Attn: Legal
11335 NE 122nd Way, Suite 200
Kirkland, WA 98034

Attn: Pharmacy Director
26520 Cactus Ave
Moreno Valley, CA, 92555

20. Amendments and Waivers. No amendment, waiver or discharge of any provision of this Agreement will be effective unless made in writing that specifically identifies this Agreement and the provision intended to be amended, waived or discharged and signed by the parties hereto. The failure of Talyst to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any of its rights or remedies under this Agreement will not be construed as a waiver or relinquishment to any extent of Talyst's rights to assert or

rely upon such provision, right or remedy in that or any other instance; rather the same will be and remain in full force and effect.

20.1. The Board of Supervisors and the County Purchasing Agent and/or his designee is the only authorized County representatives who may at any time, by written order, alter this Agreement. Only such authorized County representatives will request services outside of the 340B Services provided for in this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

21. Governing Law. If not otherwise provided herein, the laws of the State of California govern this Agreement and Licensee consents to jurisdiction in the state and federal courts sitting in Riverside County of the State of California.

22. Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

23. Independent Contractors. Talyst and Licensee are independent parties and this Agreement creates a non-exclusive relationship. Nothing in this Agreement creates an employer-employee relationship, a partnership, or a joint venture between the parties.

24. Subcontract for Work or Services. No contract shall be made by the Talyst with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the County; but this provision shall not require the approval of contracts of employment between Talyst and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

25. Disputes. The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the County Pharmacy Director and senior management of Talyst.

25.1. Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

26. Assignment. Neither party may transfer or assign its rights or obligations under this Agreement to any other party without the prior written consent of the other party; provided that Talyst may assign this Agreement without consent of County in connection with a sale or change of control of its business. This Agreement will be fully binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns.

27. Force Majeure. If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

28. Taxes. All amounts payable under this Agreement are exclusive of any sales, use and all other taxes or duties, whether currently imposed or imposed in the future (but excluding taxes on Talyst's net income) (collectively "Taxes"). Licensee will pay Taxes and all License Fees will be paid without offset or deduction for Taxes.

29. Patient Identifying Information. All medical information and data concerning specific patients (including, but not limited to, the identity of the patients), if any, derived from the business relationship set forth in this Agreement, shall be treated and maintained in a confidential manner by all parties to this Agreement and their employees and agents and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws. All parties to this Agreement shall comply with all applicable state and federal

laws and regulations regarding confidentiality of patient records, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Privacy Standards (45 C.F.R. Parts 160 and 164), the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Part 162) (collectively, the "Standards") promulgated or to be promulgated by the Secretary of Health and Human Services on and after the applicable effective dates specified in the Standards. Each party specifically agrees to sign any additional agreement which the other party is mandated by HIPAA to enter into with contractors who have access to protected health information. Notwithstanding the above, Licensee shall be the data controller of its personally identifiable health information at all times.

30. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

31. Entire Agreement. This Agreement constitutes the complete agreement between Talyst and Licensee with respect to its subject matter, and supersedes all prior or contemporaneous oral or written communications, proposals, representations, understandings, or agreements. This Agreement may not be amended except in a paper writing (e.g., not via email) duly signed by authorized representatives of Talyst and Licensee respectively.

32. Survival. Upon expiration or termination of this Agreement, those terms that should be reasonably construed to survive the termination of this Agreement shall survive.

-End of Standard Terms and Conditions-

Exhibit A: AutoSplit 340B Fully Managed Service Plan

Overview

The following are the services to be performed by Talyst using AutoSplit 340B under a fully managed service plan (“turnkey” plan).

Installation

- AutoSplit will be installed at either:
 1. Talyst Tier 3 Data Center.
 - Login/password access for both Talyst and Licensee’s staff available via *Window’s Remote Desktop Connection*.
 - Talyst will perform regular backup of the data.
 2. Licensee’s data center (or pharmacy).
 - All data kept within the Licensee’s sphere (local server).
 - Licensee is responsible for backup of the data.

Setup, Implementation, and Testing

- Talyst will perform all the necessary steps for setting up the various components needed, including working with Licensee’s drug wholesaler (“Wholesaler”) to insure that all necessary interfaces are turned on and working. Licensee is solely responsible for any other vendor fees associated with implementation and for ensuring cooperation of other vendors with Talyst. If Licensee changes the Wholesaler, an additional charge may apply. Talyst requires the Licensee to create a transaction (batch) file of qualified 340B dispenses, and if applicable, in-patient GPO dispenses, WAC dispenses and WAC dispenses for Medicaid carve-out transactions, as more specifically described in Talyst’s Data Specifications document. AutoSplit will process these files either from a local network directory or via FTP (if installed on a remote server). Licensee is solely responsible for the completeness and accuracy of the data submitted to Talyst.
- Talyst will review the data given, pursuant to the Talyst Responsibilities listed below, and any discrepancies will be reviewed with Licensee and changes only made upon Licensee’s approval.
- AutoSplit will use its suite of best practices to capture savings opportunities.
 1. If applicable, Talyst will set up for a four way split that splits orders to WAC, WAC Medicaid carve-out transactions, 340B, and GPO purchasing accounts. For sites that are 99% 340B, AutoSplit offers setup with “Reverse Splitting”.
 - In this case, the department/site will order everything under the 340B contract and AutoSplit will split the items to the GPO and WAC accounts (based upon batch transaction files that contain the NON-340B dispenses).
 - This may enable the department to avoid the “bottle is not yet empty so can’t be replaced at 340B pricing but still needs to be ordered” problem.
 2. Utilizing Talyst expertise from prior implementations to identify high-suspect or difficult items Talyst will make sure these items are splitting correctly (ampoules, powders, gases, aerosols, multi-dose vials, compounds and reconstituted items).
- Licensee’s staff will setup a login/password for Talyst support to be able to access Licensee’s accounts on its Wholesaler’s website.
 1. This will allow Talyst support to:

- Download item master data periodically when necessary, to ensure the latest prices and best savings.
- Validate that all orders are going through the AutoSplit 340B splitting process, and to contact Licensee's staff if not.
- Have access to various data and reports necessary for different functions (like identifying unknown items).

Pharmacy Responsibilities

- **Compounds.** If Licensee creates compound items (medications given to patients that consist of 2 or more NDCs combined for dosage), then a listing of these compound items will be periodically provided to Talyst who will import the listing into AutoSplit.

1. You will submit either CSV or Excel file for Talyst to import, with the following columns:
 - Charge Code for the compound.
 - The charge code will be repeated on each line for each NDC that is in the same compound.
 - NDC in the compound.
 - Quantity of the NDC in the compound.
 - Description of the compound (optional).

- **Crosswalks.** If Licensee uses Charge Codes (CDMs), then a charge code to NDC cross-reference will be provided periodically to Talyst.

Note: AutoSplit has a generic grouping functionality that helps to split items even if you are using an obsolete NDC number or if you start ordering a new NDC number that is generically equivalent.

1. CSV or Excel file with the following columns:
 - Charge Code
 - NDC
 - Drug Description (optional)
2. Talyst support staff will also review the Unknown Items list in AutoSplit from time to time and periodically consult with Licensee regarding possible corrective actions. Licensee is responsible for providing Talyst with corrected information for Unknowns.
 - Loading new cross reference files.
 - Using the charge description to look up and identify the item in Wholesaler's website to see what item is actually being ordered.

- **Multipliers.** If Licensee uses Multipliers (conversion factors) then a multiplier file will be periodically provided to Talyst.

1. CSV or Excel file with the following columns:
 - Charge Code or NDC.
 - Multiplier.

- **Weekly Penny Specials.**

1. Each week, Talyst will provide Licensee's staff with a spreadsheet of items that are on special for a penny that the hospital qualifies to purchase (based upon the current level of the 340B buckets). Licensee may order these in the following ways:
 - Order the item under the GPO contract (per normal) and let AutoSplit split the item (it will split to the penny price).
 - Send an email request to Talyst asking items be ordered.

- Send the spreadsheet back to Talyst with the desired quantities indicated.
- 2. 340B prices typically remain the same for each quarter; however, each week Manufacturers put certain drugs on sale for one penny. This is a huge opportunity for saving money and Talyst Support will make sure that Licensee is taking advantage of these savings.

Daily Pharmacy/Buyer Steps

- Order created as per normal in Wholesaler's website from any computer.
- Buyer clicks on the *Export PO* button instead of the *Submit* button when the order is finished.
 1. A special Talyst/Wholesaler interface (PO Export) will be turned on which will send the order from the Wholesaler to the AutoSplit computer.

Talyst Responsibilities

- **Daily**

1. Verify that AutoSplit is running and processing files/data as expected.
 - Verify that the application itself is running.
 - Verify that the batch transaction file of 340B dispenses is being received and processed.
 - Verify that orders are splitting each day.
2. Check log files for errors.
3. Check for orders not split in Wholesaler's website.
4. Identify unknown Items. AutoSplit automatically stores unknown items in a special table that Talyst support will make sure the most recent cross reference is loaded.
5. Make sure the most recent cross reference is loaded.
6. Run *Split Analysis Report* and periodically consult with Licensee regarding possible corrective action.
 - Report shows how many times an item has been ordered, and how often it is splitting versus not-splitting.
 - Talyst will look for over-splitting (compliance issue) and under-splitting (savings issue).
7. Run *Potential Order* report looking for abnormally high order quantities (compliance issue).
 - Abnormally high quantities can be a sign that a multiplier or conversion factor is wrong (or needed). It is important to make sure that the dispenses from the hospital roll up correctly into wholesale terms.

- **Weekly.**

1. Normal Daily tasks.
2. Notify pharmacy of Penny Special opportunities. See **Weekly Penny Specials** above.
3. Run weekly reports and send to Pharmacy Management.
 - Pharmacy Management can choose which reports to send weekly.
 - Typical reports are *Savings Report*, *Split Analysis Report*, and the *Never Split Report*.
4. Download item master file from Wholesaler's website.
 - Item updates will be received daily from Wholesaler; however, there is some additional information only available in the Talyst Price Update interface we have setup with the Wholesaler (including generic grouping information, unit of issue factor, and custom charge codes).
5. Re-index data tables.

- **Monthly.**

1. Normal Daily and Weekly tasks.

2. Run monthly reports and send to Pharmacy Management.
 - Pharmacy Management can choose which reports to send monthly.
 - Typical reports are *Savings Report*, *Split Analysis Report*, *Orders Not Split*, *Unknown Items*, and the *Never Split Report*.
3. Look for Potential Credit/Rebill opportunities.
 - Check for missed savings opportunities by checking invoice history for missed splitting opportunities.
 - Talyst will provide Wholesaler with a spreadsheet of items and invoice numbers and quantities that should be credited to the GPO account and rebilled to the 340B account. (Usually there are only a few items that require a credit/rebill.)
- **Quarterly.**
 1. Normal Daily, Weekly, and Monthly tasks.
 2. Run quarterly reports and send to Licensee.
 - Licensee will designate in writing which quarterly reports they want provided and Talyst will provide.
 - Typical reports are *Savings Report*, *Split Analysis Report*, *Orders Not Split*, *Unknown Items*, and the *Never Split Report*.
 3. Prepare for 340B Quarterly Price Change
 - Check Potential Order for high-dollar items that should be ordered prior to possible price increase (this is coordinated with pharmacy management via a report. Talyst will NOT automatically order items).
 4. Perform Talyst's standard mini Compliance Review upon Licensee's written request.
- **Yearly.**
 1. Normal Daily, Weekly, Monthly, and Quarterly tasks.
 2. Perform Talyst's standard larger full-scale Compliance review upon Licensee's written request.

Exhibit B: AutoSplit 340B Retail / Contract Pharmacy Processor Plan

1. Processor Services. Talyst shall provide the following processor services, subject to the terms and conditions set forth herein (collectively, the "Processor Services").

1.1 Contract Pharmacy Registration. Upon request by County, Talyst shall register each Contract Pharmacy relationship with the Office of Pharmacy Affairs ("OPA") during one of the four annual registration periods. Talyst must receive a fully executed copy of the applicable pharmacy services agreement between County and Contract Pharmacy (a "Pharmacy Services Agreement") from County at least two (2) weeks prior to the end of an OPA registration period in order to complete the registration process for that enrollment period. County shall timely provide Talyst with all requested information and documentation to enable Talyst to complete such registration. Any necessary changes to a registered Contract Pharmacy, re-registration of a Contract Pharmacy, or de-registration of a Contract Pharmacy shall be the sole responsibility of C.

1.2 Determination of Eligible Dispenses. Talyst shall identify the dispenses made by the Retail/Contract Pharmacy that are eligible for replenishment under the 340B Act ("340B Eligible Dispenses") beginning on the first day such Retail/Contract Pharmacy is eligible to provide Retail/Contract Pharmacy services to County ("Start Date"), as dictated by OPA (i.e., the first day of the quarter following the quarter during which registration occurred). The determination of which dispenses are 340B Eligible Dispenses shall be based upon the following information: (a) the County Data (as defined below), (b) the Pharmacy Data (as defined below), and (c) the County 340B policies and procedures, which shall be established by County during implementation ("County's 340B Policy"). For County-owned retail pharmacies that serve as shipping addresses (hospital-owned retail pharmacies) Talyst shall include in 340B Eligible Dispenses any dispense for an eligible patient and provider regardless of patient's insurance coverage. Talyst shall not include in 340B Eligible Dispenses for non-county external contract pharmacy any dispenses (x) that were paid (in whole or in part) by traditional fee-for-service Medicaid providers, as identified in the Pharmacy Data or (y) any dispenses for drugs classified as Schedule II drugs under the U.S. Controlled Substances Act.

1.3 Replenishment Inventory. Talyst shall accumulate and track only those 340B Eligible Dispenses that provide a net benefit to the County (as defined below) ("Eligible Dispenses") for purposes of ordering replenishment inventory ("Replenishment Inventory") for Contract Pharmacy. Unless otherwise agreed to by County and Contract Pharmacy, Talyst shall place orders ("Orders") for Replenishment Inventory when 100% of an inventory ordering unit (e.g., bottle, package, vial) for a particular NDC has accumulated, as determined by Talyst through its tracking system ("Tracking System"). 340B Eligible Dispenses at external contract pharmacies shall be considered "Eligible Dispenses" if they result in a net benefit to the County based upon the following formula: Standard Acquisition Cost (as defined below) minus County's cost under the 340B Act minus Pharmacy Dispense Fees (as defined below). County and the applicable Contract Pharmacy shall identify in their Pharmacy Services Agreement any additional restrictions on the types of drugs to be accumulated and included in Orders for Replenishment Inventory to Contract Pharmacy. Orders for Replenishment Inventory shall be billed to the Covered Entity and shipped to the Contract Pharmacy. All payment obligations to the Wholesaler (as defined below) are the sole responsibility of the County. Talyst shall begin accumulating 340B Eligible Dispenses for purposes of placing Orders only after all conditions set forth in this Agreement are satisfied (by County and by Contract Pharmacy).

1.4 Standard Acquisition Cost. Talyst shall invoice Contract Pharmacy for Replenishment Inventory at the time of Order in an amount equal to a referenced wholesale acquisition between the Contract Pharmacy and the County or, if silent, the wholesale acquisition cost minus three percent (3%), as determined by First Databank at the time of Order ("Standard Acquisition Cost"), minus a credit for the Pharmacy Dispense Fees. Talyst shall remit all payments from Contract Pharmacy to County within thirty (30) days of receipt minus a credit for all Fees due to Talyst at the time of remittance.

1.5 Returns. In the event a Contract Pharmacy requests to return any Replenishment Inventory for any reason whatsoever, then Talyst shall request that the Contract Pharmacy make such returns directly to the

Wholesaler on its own account. Notwithstanding the foregoing, the parties shall work together in good faith to address any Replenishment Inventory return requests. In no event shall Talyst issue any refunds or credits for its Fees for returned Replenishment Inventory unless such return was the result of Talyst's acts or omissions.

1.6 Reporting. Talyst shall provide [monthly] reports to Contract Pharmacy and Covered Entity detailing (a) 340B Eligible Disperses, (b) Net Benefit Disperses, and (c) savings and costs to Covered Entity.

1.7 Support. Talyst shall provide ongoing technical and operational support ("Support") to County in connection with the Processor Services. All Support provided to County by Talyst shall be subject to the provisions of this Agreement.

2. Implementation. The following steps must be completed in connection with providing the Processor Services.

2.1 County Data. County shall provide Talyst with all requested data and information ("County Data") in accordance with the data specifications ("Data Specifications") attached as Exhibit E. The data provided in County Data shall be based, in part, upon County's 340B Policy, which shall be established by County during implementation provided, further that County shall only provide data for an individual(s) who is a "patient" as defined by the Health Resources and Services Administration ("HRSA") at 61 Fed. Reg. 55,156-58 (Oct. 24, 1996), as amended from time to time.

2.2 Wholesaler Account. In order to facilitate the Processor Services, County shall establish a separate account with the Contract Pharmacy's wholesaler (the "Wholesaler"). Talyst shall assist County with establishing such account; provided, that County shall be responsible for completing certain documentation (e.g., credit questionnaire; ACH transfer; etc.) in connection therewith. If a Contract Pharmacy's Wholesaler is not one of Talyst's preferred wholesalers (a list of which is available upon request), then County shall be responsible for paying all additional fees incurred by Talyst (including labor costs) in creating/developing an interface with such Wholesaler for the purpose of ordering Replenishment Inventory.

2.3 Enabling Switch Data Feed. In order to facilitate the Processor Services, each Retail /Contract Pharmacy must provide or authorize its switch data provider to provide the required pharmacy dispense data ("Pharmacy Data") to Talyst. County shall use commercially reasonable efforts to facilitate this authorization from the Contract Pharmacy upon request by Talyst. In addition, if a Contract Pharmacy's switch data provider is not one of Talyst's preferred providers (a list of which is available upon request), then County shall be responsible for paying all additional fees incurred by Talyst (including labor costs) in creating/developing an interface with such switch provider.

2.4 Pharmacy Services Agreement. County and each Contract Pharmacy shall execute a Pharmacy Services Agreement, that is consistent with the terms of this Agreement, where applicable, and that details the obligations of each party. Each Pharmacy Services Agreement must set forth (a) the dispense fees owed to Contract Pharmacy for each Eligible Dispense ("Pharmacy Dispense Fees"), (b) the cost of Replenishment Inventory established in the Pharmacy Services Agreement or, if silent, the Standard Acquisition Cost, and (c) any restrictions on the types of drugs that Contract Pharmacy may dispense on behalf of Covered Entity.

2.5 Talyst/Pharmacy Agreement. In order to facilitate the Processor Services, Talyst shall use commercially reasonable efforts to enter into an agreement with Contract Pharmacy in accordance with Talyst's standard terms and conditions (a "Talyst/Pharmacy Agreement"). Talyst shall be under no obligation to enter into a Talyst/Pharmacy Agreement, and any determination to do so shall be in Talyst's sole discretion.

2.6 Terms of Payment. All Fees shall be paid in US dollars either upon receipt of invoice or as otherwise provided in this Agreement (e.g. automated clearing house ("ACH") or wire transfer). Talyst may offset amounts owed to Covered Entity from Contract Pharmacy for all unpaid Fees owed to Talyst by Covered Entity. Furthermore, Talyst reserves the right to terminate this Agreement or a Talyst/Pharmacy Agreement immediately in the event either Covered Entity or Contract Pharmacy is over thirty (30) days in arrears. Talyst shall not be responsible for pursuing any collection efforts against a Contract Pharmacy. In the event a Contract

Pharmacy fails to remit timely payment for Replenishment Inventory to Talyst, then Talyst may invoice Covered Entity directly for all outstanding Fees.

2.7 To the extent elected, Covered Entity authorizes Talyst to charge its financial institution account via an ACH transaction for all amounts owed to Talyst as provided for in this Agreement including those terms, incorporated herein by this reference, provided at Exhibit D. For the purposes of Exhibit D, "Payor" shall refer to Covered Entity and Payee shall refer to Talyst Inc. along with any service provider(s) chosen by Talyst to provide the ACH services. The terms described in this Section 3, including those at Attachment 1, supersede any other payment terms.

Exhibit C: Pricing and Payment Terms

Talyst AutoSplit Fully Managed 340B Services

Location	Items	Price per Location
Riverside County Regional Medical Center 26520 Cactus Ave Moreno Valley, CA, 92555	Set Up Fee	\$ 9,800.00
	Subscription Fee - monthly	\$ 11,000.00

Talyst AutoSplit 340B Processing Software – County Owned Pharmacies

Location	Items	Price per Location
RCRMC O/P Pharmacy 26520 Cactus Avenue	Annual Processing Fee	\$10,000.00*
Mental Health Pharmacy 9990 County Pharmacy Road	Annual Processing Fee	\$10,000.00*
Neighborhood Pharmacy 7140 Indiana Avenue	Annual Processing Fee	\$10,000.00*

*FLAT Fee- no per click fees and/or additional fees apply.

Talyst AutoSplit 340B Processing Software – External Contract Pharmacies

Items	Total Price
Location Fee, per Contract Pharmacy location	\$ 250.00 per month
Eligible Dispense Fee and Replenished Dispense Fee (no additional fees apply)	\$ 3.00
Fee per Eligible 340B Dispense Fee per unprofitable match	\$0.50

Payment Terms

The Setup Fee is a one-time charge payable upon the Effective Date and applies to the original installation at each Location. Such amount is due on the Effective Date. Payments are due net 30 days.

The Subscription Fee is a monthly charge that is due each month, commencing on the first of the month following the Implementation Date of the 340B Services at the first Location listed above. Payments are due net 30 days. The Subscription Fee will apply to each Location using the Product licensed through this Agreement as well as to Licensee. After the first payment, remaining Subscription Fees are invoiced and payable on the first of each subsequent month.

If Licensee wishes to add another Location, such Location may sign an addendum to this Agreement to avoid renegotiation of the terms; provided however that the Effective Date and Payment Term obligations will be defined in the addendum. For purposes of clarity, if a new Location wishes to start using the Product, it will be obligated to pay a monthly Subscription Fee and Setup Fee at then current prices.

Payments

County's payments will be made by check, wire transfer or ACH (see below) of immediately available funds to the address or account designated below or such other address or account identified in writing by Talyst from time to time.

Payment by check mailed to:

Talyst Inc.

Dept. CH 17728

Palatine, IL 60055-7728

ACH Payment (check box, if applicable and see additional terms attached below).

Exhibit D: Other Terms and Conditions

Talyst 340B AutoSplit Services

Notwithstanding any provisions in this Agreement to the contrary, the following terms and conditions will apply. To the extent, there exists a conflict between terms contained in this exhibit and the main body of the Agreement, the terms herein will govern.

No other terms and conditions

Exhibit E: Covered Entity Data Specifications- Retail/Contract Pharmacy Processing

Data Extracts

There are two sets of data that Talyst will need from the "Entity" in order to identify eligible dispenses. The first is a record of patients of the hospital that meet the 340B patient definition. The second is a list of prescriber IDs. An eligible encounter is a patient that has been discharged. This should be identifiable by a discharge code within the Hospital Information or Billing System. Talyst recommends that you omit any patient encounters for patients who are known to be Medicaid patients.

The list of prescriber IDs should include all those prescribers who are affiliated with the hospital per the 340B patient definition.

Both of these files will be delivered on a daily basis to Talyst's secure FTP server/or via HL7 feed. Accurate reconciliation requires that the patient list, in particular, be kept up to date.

Patient Encounters

All files delivered to Talyst's SFTP server/or via HL7 feed for reconciliation are expected to conform to the following constraints:

- Multiple encounters of the same patient are permissible, but the most recent encounter should be included
- You may create incremental files rather than complete files for delivery, provided that the date is included in the filename, and that no more than one incremental file is created each day

In addition to the file specifications above the file must be

- An ASCII flat text file
- Separate fields with pipebar ('|', ASCII 124)
- No column header line
- The file should be named "<Hospital>_Encounters_yyyy_mm_dd.txt", with an additional ".pgp" extension if the file has been encrypted with Talyst's public key.
- If the entity elects to encrypt the file with PGP, a ".pgp" suffix should be appended.
- The historical encounter file should be named "<Hospital>_HistoricalEncounters_yyyy_mm_dd.txt", with an additional ".pgp" extension if the file has been encrypted with Talyst's public key.

Field	Description
0	Date and timestamp of encounter
1	Patient last name
2	Patient first name
3	Patient middle name
4	Patient Gender
5	Patient date and year of birth
6	Encounter number

		but it is recommended that for auditing purposes you provide an encounter number that directly references the numbers used in your EHR system.
--	--	--

Example encounters: 2013-10-25 09:37:13|Doe|Jane|Jill|F|1975-02-25|123456

Eligible Prescribers List

To identify which prescribers are affiliated with your facility the entity must also initially provide a list of historic prescribers and their dates of affiliation with the Medical Center.

The file should be named "<Hospital>_Prescribers_yyyy_mm_dd.txt"

The historical prescriber files should be named "<Hospital>_HistoricalPrescribers_yyyy_mm_dd.txt"

	Field	Description
0	Prescriber name	First and last name of eligible prescriber. Since this value is not used to match transactions, it is specified as a single field that will appear on the reconciliation report.
1	Prescriber NPI	The National Prescriber Index of the physician or nurse practitioner

Example prescribers: John Smith|1234567899

The Historical Prescribers list should also include a start date and if applicable an end date of the prescriber in the same YYYY-MM-DD format.

- Separate fields with pipebar ('|', ASCII 124)

We ask that the historical data files go back one year from the OPA start date for maximum returns.

Example historical encounter: 2013-10-25 09:30:15|Doe|Jane|Jill|F|1975-02-25|123456

Example historical prescriber: John Smith|1234567899|2012-10-15

OR

John Smith|1234567899|2012-10-15|2013-09-23

Exhibit F: Business Associate Agreement

HIPAA Business Associate Agreement
Addendum to Contract
Between the County of Riverside and

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the (the "Underlying Agreement") between the County of Riverside ("County") and Talyst, Inc. ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

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

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

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

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

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

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

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

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

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.
 - A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.

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

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

(2) Breach excludes:

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

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

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

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

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

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

E. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.

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

G. "Health care operations" has the meaning given such term in 45 CFR §164.501.

H. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.

I. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.

J. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.

K. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.

- L. "Required by law" has the meaning given such term in 45 CFR §164.103.
- M. "Secretary" means the Secretary of the U.S. Department of Health and Human Services ("HHS").
- N. "Security incident" as defined in 45 CFR §164.304 means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- O. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- P. "Subcontractor" as defined in 45 CFR §160.103 means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.
- Q. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2).

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

- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:
 - 1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,
 - 2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:
 - a) The disclosure is required by law; or,
 - b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:
 - i. Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
 - ii. Notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached; and,
 - 3) Use PHI to provide data aggregation services relating to the health care operations of County pursuant to the Underlying Agreement or as requested by County; and,
 - 4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. **Prohibited Uses and Disclosures.**

- A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §17935 and §17936. Contractor agrees:
 - 1) Not to use or disclose PHI for fundraising , unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45 CFR §164.508;
 - 2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.508(a)(3);
 - 3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
 - 4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted by the Underlying Agreement and in compliance with the requirements of a valid authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

- A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
- D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
- E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying Agreement.

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

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

- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
 - C. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
 - D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
 - E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410.
 - F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create, receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
 - G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
 - H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
 - I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
 - J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
 - K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
 - L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
 - M. Comply with the requirements of the Privacy Rule that apply to the County to the extent Contractor is to carry out County's obligations under the Privacy Rule.
 - N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of which Contractor becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Contractor, and if such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if feasible.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.

- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
- 1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
 - 2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
 - 3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
7. **Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create, receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:
1. Comply with the applicable requirements of the Security Rule, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;
 2. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
 3. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
 4. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
 5. Ensure compliance with the Security Rule by Contractor's workforce;
 6. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same restrictions and requirements contained in this Addendum and comply with the applicable requirements of the Security Rule;
 7. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
 8. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.

- 1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
 - 2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
 - a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
 - b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
 - c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
 - d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
 - f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.
- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.
- F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's completed risk assessment and investigation documentation.

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

- 1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.
- 2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than two (2) business days after Contractor detects such incident. Contractor further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.

9. **Hold Harmless/Indemnification.**

- A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.
- D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned

to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

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

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

B. **Effect of Termination.**

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

12. **General Provisions.**

- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.
- D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.
- F. **Interpretation of Addendum.**
 - 1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
 - 2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.

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

County HIPAA Privacy Officer: HIPAA Privacy Manager

County HIPAA Privacy Officer Address: 26520 Cactus Avenue, Moreno Valley, CA 92555

Attachment 1: Authorization to Pay by ACH – Additional Terms

To the extent elected, Payor authorizes Payee to charge its financial institution account via an ACH transaction for all amounts owed to Payee as provided for in this Agreement. Payor authorizes Payee to: (a) collect and store the related financial institution account number(s) or other information, along with other related transaction information (collectively, "Payment Information"), and (b) that Payee may share any Payment Information with third parties, such as payment processors and/or credit agencies, for the purpose of checking credit, effecting payment to Payee and servicing your relationship with Payee. The Authorization to Pay by ACH described herein supersedes any other payment terms. If the Payment Method Payor chooses is to pay by ACH ("ACH Payment Service"), Payor hereby authorizes Payee to electronically debit or credit, via an ACH transaction, the bank deposit account Payor designates from time to time ("Bank Account") and which constitutes Payor's authorization to Payee to debit or credit Payor Bank Account via ACH transactions ("Authorization"), as provided in this Agreement. The following terms and conditions apply to the ACH Payment Service:

A. Authorization to Debit and Credit Bank Account. Payor hereby authorizes Payee to initiate: (a) recurring automatic ACH debits to Payor Bank Account in the amounts owed to Covered Entity as indicated on the corresponding Payee invoices; and (b) ACH credits to Payor Bank Account to correct any erroneous debits or provide a refund, as approved by Payee in its sole discretion. Payor Authorization also includes permission to collect the following: (i) Payor name; (ii) Payor current mailing address and Bank Account Information (as described in Paragraph 3. below); (iii) Payor Internet Protocol (IP) address; and (iv) the means used by Payee to authenticate the person providing the Authorization on Payor behalf. With respect to each ACH transaction Payor authorizes, Payor agrees to be bound by the "National Automated Clearing House Association Operating Rules and Guidelines" ("NACHA Rules"), as may be amended from time to time.

B. Timeframe and Amounts of Debits to Bank Account. ACH debits to Payor Bank Account generally will occur one to five days after the date of the invoice(s) generated by Payee. Payor acknowledges that the amounts of the automatic ACH debits to Payor Bank Account may vary depending on the invoice amounts.

C. Bank Account Information. In accordance with procedures established by Payee, Payor agrees to provide to Payee the necessary information pertaining to Payor Bank Account in order to debit or credit Payor Bank Account via an ACH transaction, including (but not limited to) the name of Payor financial institution, the financial institution's routing number, the name(s) of the owner(s) of Payor checking account designated as the Bank Account, and the account number of the Bank Account (collectively "Bank Account Information"). The Administrator (as defined below) may be able to change or update the Bank Account Information at a later time and in a manner that Payee requires in its sole discretion. Any changes to the Bank Account Information must be received by Payee no less than ten (10) business days before the effective date of the change. ACH debit and credit transactions will be transmitted using the most recent Bank Account Information that is accepted and approved by Payee as indicated in Payee's records.

D. Revoking Payor Authorization. This Authorization will remain in full force and effect until Payor notifies Payee by electronic message at accounting@talyst.com that Payor wishes to revoke this Authorization. Payee requires at least ten (10) business days' prior written notice in order to revoke this Authorization. Revocation will not affect Payee's right to initiate ACH credits to Payor Bank Account in order to correct or adjust any debits that were processed before Payor revocation became effective.

E. Return of ACH Entries. If an ACH payment is returned from Payor Bank Account for insufficient or uncollected funds or for erroneous information, Payee may reinitiate the returned ACH debit to Payor Bank Account within one to five days after the initiation of the first ACH debit. Payor agrees to pay Payee a returned payment fee of \$25 that may be charged by Payee, for each returned ACH debit from Payor Bank Account. Any amounts owed to Payee that cannot be collected by an ACH debit will be charged to Payor directly.

F. Filing Claims for Alleged Errors. If Payor believe an ACH debit initiated by Payee occurred in error, there was an error in the amount of a debit, or any other error, Payor must file a claim with Payee as soon as practicable by contacting Payee at accounting@talyst.com, giving Payee all information Payor have about the alleged error, and taking any other action(s) as reasonably required by Payee. Payor shall have sixty (60) days

after the date of the posting of the ACH debit in question to file a claim. If Payor files a claim with Covered Entity or Payee after more than sixty (60) days, neither will have any obligation to investigate the claim and Payor will have no right to recover any funds Payor may have lost as a result of the alleged error. If an error occurs with regard to an ACH credit, Payee may take any action permitted by law and the NACHA Rules to recover the funds from Payor Bank Account.

G. Payor is liable for payment of all invoices. Payor may have a third party pay an invoice directly to Payee. However, it is understood that Payee has no relationship with such third parties and has no obligation to collect from them. The payment obligation rests solely with Payor, and Covered Entity will hold Payor liable for payment of any invoice submitted to a third party for payment. Covered Entity or Payee reserves the right to impose or reduce the limit on the balance that a customer may owe us, even if not yet billed, for any or no reason. Should any invoice become delinquent and Covered Entity or Payee has to initiate a collections effort, all reasonable collection costs and/or legal fees will be added to the balance due.