

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

115



FROM: Human Resources Department

SUBMITTAL DATE:
August 20, 2015

SUBJECT: Ratify and Approve the Professional Services Agreement for Claims Administration with Sedgwick Claims Management Services, Inc. for the period of July 15, 2015 through June 30, 2018. [District- ALL] [Total Cost - \$1,058,676] [SOURCE OF FUNDS - Short-Term Disability Internal Service Fund]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify and approve the Professional Services Agreement with Sedgwick Claims Management Services, Inc., to provide claims administration for the County's Short-Term Disability (STD) program for an aggregate amount of \$1,058,676, effective July 15, 2015 - June 30, 2018 with automatic renewal for one year periods for up to two successive years;
2. Authorize the Chairperson to sign four (4) copies of each agreement; and
3. Retain one (1) copy of each agreement and return three (3) copies of each agreement to Human Resources for distribution.

Michael T. Stock
Asst. County Executive Officer/
Human Resources Director

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 313,974	\$ 353,418	\$ 1,058,676	\$	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$	\$	\$	\$	
SOURCE OF FUNDS: Short-Term Disability Internal Service Fund				Budget Adjustment: No	
				For Fiscal Year: 2015/16-17/18	

C.E.O. RECOMMENDATION:

APPROVE

BY:
Lari Sioson

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL 8/31/15
BY: GREGORY P. PRIAMOS
Departmental Concurrence

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

Prev. Agn. Ref.: 06/17/2014, 3-31 | District: All | Agenda Number:

3-12

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

FORM 11: Ratify and Approve the Professional Services Agreement for Claims Administration with Sedgwick Claims Management Services, Inc. for the period of July 15, 2015 through June 30, 2018.

District- All; [Total Cost - \$1,058,676] 100% Short-Term Disability Internal Service Fund

DATE: August 20, 2015

PAGE: 2 of 2

BACKGROUND:

Summary

The County's STD program provides income replacement for eligible members of the Laborer's International Union of North America (LIUNA), members of Services Employees International Union (SEIU), except the Supervisory Unit, and members of Riverside Sheriffs' Association Public Safety Unit (PSU) who are approved for a non-industrial medical disability.

Currently, the County provides this benefit to approximately 13,148 eligible employees, in which 7,554 are members of LIUNA, 4,988 are members of SEIU (excluding Supervisory Unit), and 606 are members of PSU.

Impact on Citizens and Businesses

There is no direct impact to residents or businesses.

SUPPLEMENTAL:

Additional Fiscal Information

On June 17, 2014, Item 3-31, the Board approved the addendum to the Sedgwick Services Agreement for administrative services and fees through FY 2014/2015. Total projected fees for FY 2015/16 are expected to be \$313,974. For FY 2016/17, the total projected fees are expected to be \$353,418. And, for FY 2017/18, total projected fees are anticipated to be \$391,284.

There is no direct cost to the County for this recommendation. Administration fees for the STD plan are calculated into the STD internal services rates. The STD rates are charged to departments and were approved by the Board on February 3, 2015, Agenda Item 3-28.

Contract History and Price Reasonableness

In an effort to ensure the County's STD plan is competitive in the current market, the Human Resources Department in conjunction with AON Hewitt, benefits consultants, conducted a Request for Proposal (RFP), and three responses were received.

The proposals were reviewed by an evaluation team consisting of personnel from HR and AON Hewitt. The proposals were scored using the following criteria: overall responsiveness to the requirements of the scope of service, provide services for the entire county, experience/ability, credentials, references and the overall cost. The cost proposals ranged from \$310,440 to \$527,280.

In comparing the three vendor proposals, Sedgwick provided the most competitive and cost effective business proposal.

Since July 2007, Sedgwick and the County of Riverside have maintained a strategic and positive business relationship to provide STD benefits to eligible County employees. The collaboration ensures continued quality service and efficient processes, while controlling overall costs for the County.

FY 2015/16 service fees are listed in the Professional Services Agreement with Sedgwick for claims management services. Human Resources will continue to monitor the STD plan to ensure fees remain appropriate for the average market trend for STD plans.

ATTACHMENTS

- A. Professional Services Agreement with Sedgwick Claims Management Services, Inc.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
COUNTY OF RIVERSIDE
AND
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.**

This Professional Services Agreement (“Agreement”) is made and entered into by and between the County of Riverside (“COUNTY”), a political subdivision of the State of California, and Sedgwick Claims Management Services, Inc. (“CONTRACTOR”), an Illinois corporation.

RECITALS

WHEREAS, COUNTY is in need of the professional services offered by CONTRACTOR, and CONTRACTOR has the relevant specialized training, experience and/or knowledge to perform the scope of services set forth herein;

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter contained, the parties hereto mutually agree as follows:

1. SERVICES

1.1 COUNTY self-insures its Short Term Disability (“STD”) benefits for COUNTY eligible employees. CONTRACTOR shall provide claims administration and other services described in the attached Exhibit A (Scope of Services) and Exhibit B (Performance Agreement) to COUNTY in connection with the STD program (“Program”). CONTRACTOR shall furnish the labor necessary to perform in a complete, skillful and professional manner all those services described in Exhibits A and B. The parties agree that CONTRACTOR will not perform any services which may constitute the unauthorized practice of law.

1.2 The term “Qualified Claim” means all claims for benefits and loss reports received by CONTRACTOR from COUNTY that are required to be reviewed under the Program. The parties agree that CONTRACTOR shall not be required to advance its own funds to pay losses or allocated loss adjustment expenses for any Qualified Claim.

1.3 In connection with CONTRACTOR’s performance of services under this Agreement, COUNTY shall provide CONTRACTOR with the bi-weekly eligibility data via the COUNTY Secure Website. COUNTY shall provide CONTRACTOR, in a timely manner, with excess insurance or umbrella insurance information for policy years necessary for proper notification of applicable Qualified Claims to such insurers by CONTRACTOR. Should COUNTY fail to provide such insurance information, CONTRACTOR shall be relieved of its obligation to provide such notification to any excess or umbrella insurer.

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be three (3) years, commencing on July 15, 2015 (“Effective Date”) through June 30, 2018, and shall automatically renew for one year periods for

up to two (2) successive years, unless earlier terminated pursuant to Section 7 (Termination).

3. BILLING AND COMPENSATION

3.1 COUNTY shall make payments to CONTRACTOR as set forth in the attached Exhibit C (Service Fees) for services rendered by CONTRACTOR pursuant to this Agreement. CONTRACTOR shall submit completed invoices or bills, as required by the COUNTY, for such service fees. Said invoices or bills shall be based upon rates set forth in Exhibit C. Service fees are due and payable to CONTRACTOR within 30 days of COUNTY's receipt of a completed invoice or bill from CONTRACTOR. COUNTY's failure to provide payment on or before the end of the due date may result in termination of this Agreement pursuant to Section 7 (Termination). Past due fees will incur interest at the rate of 1.5% per month.

3.2 In the event CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request.

4. OWNERSHIP OF CONTRACT MATERIALS

4.1 "Contract Materials" mean: (a) all materials, reports, findings, data or documents in any form, including electronic, created, compiled or assembled by CONTRACTOR under this Agreement; and (b) all information relating to Qualified Claims in any form, including electronic, which are created by, made available to, or maintained by CONTRACTOR for purposes of carrying out its obligations under this Agreement, including, but not limited to, information which CONTRACTOR receives from COUNTY, claimants or third parties. "Contract Materials" do not include CONTRACTOR's proprietary software, general work flow and/or business process.

4.2 All Contract Materials are the sole property of the COUNTY. CONTRACTOR may use or access Contract Materials as necessary to perform its obligations under this Agreement. CONTRACTOR agrees not to release or circulate in whole or in part such Contract Materials without the prior written authorization of the COUNTY.

5. CONTRACTOR RELATIONSHIP AND CONDUCT

5.1 It is expressly understood and agreed that CONTRACTOR is, for purposes of this Agreement, an independent contractor, and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods of accomplishing the results.

5.2 CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. CONTRACTOR agrees to inform COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

5.3 CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

6. DISPUTES

6.1 The parties shall attempt to resolve any disputes relating to this Agreement at the working level, and if that is not successful, the dispute shall be referred to the senior management of the parties. Unless this Agreement is terminated by either party, the parties shall proceed diligently with the performance of this Agreement pending the resolution of the dispute.

6.2 Prior to the filing of a claim under the Government Claims Act (Government Code § 900 et seq.) or the filing of any legal action, the parties agree to meet and confer in good faith to resolve any disputes that may arise out of or in any way relate to this Agreement.

7. TERMINATION

7.1 This Agreement may be terminated by either party without cause at any time, provided that at least 90 days written notice is given to the other party prior to the effective date of termination.

7.2 Either party may, upon 5 days written notice to the other party, terminate this Agreement for cause due to the other party's breach of any material terms of this Agreement, provided that written notice of breach was given to the breaching party and the breaching party failed to cure such breach within 30 days.

7.3 COUNTY may, upon written notice to CONTRACTOR, terminate this Agreement immediately for cause as set forth below:

(a) CONTRACTOR's failure to secure and/or maintain the necessary governmental licenses, approvals, permits or certifications required for the performance of CONTRACTOR's obligations hereunder.

(b) CONTRACTOR's filing of bankruptcy, insolvency or for reorganization, or the appointment of a receiver, trustee or conservator, or assignment to creditors.

(c) CONTRACTOR's failure to maintain adequate general and professional liability insurance coverage, as provided herein.

7.4 Except as set forth in Section 7.5 herein, CONTRACTOR shall stop all work under this Agreement on the effective date of termination specified in the notice of termination. After termination of this Agreement, COUNTY shall make payment up to the date of termination in accordance with this Agreement at Section 3 and Exhibit C and at the rates agreed upon.

7.5 Upon written request by COUNTY, CONTRACTOR will continue to process any Qualified Claims remaining open at the expiration or termination of this Agreement (“Open Claims”), if any. In that event, the parties agree to the following:

- (a) The only applicable fees for open Qualified Claims are set forth in the attached Exhibit C as “Run-Out Fees”;
- (b) As each Qualified Claim closes, CONTRACTOR shall transfer and deliver in a manner as directed by the COUNTY any and all Contract Materials pertaining to such Qualified Claim in accordance with Section 7.6 herein.
- (c) Except as otherwise set forth in this Section 7.5, all terms and conditions of the Agreement shall remain in effect for as long as CONTRACTOR retains any Qualified Claims.

7.6 Upon the expiration or termination of this Agreement, CONTRACTOR shall transfer and deliver, in a manner as directed by COUNTY, to the COUNTY or its designee, any and all Contract Materials, including but not limited to, the hardcopy and imaged files that CONTRACTOR has maintained for Qualified Claims. CONTRACTOR will encrypt any electronic data relating to Qualified Claims prior to such transfer and delivery. Upon COUNTY’s request, CONTRACTOR shall provide COUNTY, in CONTRACTOR’s standard format, with CONTRACTOR’s standard CD(s) containing the computer data for the Qualified Claim files stored on CONTRACTOR’s computer system(s).

7.7 If any provision of this Agreement is breached by either party, the rights and remedies of the non-breaching party as provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

7.8 If CONTRACTOR, within four (4) years from the date of expiration or termination of this Agreement, is subject to audit, claim or lawsuit related to this Agreement, CONTRACTOR may submit a written request to the COUNTY to inspect and copy the hardcopy or imaged files for Qualified Claims, which was previously maintained by CONTRACTOR on behalf of COUNTY. To the extent legally permissible, the COUNTY agrees to grant such request provided that CONTRACTOR agrees in writing to terms and conditions as determined by the COUNTY to be appropriate, including without limitations, to ensure compliance with all applicable laws and to ensure the confidentiality and security of Qualified Claims.

8. RECORDS AND DOCUMENTS

CONTRACTOR shall make available, upon written request by COUNTY, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of CONTRACTOR's costs related to this Agreement.

9. CONFIDENTIALITY

9.1 CONTRACTOR shall not use for personal gain or make other improper use of Confidential Information which is acquired in connection with this Agreement. The term "Confidential Information" includes but is not limited to: all records, reports and information pertaining to claimants under the Program; medical, personnel or security records; unpublished or sensitive technological information; and COUNTY information or data which is not subject to public disclosure. If CONTRACTOR is requested or required to disclose any Confidential Information, CONTRACTOR shall promptly notify the COUNTY.

9.2 CONTRACTOR shall protect from unauthorized disclosure names, other identifying information, and any other information relating to any COUNTY employees receiving services pursuant to this Agreement ("Employee Data"). CONTRACTOR shall not use Employee Data for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of Employee Data not emanating from the claimant who is the subject of such information. Except as otherwise specifically permitted by this Agreement, or authorized by the claimant who is the subject of Employee Data, or authorized in advance in writing by the COUNTY, CONTRACTOR shall not disclose any Employee Data to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph. Notwithstanding the foregoing, COUNTY agrees to permit CONTRACTOR to compile and disseminate aggregate, de-identified information for benchmarking purposes or to forward to a data collection facility de-identified data for Qualified Claims handled pursuant to this Agreement, provided that such facility agrees in writing to keep COUNTY's de-identified data confidential. CONTRACTOR's de-identification of COUNTY's protected health information shall comply with 45 C.F.R. § 164.514.

9.3 CONTRACTOR shall safeguard the confidentiality of medical information and protected health information in connection with the Program. CONTRACTOR agrees to comply with all relevant requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, enacted August 21, 1996, 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 related relevant laws and regulations promulgated subsequent thereto, for purposes of this Agreement. As applicable, the parties shall adhere to all terms and conditions set forth in the attached Exhibit D (HIPAA Business Associate Agreement).

10. NETWORK SECURITY

If COUNTY's access to the CONTRACTOR's data management system requires a network connection ("Network Connection") between the COUNTY's network and CONTRACTOR's network, the parties shall take reasonable and customary precautions to prevent unauthorized access to or use of the Network Connection through their respective networks. The parties agree that each party is responsible for the security of its own network.

11. TRADEMARKS, COPYRIGHTS AND ADVERTISING

11.1 Each party reserves the right to control the use of its name, symbols, trademarks, other marks currently existing or later established. However, either party may use the other party's symbol, trademarks, or other marks with the prior written approval of the other party. COUNTY shall be allowed to use CONTRACTOR's symbol, trademarks, or other marks for COUNTY activities and trainings.

11.2 Prior to listing or otherwise referencing COUNTY in any promotional or advertising brochures, media announcements or other advertising or marketing materials, including references, CONTRACTOR shall first obtain the prior written consent of COUNTY.

12. SUBCONTRACTOR DISCLOSURE

Through contractual arrangements with subcontractors, CONTRACTOR provides a full range of medical management and investigative services to its clients, as well as structured settlements, Medicare set-aside, claim indexing services, imaging, auto-bill adjudication and extra-territorial claims administration services. Medical management services include, but are not limited to, bill review, network access, pharmacy benefits management, peer review, field case management, electro-medical devices, bone growth stimulators, orthotics, prosthetics, translation and interpretation, transportation, medical supplies, IV and respiratory therapy, and home health. COUNTY acknowledges that delivery of some of these services is being provided pursuant to separate agreements between subcontractors and CONTRACTOR. Invoices for these services will be paid as allocated expenses on individual Qualified Claims, unless otherwise agreed to between COUNTY and CONTRACTOR. COUNTY agrees it is obligated to make payment to the subcontractors by remitting such payment to CONTRACTOR for any money due for subcontracted services that have been provided under this Agreement. COUNTY acknowledges that CONTRACTOR receives a portion of charges for subcontracted services as reimbursement for cost of program management, administration, and technological and service enhancements. In no event will charges to COUNTY exceed the amount indicated in the attached Exhibit C (Service Fees).

13. NOTICES

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below, or such other addresses as the parties may hereafter designate in writing, and are deemed to have been duly given on the date of

delivery if delivered personally, or on the seventh business day after their deposit in the United States mail, postage prepaid:

CONTRACTOR: Sedgwick Claims Management Services, Inc.
1100 Ridgeway Loop Road
Memphis, TN 38120
Attn: General Counsel

COUNTY: County of Riverside
Human Resources
P.O. Box 1569
Riverside, CA 92502-1569
Attn: Stacey M. Beale, HR Division Manager

14. MUTUAL INDEMNIFICATION

14.1 In connection with the obligations imposed by this Agreement, COUNTY and CONTRACTOR each agree to indemnify, hold harmless and defend ("Indemnifying Party") the other party, including its directors, officers, Board of Supervisors, employees, agents and representatives ("Indemnified Party") from and against all loss, damage, liability, or expense (including without limitation, reasonable attorneys' fees) of any kind arising by reason of the acts or omissions of the Indemnifying Party, including its officers, directors, employees, agents and representatives. Indemnified Party shall promptly notify the Indemnifying Party of any claims or actions which arise and for which indemnification is sought. With respect to any action or claim subject to indemnification herein, the Indemnifying Party shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of the Indemnified Party; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes the Indemnifying Party's indemnification to the Indemnified Party as set forth herein. Indemnifying Party's obligation hereunder shall be satisfied when the Indemnified Party has received the appropriate form of dismissal relieving the Indemnified Party from any liability for the action or claim involved.

14.2 Notwithstanding the provisions of this Section 14, the parties agree that COUNTY shall remain responsible for claims or expenses that constitute payment of Qualified Claim benefits or expenses under the Program.

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

15. INSURANCE

15.1 Without limiting or diminishing the CONTRACTOR's obligation to indemnify or hold the COUNTY harmless, CONTRACTOR 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.

15.2 Workers' Compensation: If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR 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 waive subrogation in favor of The County of Riverside.

15.3 Commercial General Liability: Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall include 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.

15.4 Vehicle Liability: If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then CONTRACTOR 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 include the COUNTY as Additional Insureds.

15.5 Professional Liability: Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue for a period of no less than three years following the termination of this Agreement, if commercially available.

15.6 General Insurance Provisions – All lines:

15.6.1 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.

15.6.2 The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein.

15.6.3 CONTRACTOR shall cause CONTRACTOR'S insurance broker(s) to furnish the County of Riverside with a properly executed original Certificate(s) of Insurance and relevant policy excerpts effecting coverage as required herein. Further, said Certificate(s) and policies of insurance shall include wording that should any of the described policies be cancelled prior to the expiration date thereof, notice will be delivered in accordance with policy provisions. 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 relevant policy excerpts, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and relevant policy excerpts as required in this Section. An individual authorized by the insurance carrier shall sign the Certificate of Insurance.

15.6.4 It is understood and agreed to by the parties hereto that the CONTRACTOR'S Commercial General Liability and Vehicle Liability insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

15.6.5 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; at the COUNTY'S request the party's shall mutually agree on revised 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 the CONTRACTOR has become inadequate.

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

16. GENERAL PROVISIONS

16.1 Assignment and Delegation. Neither party shall, without the prior written consent of the other party, delegate or assign any interest in this Agreement, whether by operation of law or otherwise. Any attempt to delegate or assign any interest herein in contravention of this provision shall be deemed void and of no force and effect.

16.2 Compliance with Law. CONTRACTOR shall comply with applicable Federal, State and local laws and regulation. CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Government Code § 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. § 1201 et seq.) and all other applicable laws or regulations.

16.3 Licenses and Permits. CONTRACTOR shall comply with all State or other licensing requirements necessary for the provisions of services hereunder. CONTRACTOR warrants that it has all necessary licenses, permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the COUNTY and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

16.4 Public Disclosure of Documents. Notwithstanding any provisions set forth in this Agreement, CONTRACTOR acknowledges and agrees that information, communications and documents given by CONTRACTOR to COUNTY and meetings involving COUNTY may be subject to disclosure by COUNTY under the public records and meetings laws and regulations of the State of California. CONTRACTOR shall use best efforts to cooperate with COUNTY in order that COUNTY may fully comply with the requirements of such laws and regulations.

16.5 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, (a "force majeure") such party shall not be liable for such failure to comply. Both parties are obligated to have in place a contingency plan to avoid potential interruptions. In the event a force majeure occurs, the party delayed or unable to perform shall give immediate notice to the other party.

16.6 Governing Law and Venue. This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in Riverside, State of California, and the parties waive any provision of law providing for change of venue to another location.

16.7 Government Claims Act. The applicable provisions of the Government Claims Act (Government Code § 900 et seq.) must be followed for any disputes under this Agreement.

16.8 Non-Exclusive. Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent products, materials or services from other sources, when deemed by the COUNTY to be in its best interest.

16.9 Invalidity and Severability. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. In the event the removal of a provision rendered invalid or unenforceable or declared null and void has the effect of materially altering the obligations of either party in such manner as to cause serious financial hardship to such party, the party so affected shall have the right to terminate this Agreement upon providing 30 days prior written to the other party.

16.10 Waiver. Any waiver by either party of a breach of any one or more terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same

or of any other term of this Agreement. Failure on the part of either party to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing such party from enforcement of the terms of the Agreement.

16.11 Survival. The parties agree that the provisions of Section 9 (Confidentiality) and Section 14 (Mutual Indemnification) shall survive the termination or expiration of this Agreement.

16.12 Headings. Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

16.13 Entire Agreement. This Agreement, including any attachments hereto, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by both parties. The following attachments are incorporated herein by this reference and made an integral part of this Agreement:

Exhibit A – Scope of Services

Exhibit B – Performance Agreement

Exhibit C – Service Fees

Exhibit D – HIPAA Business Associate Agreement

16.14 Certification of Signatory Authority. CONTRACTOR certifies that the individual signing below has the authority to execute this Agreement on behalf of CONTRACTOR, and may legally bind CONTRACTOR to the terms and conditions of this Agreement, and any attachments hereto.

(Signatures on Following Page)

IN WITNESS WHEREOF, the parties hereto have executed this Professional Services Agreement with an Effective Date of July 15, 2015.

ATTEST:
Clerk to the Board
Kecia Harper-Ihem

COUNTY OF RIVERSIDE:

By _____
Deputy

By _____
Chairman, Board of Supervisors

Date _____

Date _____

Approved as to Form:

Gregory P. Priamos
County Counsel

By 
Deputy County Counsel

CONTRACTOR:
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.

By 

Printed Name Jeff Glatstein

Title Dep. Counsel

Date 16 August 2015

EXHIBIT A

**SCOPE OF SERVICES
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.**

I. Service Program Overview

CONTRACTOR provides the services stated in this Agreement and administers the self-insured STD claims for the COUNTY.

Contractor Office Location: Calabasas, CA

Hours of Operations: Monday through Friday, 5:00 am to 5:00 pm (Pacific Time)

Toll-Free Phone Number: 800 845-7739

Website: www.sedgwickcms.com/calabasas

Accounts to be Serviced: 268001- County of Riverside

On behalf of the CONTRACTOR, the following account manager will coordinate the services stated in this Agreement:

Jason Rubinstein
Sedgwick Claims Management Services, Inc.
24025 Park Sorrento, Suite 200
Calabasas, CA 91302
Telephone # 818-222-3026
Fax # 800-495-9303

CONTRACTOR may, upon thirty (30) days prior written notice to the COUNTY, change its designated representative.

II. Services

During the term of the Agreement, CONTRACTOR shall provide the following services to the COUNTY in connection with the COUNTY's self-insured STD Program.

A. With regard to claims administration services, CONTRACTOR shall:

(1) Receive, review and examine all Qualified Claim, as defined in Section 1.2 of the Agreement, and process each Qualified Claim in accordance with applicable statutory and administrative regulations.

(2) Conduct an investigation of each Qualified Claim to the extent deemed necessary by CONTRACTOR in the performance of its obligations hereunder.

(3) Obtain additional information, as needed, by correspondence with or telephonic outreach to claimant, physicians and others.

(4) Arrange for independent investigators, appraisers, or medical or other experts to the extent deemed necessary by CONTRACTOR in connection with processing any Qualified Claim.

(5) Advise COUNTY regarding the payment of benefits and expenses recommended to settle each Qualified Claim, if in the sole judgment of CONTRACTOR such payment would be prudent for COUNTY or as COUNTY specifically approves or directs such action in writing.

(6) Submit daily electronic files detailing individual voucher information for approved claims includes current and adjustments.

(7) Communicate to claimants claim approval with notification to designated departments of COUNTY.

(8) Communicate to claimants that fact of, and the reason for denial of benefits, with copies to designated departments of COUNTY.

(9) Disburse payments for allocated expense payments. Allocated expenses include all costs incurred on behalf of COUNTY, which are specifically related to an individual Qualified Claim, in the nature of fees, expenses and costs of independent investigations, copying transcripts, medical and hospital records, consultative medical examinations, and any other items which are deemed necessary to properly represent COUNTY on a Qualified Claim. Allocated expenses do not include services performed by CONTRACTOR employees.

(10) Continue medical management and benefit approval on open Qualified Claims in accordance with published duration guidelines and the parties' agreed upon workflows.

(11) Coordinates with COUNTY Payroll Division when over or under payments have been made to recalculate and adjust records to reflect correct payment of benefits.

(12) In accordance with legal requirements and reasonable requests by COUNTY, maintain records and files for each Qualified Claim, which shall be the property of COUNTY and which shall be available for review by COUNTY during normal business hours upon three (3) days prior written notice.

(13) Notify excess or umbrella insurers, if applicable, of each Qualified Claim where the values may exceed COUNTY's retention, providing such insurers with necessary information on the current status of those claims, unless relieved of this obligation pursuant to Section 1.3 of this Agreement.

(14) Assist COUNTY's counsel, if requested, in preparing the defense of litigated cases arising out of Qualified Claims, negotiating settlements and pursuing subrogation or contribution actions.

(15) Maintain a current estimate of the expected total cost of each Qualified Claim, which is based on facts known at the estimation date, but is not trended or actuarially developed.

(16) Provide and coordinate Qualified Claim information to COUNTY's Return to Work program including daily notification, diagnosis, and supporting documents as requested.

(17) Coordinate modified duty and return to work with designated departments of the COUNTY.

(18) Provide email Employer Notification confirmations on a daily basis of all newly processed Qualified Claims pending approval.

(19) Collaborate with COUNTY Workers' Compensation Unit to coordinate appropriate benefit payments and determine if payment is payable under STD Program.

(20) Manage refund payments received from third party, subrogation or a voluntary payment from claimant by adjusting claim data and forwarding payment to COUNTY.

(21) Meet with COUNTY on a quarterly basis to review the performance of the STD Program.

B. With regard to determining eligibility, CONTRACTOR shall:

- (1) Retrieve bi-weekly eligibility file via COUNTY Secure Website;
- (2) Load bi-weekly eligibility file to proprietary data management system; and
- (3) Provide bi-weekly error report to COUNTY once eligibility file has loaded.

C. With regard to customer service, CONTRACTOR shall provide the following call center services:

(1) Provide to the COUNTY a toll free number owned by CONTRACTOR to be used by COUNTY and its employees to access the CONTRACTOR telephonic claims intake center while providing customer service to claimant.

(2) Generate Initial Claims Information Packet and appropriate notification letters approving or denying claim including general explanation of benefits, payment amounts, duration and general information.

(3) Complete the appropriate form(s) as required by an applicable program or statute

and provide copies to all necessary parties via fax, mail, or electronically as agreed upon with COUNTY.

(4) Follow-up with Providers for additional information, Physician Statement, case management, or requesting medical records.

(5) Follow-up with COUNTY for additional employment information.

(6) Notify claimant via letter or phone call to request additional information or follow-up on outstanding issue.

D. With regard to reports, CONTRACTOR shall:

(1) Use a proprietary data management system to furnish to COUNTY agreed upon loss and information reports. These reports shall contain information such as each Qualified Claim date, condensed claim description, payments made, estimated future costs and total expected costs of all Qualified Claims, as well as summary and other data deemed relevant by CONTRACTOR, but not IBNR (incurred but not reported) claims or actuarially developed loss values.

E. With regard to consulting services, CONTRACTOR shall:

(1) Provide COUNTY with an Annual Steward Report, which includes: (a) a summary of cash costs by Plan year; (b) a review of annual claims experience; and (c) a review of legislation changes which may impact the operation of the STD Program;

(2) Assist COUNTY in its preparation for financial and claims audits by independent certified public accountant, if needed;

(3) Advise COUNTY with respect to the integration of STD Program benefits with other Health-sponsored benefit programs; and,

(4) Advise COUNTY with respect to reasonable expenses which are recoverable from the Plans assets.

EXHIBIT B

PERFORMANCE AGREEMENT SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.

COUNTY and CONTRACTOR agree to enter into this performance agreement subject to the key performance criteria, parameters, amount at risk, frequency of measurement and distribution, measurement and scoring, performance table and definitions outlined in the paragraphs below. This performance agreement includes performance guarantee provisions.

This performance agreement is subject to compliance with regulatory requirements. In the event of a material change in claim volume, program structure, vendor or procedure, the parties will determine how and if such change effects the performance agreement. The performance agreement will be modified to reflect compliance with such regulatory, ordinance and statute requirement or material change within 30 days of notice to the parties.

Key Performance Criteria

The following criteria are the subject of this performance agreement:

1. Claim Accuracy
2. Financial Reporting Accuracy

All criteria and results are subject to only those activities within the direct control of CONTRACTOR. A complete description of the criteria appears in the Performance Table and Definitions paragraphs below.

Parameters

This performance agreement shall apply to Short Term Disability Claims reported to CONTRACTOR beginning July 15, 2015. The performance agreement applies to the Short Term Disability program, subject to the parameters and definitions specific to each criteria as found in the performance table and definitions below.

Risk

The maximum dollar amount at risk is 10% of the annual Short Term Disability administration fees ("Amount at Risk"). Each of the criteria is subject to a specific amount at risk as noted in the Performance Table. The sum of the criteria amounts combined equal the maximum potential amount at risk.

Frequency of Measurement and Distribution

Results will be measured and scored every quarter starting January 15, 2015. Annual Results will be posted on or before April 15 of each subsequent years. The parties will have until April

30, to rebut and agree to the findings. Distribution of any penalty will be made no later than May 15; provided that, in the case of penalty distribution, all current fees due CONTRACTOR have been paid.

Measurement and Scoring

Each criterion is scored individually subject to the specifications described in the Performance Table. The Performance Table identifies measurement and target scores for each criterion.

Should a question arise on a particular claim, CONTRACTOR will have an opportunity to resolve the question based on the measurement criteria of the Performance Agreement. If resolution cannot be reached, the claim will be eliminated from the sample and another claim will be chosen at random as a substitute. Disputed claims will not be included in the calculation of CONTRACTOR’s performance results.

For criteria that are determined by physical audit, the parties will agree that CONTRACTOR will conduct a file audit at their expense. An audit sample equivalent of at least 5% of the Short Term Disability claims processed by CONTRACTOR during each quarter will be randomly selected for the audit. The audited claims will represent all colleagues assigned to the program.

Performance Table

Criteria /KPI	Specific Parameter	Target	Reporting Method	Scoring and Calculations Methodology	Amount at Risk
Call Center	Call Abandonment Rate	Call abandonment rate not to exceed 3%	Report from Call Center	<ul style="list-style-type: none"> 3% or below – no fees at risk 3.1%-4.99% - 50% at risk 5.0% or more – 100% at risk 	
Call Center	Speed of Answer	Phone answer speed not to exceed 30 seconds	Report from Call Center	<ul style="list-style-type: none"> Average speed of answer 30 seconds or less- 0% at risk Average speed of answer greater than 30 seconds – 100% at risk 	
Program Manager	Program Management Survey	Annual Program Management survey resulting in a "Satisfied" score	Annual Client Satisfaction Survey Result	<ul style="list-style-type: none"> Average is satisfied or higher – 0% at risk Average is less than satisfied – 100% at risk 	

Program Manager	Program Management Quarterly Stewardship	Program Manager presents quarterly stewardship meeting within 45 days of quarter close	Quarterly Meeting	<ul style="list-style-type: none"> • All four (4) quarters presented – 0% at risk • Less than four (4) quarters presented – 100% at risk 	
STD	Decision Accuracy	95% Decisional accuracy (Have accepted proper liability for claim and correct decision made on meeting disability criteria)	TPM Audit Results	<ul style="list-style-type: none"> • 95% or higher claims decision accuracy – 0% at risk. • 90%-94.99% claims decision accuracy – 50% at risk. • Less than 90% decision accuracy – 100% at risk 	
STD	Financial Accuracy	95% Financial accuracy (determination of correct payment amount, as percentage of total payment)	TPM Audit Results	<ul style="list-style-type: none"> • 95% or higher claims financial accuracy correctly – 0% at risk. • 90%-94.99% claims financial accuracy correctly – 50% at risk. • Less than 90% claims financial accuracy correctly – 100% at risk 	
STD	Coding Accuracy	95% Coding accuracy (entry of date of disability, ICD9 Code, Social Security No., Hire date, Birth date, Salary, Social Security Code, Claim Status)	TPM Audit Results	<ul style="list-style-type: none"> • 95% or higher claims coding accuracy correctly – 0% at risk. • 90%-94.99% claims coding accuracy correctly – 50% at risk. • Less than 90% 	

		Code, etc.)		claims coding accuracy correctly – 100% at risk	
STD	Examiner Response	95% timely response to inquiries within 24 business hours of receipt.	Diary Report	<ul style="list-style-type: none"> • 95% or higher response within 24 business hours – 0% at risk. • 90%-94.99% response within 24 business hours – 50% at risk. • Less than 95% response within 24 business hours – 100% at risk 	
STD	Initial Claim Decision	90% of initial claim decisions made within 15 days of claim receipt.	STD Decision Timeliness Average Days Report	<ul style="list-style-type: none"> • 90% or higher of decision made within 15 business days – 0% at risk. • 85%-89.9% of decisions made within 15 business days – 50% at risk. • Less than 85% of decisions made within 15 business days – 100% at risk 	
Appeals	Appeal Handling	99% appeals administered per process and time plan standards	Report from Appeals Team	<ul style="list-style-type: none"> • 99% or higher appeals handled per process/time – 0% at risk. • 95%-98.99% appeals handled per process/time – 50% at risk. • Less than 95% appeals handled per process/time – 100% at risk 	

EXHIBIT C

**SERVICE FEES
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.**

COUNTY shall pay the following fees for services provided by CONTRACTOR during the term of this Agreement:

I. Per Employee Per Month Fees

A. COUNTY shall pay the following fees for claims received by CONTRACTOR during the period July 15, 2015, and ending June 30, 2018:

	July 15, 2015 through June 30, 2016	July 1, 2016 through June 30, 2017	July 1, 2017 through June 30, 2018
Per Employee Per Month	\$1.99	\$2.24	\$2.48

B. COUNTY shall pay the following fees for claims received by CONTRACTOR during the period July 1, 2018, and ending June 30, 2019:

	July 1, 2018 through June 30, 2019
Per Employee Per Month	\$2.54

C. COUNTY shall pay the following fees for claims received by CONTRACTOR during the period July 1, 2019, and ending June 30, 2020:

	July 1, 2019 through June 30, 2020
Per Employee Per Month	\$2.60

II. Implementation and/or Readiness Assessment Audit

CONTRACTOR will fund up to \$45,000 for an implementation support and/or audit.

III. Run-Out Fees

At the time of termination, CONTRACTOR will charge a one-time fee of \$325 per open Qualified Claim.

IV. Americans with Disabilities Act (ADA) Services

County shall pay a fee of \$550 per case for claims received by the Contractor requiring ADA services.

EXHIBIT D

**HIPAA BUSINESS ASSOCIATE AGREEMENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.**

HIPAA Business Associate Agreement
Addendum to Contract
Between the County of Riverside and Sedgwick Claims Management Services, Inc.

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the **Professional Services Agreement** (the "Underlying Agreement") between the County of Riverside ("County") and Sedgwick Claims Management Services, 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, 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 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:

- A. 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;
- B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
- C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
- D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
- E. Ensure compliance with the Security Rule by Contractor's workforce;
- F. 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;

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

- B. Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information and documentation 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. 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.
- D. 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.
- E. 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.
- F. 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 five (5) 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. County agrees to indemnify and hold harmless Contractor, its directors, officers, employees, agents and representatives from any liability whatsoever based or asserted upon the obligations of County under this Addendum. The indemnifying party 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 the indemnified party, and as applicable 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 the indemnifying party, the indemnifying party shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of the indemnified party, 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 the other party; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes the indemnifying party’s indemnification to the indemnified party as set forth herein. The indemnifying party’s obligation to defend, indemnify and hold harmless the indemnified party shall be subject to the indemnified party having given the indemnifying party 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 the indemnifying party’s expense, for the defense or settlement thereof. The indemnifying party’s obligation hereunder shall be satisfied when the indemnifying party has provided to the indemnified party the appropriate form of dismissal relieving the indemnified party 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: P.O. Box 1569,
Riverside, CA 92502

County HIPAA Privacy Officer Fax: (951) 955-HIPPA or (951) 955-4472

----- **TO BE COMPLETED BY COUNTY PERSONNEL ONLY** -----

County Departmental Officer: Stacey Beale
County Departmental Officer Title: Human Resources Division Manager
County Department Address: 4080 Lemon Street, Riverside, CA 92501
County Department Fax Number: (951) 955-3581