

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

258



FROM: Riverside University Health System (RUHS) – Medical Center

SUBMITTAL DATE:
July 12, 2016

SUBJECT: Approve and execute the Professional Service Agreement with ShiftWise, Inc. to provide contingent temporary labor for up to \$9,000,000 per year for five years; District 5; [\$45,000,000 over 5 years], Hospital Enterprise Fund

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the Agreement with ShiftWise, Inc. to provide contingent temporary labor for \$9,000,000 annually effective July 26, 2016 through August 31, 2017, with the option to renew for four (4) additional years in one-year increments;
2. Authorize the Purchasing Agent to adjust contract amounts of ShiftWise and RightSource so long as the total does not exceed \$9,000,000 per year; and
3. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved by County Counsel to: a) sign amendments that do not change the substantive terms of the Agreement; and b) sign amendments to the compensation provisions that do not exceed 10% annually.

BACKGROUND:


Summary

(continued on next page)


Zareh H. Sarrafian,
Assistant CEO- Health System

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 9,000,000	\$ 9,000,000	\$ 45,000,000	\$ 0	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: 16/17-20/21

C.E.O. RECOMMENDATION: **APPROVE**
BY: 
Christopher M. Hans

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

APPROVED COUNTY COUNCIL
 BY:  7/14/16
 KARIN L. WATTS-BAZZAN
 DATE
 Departmental Concurrence
 Teresa Summers, Assistant Director
 Purchasing & Fleet Services: 

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

Prev. Agn. Ref.: _____ District: 5 Agenda Number: _____

3-60

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

FORM 11: Approve and execute the Professional Service Agreement with ShiftWise, Inc. to provide contingent temporary labor for up to \$9,000,000 per year for five years; District 5; [\$45,000,000 over 5 years], Hospital Enterprise Fund

DATE: July 12, 2016

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BACKGROUND:

Summary (continued)

Approval of this ShiftWise contract would give RUHS – Medical Center a second option for securing temporary nurses for patient care. The hospital has an existing contract with RightSourcing, however providing another temporary staffing services firm will ensure adequate resources are available to meet hospital demand. If approved, the hospital would keep the total cost of temporary staffing services at an annual amount of not to exceed \$9,000,000 between the two firms.

The requested Board action will allow Riverside University Health System (RUHS) to contract for “travelling nurse” support, which would meet variable staffing needs and increase efficiencies. Without this option to bring in temporary nurses on short notice, the hospital would be forced to maintain a fixed patient care workforce. Because the number of patients shifts constantly, a fixed workforce would be too small when the patient count surges or too large when few patients present for services. The first situation would be unacceptable as it puts patient safety at risk. The second situation would be unnecessarily costly and would ultimately cost the hospital considerably more than the amount being paid in this contract.

ShiftWise and RightSource are the primary competitors in the Inland Empire for providing contingent labor to hospitals. Medical Center staff conducted an informal survey of 16 local hospitals and found that five use RightSource, two use ShiftWise and one uses both. Of the others, most use smaller supplies that won't be able to meet our hospital's needs. One uses a national firm that is probably too big to adequately support a small account like ours. Another advantage of contracting with both firms is that the Medical Center would be sure of having enough nurses with Epic experience during the crucial weeks when it is rolled out later this year. RUHS – Medical Center recommends contracting with both ShiftWise and RightSource.

Impact on Citizens and Businesses

The hospital, its inpatient treatment facility, site-based clinics and community-based clinics serve residents in all five Riverside County supervisorial districts, providing more than 450,000 patient encounters each year. The local economy will experience positive benefits from the presence of a thriving health system that is served by an educated workforce, and where patients of all incomes can feel safe and obtain high quality healthcare services.

During past periods of medical staffing shortages, hospital managers had difficulty using standard county hiring processes to quickly hire medical staff, especially registered nurses. Patient counts vary daily and staffing must also vary daily to satisfy nurse to patient ratio targets as efficiently as possible. To meet these objectives, hospital management has looked to temporary employment agencies to fill vacancies created by the variable nature of patient traffic. Filling vacancies with temporary nurses has, for example, improved RUHS' services by allowing shorter waiting periods for admission while ensuring that the required nurse-to-patient staffing ratios are met, all without the unnecessary cost of overstaffing.

Contract History and Price Reasonableness

Medical Center staff conducted an analysis of rates and ShiftWise rates are within market standards for supplemental temporary staff and comparable to the rates in the existing contract with RightSource.

There were specific components of a vendor managed services which RUHS requires and ShiftWise, Inc. offers specialized features such as:

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- a) **Reporting Capabilities** - able to provide thirty (30) plus standard reports with ad hoc/custom reporting capabilities which brings visibility to supplier performance. Standard reports on a scheduled/regular basis to allow Nursing Administration the ability to identify high performing vendors in the local market. Offers the opportunity to increase fill rates by monitoring key metrics in real time. Reports provide visibility into staff utilization and cost, improving business decisions with the ability to quickly identify and address labor shortages and overtime costs.
- b) **Supplier Performance** –a web-based, on demand system with the ability to run reports as needed by Nursing Administration in order to analyze needs and performance. Ability to pull important metrics such as tracking fill rates, tracking time-to-fill rates, and tracking cancellation rates. These metrics brings visibility to supplier performance with the potential to increase operational efficiencies for cost savings results, and higher fill rates in less time.
- c) **Credentialing & Government Compliance** –an automated document and credential management system to ensure compliance with Joint Commission and other mandatory audits. An automated profile verification process will help speed up work start time and will also provide notifications for approaching and expiring credentials.
- d) **Training** –free pre “Go-Live” software systems web based training.
- e) **Services** –a web-based staffing vendor management system where orders will be place on-line and date stamped for tracking purposes.
- f) **Client Services/Support (on site)** – one full time Shiftwise staff on-site for the first six months at no charge.
- g) **Client Services / Support (off site)** – dedicated account manager and supplier relations team 24/7/365 customer support.
- h) **Program Management** - direct mobile and online job opportunities results in shifts being filled faster and more efficiently with internal and external staff. Staff time savings with mobile device communications and shift confirmations.
- i) **Rate Plan Management Reports** – performs a market rate analysis to view current rates for types and specialties.
- j) **Group Purchasing Organization (GPO)** – it is under Novation supplier for hospital to qualify using its rebate program and the rates are comparable within market standard.

**PROFESSIONAL SERVICE AGREEMENT
FOR
SOFTWARE LICENSE AND VENDOR NEUTRAL MANAGED SERVICE PROVIDER
AGREEMENT FOR SHIFTWISE PRODUCTS (HDO)
between
SHIFTWISE, INC.
and
COUNTY OF RIVERSIDE**

This Software License and Vendor Neutral Managed Service STAFF Agreement (“**Agreement**”) is entered into as of _____ (“**Effective Date**”), between ShiftWise, Inc., an Oregon corporation located at 1800 SW 1st Ave., Suite 510, Portland, Oregon, 97201 (“**ShiftWise**”), and County of Riverside, a political subdivision of the State of California, on behalf of Riverside University Health System – Medical Center, located at 26520 Cactus Avenue, Moreno Valley, CA 92555 the undersigned **Health Care Delivery Organization (“HDO”)**. HDO and ShiftWise may each be referred to herein as a “**Party**” and collectively as the “**Parties**”

RECITALS

WHEREAS, ShiftWise has developed a staffing application service that includes an internet based system that offers, through a variety of products, procurement and management of the procurement of agency staffing to supplement internal and external temporary clinical and non-clinical staff for hospitals and other healthcare providers.

WHEREAS, HDO desires to use certain ShiftWise products under the terms of this Agreement for the purpose of procuring supplemental temporary staff to provide services at HDO’s FACILITIES.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements and covenants contained herein, and for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, HDO and ShiftWise agree as follows:

1. DEFINITIONS

- (a) “**APPLICATION SERVICE**” means the SHIFTWISE PRODUCT(S) offered for use through an application service provider model.
- (b) “**APPLICATION SERVICE DOCUMENTATION**” means user documentation, including the system documentation, user manuals, functionality descriptions, written specifications and methodologies, and final release information concerning the capabilities, functions and features of the SELECTED APPLICATION SERVICE, all as modified and supplemented by ShiftWise from time to time.
- (c) “**FACILITY(IES)**” means all locations in which HDO will utilize the SELECTED APPLICATION SERVICE.
- (d) “**ShiftWise-MSV AGREEMENT**” means the subcontract with an MSV to provide staffing service to fill HDO’s requests for STAFF that will contain clauses placing duties on the MSV to following the provisions of this Agreement that related to MSV.
- (e) “**IRP APPLICATION**” means the web-based ShiftWise IRP system application for requesting, placing and managing staff retained by the HDO.
- (f) “**MSV**” means a medical staffing vendor that provides staffing services for HDO pursuant to this Agreement.
- (g) “**PROFESSIONAL SERVICES**” means additional professional services provided to HDO by ShiftWise

- pursuant to the statement of work (“SOW”) attached hereto as Attachment A and incorporated by reference.
- (h) “**SELECTED APPLICATION SERVICE**” means the SHIFTSWISE PRODUCT(S) selected by HDO under this Agreement, as set forth in Attachment A, and any additional SHIFTSWISE PRODUCT(S), including but not limited to other job sourcing systems or solutions added by a signed written amendment hereto.
 - (i) “**SHIFTSWISE BRIDGE**” means a ShiftWise proprietary application that automates the transfer of information into the ShiftWise VMS from an HDO’s back office system(s).
 - (j) “**SHIFTSWISE CONNECT**” means a ShiftWise proprietary application that allows MSV and HDO staff to be notified and book themselves to open orders created in VMS using mobile messaging, email notifications, private online login, and daily email job alerts.
 - (k) “**SHIFTSWISE PRODUCT(S)**” means ShiftWise’s VMS APPLICATION, IRP APPLICATION, STT APPLICATION, SHIFTSWISE CONNECT™, SHIFTSWISE BRIDGE, VERISTAFF™ and its other on-line evaluation and performance management solutions as requested by HDO and set forth in Attachment A.
 - (l) “**SHIFTSWISE SERVICES**” means the implementation, training and other services provided by ShiftWise in support of the SELECTED APPLICATION SERVICE.
 - (m) “**SHIFTSWISE SOFTWARE**” means any ShiftWise proprietary source code and object code incorporated within the SELECTED APPLICATION SERVICE.
 - (n) “**STAFF**” means any employee, agent or other labor resource engaged by an MSV or retained by HDO and placed for work in an HDO’s facility through the use of the VMS APPLICATION or IRP APPLICATION.
 - (o) “**STAFF CHARGES**” means charges for the STAFF who are placed and who actually provide services at an HDO facility as a result of being placed through the VMS APPLICATION.
 - (p) “**STT APPLICATION**” means the ShiftWise Staff Time Tracker application for tracking, approving and managing the time of STAFF provided by MSVs and HDO’s employed staff.
 - (q) “**VERISTAFF™**” means ShiftWise’s online credential and document management system.
 - (r) “**VMS APPLICATION**” means the web based ShiftWise Vendor Management System application for requesting, placing, and managing STAFF provided by MSVs.

2. LICENSE GRANTS AND LIMITATIONS

- (a) **Grant.** For the term of this Agreement, ShiftWise grants to HDO a non-transferable and non-exclusive right and license to use the SELECTED APPLICATION SERVICE subject to the terms and conditions of ShiftWise’s standard end-user license agreement (EULA), a copy of which can be viewed at www.shiftwise.com/ShiftWise-EULA. No right is given to HDO or any third party, to copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any SHIFTSWISE SOFTWARE (including source and object code), sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the SHIFTSWISE PRODUCT(S). HDO agrees not to modify the SHIFTSWISE SOFTWARE in any manner or form, or to use modified versions of the SHIFTSWISE SOFTWARE, including, without limitation, for the purpose of obtaining unauthorized access to the SELECTED APPLICATION SERVICE.
- (b) **Limitations.** All rights not expressly granted herein are reserved by ShiftWise. HDO further agrees that it will not copy, market or distribute the SHIFTSWISE PRODUCT(S) or derivative works of the SHIFTSWISE PRODUCT(S).

3. PAYMENT AND BILLING PROCESS

- (a) **SELECTED APPLICATION SERVICE Fee(s).** HDO agrees to pay ShiftWise all Fees as set forth in Attachment A (“Fee(s)”).
 - (i) **VMS Fees.** HDO agrees to pay ShiftWise all charges for invoiced MSV STAFF provided through the VMS APPLICATION SERVICE. Charges will be calculated based on MSV bill rates in the VMS APPLICATION SERVICE which are set forth in Attachment B. HDO understands that, after receipt of funds from HDO, ShiftWise will distribute funds to MSVs for STAFF provided to HDO through VMS APPLICATION. HDO agrees that a Service Fee,

- payable to ShiftWise by MSVs, will be deducted prior to paying MSVs.
 - (ii) **SHIFTWISE PRODUCTS Fees.** HDO agrees to pay ShiftWise the fees shown in Attachment A for use of the SHIFTWISE PRODUCTS set forth therein.
 - (iii) **Training Fee.** HDO agrees to pay ShiftWise the fees shown in Attachment A for use of the SHIFTWISE PRODUCTS set forth therein.
 - (b) **VMS APPLICATION Billing Process.** Billing and payment under the VMS APPLICATION will be made as follows using the workweek of HDO, which begins on Thursday, and ends on Wednesday.
 - (i) For each shift worked, the VMS APPLICATION will generate and provide HDO with an electronic time slip record of the time worked by MSV STAFF. HDO will review and reconcile VMS APPLICATION time slips in accordance with HDO's record of the time worked by the STAFF and approve time slips for MSV STAFF using the VMS APPLICATION. HDO will review and approve all undisputed VMS APPLICATION time slip data for the previous BILLING WEEK no later than 5:00 PM (in HDO's time zone) Thursday of each BILLING WEEK.
 - (ii) MSVs will review and approve weekly statements generated from VMS APPLICATION that reflect HDO approved time slips. If MSV determines that there are discrepancies in time slip data, such discrepancies will be disputed with the HDO through the VMS APPLICATION and resolved to the satisfaction of both Parties. Statements must be reviewed and accepted by MSVs by 5:00 PM (in HDO's time zone) on Monday of the BILLING WEEK in order for the STAFF CHARGES listed on the VMS APPLICATION time slip to be invoiced that week.
 - (iii) After MSV has accepted the statement provided through the VMS APPLICATION, STAFF CHARGES will be invoiced to HDO. HDO will finalize and approve invoices by 5:00 PM (in HDO's time zone) on Tuesday of the BILLING WEEK.
 - (iv) After HDO's approval of the invoice, no changes may be made to the invoice. If STAFF CHARGES remain in dispute and not accepted by MSV, the STAFF CHARGES will remain in the VMS APPLICATION until resolved between HDO and MSV. Future credits/debits required to resolve any such disputes may be made through invoice memos in the VMS APPLICATION.
 - (v) After review and approval of invoice, HDO will submit payment of the approved invoice to ShiftWise according to the terms shown in Attachment A.
 - (vi) ShiftWise will be responsible for disbursement of the invoiced amounts to MSVs according to payment terms set between ShiftWise and the MSVs.
 - (c) **PRICE INCREASES; MAXIMUM ANNUAL AMOUNT.**

Maximum payments by HDO to ShiftWise shall not exceed \$9,000,000 annually including all expenses, provided however, HDO will be responsible for monitoring the amount spent and advising ShiftWise when payments come close to the not to exceed amount. HDO shall ensure that adequate funding exists for the duration of an assignment requested by HDO. Unless otherwise specifically stated in Attachment A and B, HDO shall not be responsible for payment of any of ShiftWise's expenses related to this Agreement. No price increases will be permitted during the first year of this Agreement without written mutual agreement of the parties. HDO requires written proof satisfactory to HDO of cost increases prior to any approved price adjustment. No retroactive price adjustments will be considered. No later than sixty (60) days prior to the expiration of (i) the first year after the Effective Date and (ii) the expiration of any renewal term of this Agreement, HDO and ShiftWise will meet to review costs and pricing and mutually agree on any changes to pricing for the ensuing year. Any price increases must be stated in a written amendment to this Agreement.

4. OTHER OBLIGATIONS

- (a) **Placement Obligation.** In consideration for ShiftWise's implementation and training of HDO in

association with the SELECTED APPLICATION SERVICE, HDO agrees that for a period of one hundred eighty (180) days following the Effective Date, HDO will not request supplemental medical STAFF through a system substantially similar to the SELECTED APPLICATION SERVICE without the prior written consent of ShiftWise. This limitation will not apply to Supplier (as defined in Attachment A). HDO will not, however, be bound by this placement obligation in the event that (i) ShiftWise fails to provide the SELECTED APPLICATION SERVICE or SHIFTSWISE SERVICES in accordance with the terms of this Agreement. While this Agreement is in force, and if HDO is using the VMS APPLICATION, HDO will request that MSV(s) provide STAFF to the HDO for the relevant labor types and facilities through the SELECTED APPLICATION SERVICE. HDO reserves the right to secure staffing needs through its own Temporary and Medical Assignment Program utilizing its own employees (TAP program), outside of the SELECTED APPLICATION SERVICE.

- (b) **Related Party Agreements.** HDO hereby agrees that, except as otherwise set forth in subsection (a) above, for the term of this Agreement it will use the SELECTED APPLICATION SERVICE for the procurement of STAFF. Only assignments filled through the use of SELECTED APPLICATION SERVICE will be coordinated and managed pursuant to this Agreement. **HDO and MSV bear full responsibility for the verification of any information input into the SELECTED APPLICATION SERVICE pertaining to any STAFF, and ShiftWise specifically disclaims any fitness for a particular purpose of any STAFF provided under the SELECTED APPLICATION SERVICE.** ShiftWise shall not be liable for the acts or omissions of MSVs or their respective STAFF.

- (c) **Support and Maintenance Obligations.** ShiftWise will provide satisfactory support and maintenance of the SELECTED APPLICATION SERVICE at all times that HDO and its affiliated FACILITIES are using the SELECTED APPLICATION SERVICE. ShiftWise will use its best efforts to schedule maintenance during periods outside of HDO's normal business hours and will provide HDO with at least forty-eight (48) hours notice of scheduled maintenance where the system will be unavailable. ShiftWise will provide HDO with telephone support 24 hours, 7 days a week, 365 days a year. Support and maintenance will include a maximum one (1) hour initial response time from the time of HDO's contact with ShiftWise, with system repair to be made by ShiftWise as soon as commercially practicable. ShiftWise will have the right to cease support for the SELECTED APPLICATION SERVICE in the event ShiftWise no longer makes the SELECTED APPLICATION SERVICE commercially available. ShiftWise will provide a minimum of 60 days notice in the event ShiftWise ceases to support the SELECTED APPLICATION SERVICE.

- (d) **System Failure.** System availability will be measured as a percentage of time the SELECTED APPLICATION SERVICE or SHIFTSWISE PRODUCT(S) are available to the HDO. Except for downtime due to scheduled maintenance, ShiftWise warrants that system availability will be ninety-nine percent (99%) of available time. Available time will be measured between 12:00 AM and 11:59 PM (in HDO's time zone) Monday through Sunday but shall not include any periods of scheduled maintenance. ShiftWise agrees to provide the HDO's designated contact representative advance written notice of any scheduled maintenance.

5. PROPRIETARY RIGHTS

Except as expressly provided for in Section 2 of this Agreement, ShiftWise retains any and all right, title and interest in and to the SHIFTSWISE PRODUCT(S) and APPLICATION SERVICE DOCUMENTATION. This Agreement grants no additional express or implied license, right or interest in any copyright, patent, trade secret, trademark, invention or other intellectual property right of ShiftWise. HDO will not sell, assign, lease, market, transfer, encumber or suffer to exist any lien or security interest on any SHIFTSWISE PRODUCT,. HDO will not remove, or allow to be removed, any ShiftWise copyright, trade secret or other proprietary rights notice from any SHIFTSWISE PRODUCT and APPLICATION SERVICE DOCUMENTATION. HDO will not make any warranties with respect to any SHIFTSWISE PRODUCT(S).

6. CONFIDENTIAL INFORMATION

- (a) **Definition.** For purposes of this Agreement, “Confidential Information” means all confidential and proprietary information, regardless of the format in which it is provided, of either Party or any third party, whether or not marked “confidential” or “proprietary” or specifically identified at the time of the disclosure as confidential or proprietary. Information and data, whether written or oral, that is designated by the disclosing Party as confidential will be presumed to be Confidential Information by the receiving Party. Confidential Information shall include without limitation, this Agreement, the disclosing party’s trade secrets, methodologies, business plans, data, cost and price data, marketing information, software, computer and telecommunications systems, memoranda, papers, letters, e-mail, notes, plans, documentation, records, and all copies thereof, relating to the existing or planned business or technology of the disclosing party, and any software in source code or object code form, processes, specifications, or data developed in connection with this Agreement.
- (b) **Employee Data.** All personnel information, credentials, and personally identifiable information of STAFF is Confidential Information of the MSV and subject to the protections set forth in subsection (d) below.
- (c) **General Nondisclosure Obligations.** Each Party must use commercially reasonable efforts to hold and safeguard the other Party’s Confidential Information in confidence. Confidential Information may only be used for exercising rights and fulfilling obligations under this Agreement or for the provision of other professional services by ShiftWise to HDO. Each party will retain ownership of its Confidential Information. Each Party acknowledges that the disclosing Party may suffer irreparable damage upon the receiving Party’s breach of this Section and that such damages may be difficult to quantify. Therefore, each Party hereby agrees that the other Party will be entitled to file an action of injunctive relief, in addition to any other remedy that it may have.
- (d) **Exceptions to Nondisclosure Obligations.** The obligations of this Section 6 do not apply to information that was in the recipient’s rightful possession without an obligation of confidentiality before receipt from the disclosing party, or is or becomes a matter of public knowledge through no fault of the recipient, or is rightfully received by the recipient from a third party without a duty of confidentiality, or is independently developed by the recipient without reliance on the Confidential Information, or is disclosed under operation of law,. Either Party may disclose the name of the other Party and the existence of this Agreement, but not its terms, without the written consent of the other Party. HDO expressly grants permission to ShiftWise to include the name of the HDO in any press release announcing the signing of this agreement and HDO will provide or approve a suitable quotation by the HDO within the press release.
- (e) **Personal Health Information (“PHI”) Storage.** HDO agrees that it will not provide PHI to ShiftWise nor will HDO enter PHI into any ShiftWise SELECTED APPLICATION SERVICE or PRODUCT(S). Unless otherwise agreed to by the Parties, ShiftWise will not store and will not be asked to store, PHI, on any portable laptop, desktop computer, or other removable electronic media. ShiftWise has executed the HDO’s Business Associate Agreement (“BAA”), a copy of which is attached hereto as Attachment C and is executed and enforceable only to the extent that ShiftWise is determined to be a Business Associate under HIPAA and shall apply only to the extent that ShiftWise receives PHI from HDO.

7. WARRANTY

- (a) **Infringement.** ShiftWise represents and warrants that based upon ShiftWise’s actual knowledge, SHIFWISE PRODUCT(S) do not infringe upon any patent, trademark, copyright, trade secret or other proprietary right of any third party. If the use of the SHIFWISE PRODUCT(S) or related documentation infringes, or in ShiftWise’s determination, is likely to infringe, a third party proprietary right, ShiftWise may, in its sole discretion and at its option and expense (a) obtain for HDO the right to use or continue to use the allegedly infringing SHIFWISE PRODUCTS and/or SHIFWISE SERVICES (b) substitute a functionally equivalent, non-infringing replacement for such item, (c) modify such item to make it non-

infringing and functionally equivalent, or (d) terminate the Agreement. SHIFTWISE will notify HDO of any such claim as soon as practicable after its assertion.

- (b) **Limited Warranty.** FOR AS LONG AS HDO USES THE SELECTED APPLICATION SERVICE TO PLACE STAFF, SHIFTWISE REPRESENTS AND WARRANTS: (i) THAT THE SELECTED APPLICATION SERVICE WILL OPERATE IN ACCORDANCE WITH THE APPLICATION SERVICE DOCUMENTATION PROVIDED TO HDO; AND (ii) SHIFTWISE HAS THE RIGHT AND AUTHORITY TO GRANT HDO THE LICENSE HEREDUNDER. OTHER THAN THIS LIMITED WARRANTY AND THE WARRANTIES SET FORTH IN SECTIONS 7 (a) AND 7 (c), THE SHIFTWISE PRODUCT(S) AND THE ACCOMPANYING MATERIALS ARE PROVIDED "AS IS" WITHOUT EXPRESS OR IMPLIED WARRANTY. SHIFTWISE DOES NOT WARRANT THAT THE SHIFTWISE PRODUCT(S) WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION.
- (c) **Rights, Power, and Authority.** Each Party warrants to the other Party that it has all necessary rights, power, and authority to enter into this Agreement and to grant the rights granted by such Party under this Agreement.

8. LIMITATION OF LIABILITY

IN NO EVENT WILL SHIFTWISE BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF, INABILITY TO USE, THE SHIFTWISE PRODUCT(S) OR THE PLACEMENT OR CONDUCT OF STAFF, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS OR BUSINESS INTERRUPTION, (WHETHER BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY OR CONTRIBUTION), EVEN IF SHIFTWISE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IT IS UNDERSTOOD BY BOTH PARTIES THAT HDO BEARS ALL SPECIFIED LIABILITY RELATING TO THE PLACEMENT AND CONDUCT OF STAFF AS SPECIFICALLY SET FORTH AND/OR LIMITED BY HDO'S PASS THROUGH TERMS.

9. INDEMNIFICATION

SHIFTWISE AGREES TO INDEMNIFY AND HOLD HARMLESS HDO FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, LOSSES, DAMAGES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) TO THE EXTENT CAUSED BY SHIFTWISE'S MATERIAL BREACH OF THIS AGREEMENT SUBJECT TO: (A) THE INDEMNIFIED PARTY PROMPTLY PROVIDING THE INDEMNITOR WRITTEN NOTICE OF THE CLAIM; (B) THE INDEMNITOR'S RIGHT TO CONTROL THE DEFENSE AND SETTLEMENT OF THE CLAIM (PROVIDED THAT THE INDEMNITOR MAY NOT SETTLE OR DEFEND ANY CLAIM WITHOUT THE INDEMNIFIED PARTY'S CONSENT, UNLESS IT UNCONDITIONALLY RELEASES THE INDEMNIFIED PARTY FROM ALL LIABILITY); AND (C) THE INDEMNIFIED PARTY PROVIDING REASONABLE ASSISTANCE TO THE INDEMNITOR. THIS OBLIGATION SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION, FOR WHATEVER REASON, OF THIS AGREEMENT.

10. TERM AND TERMINATION

- (a) **Term.** The initial term of this Agreement will be one (1) year from the Effective Date, and thereafter HDO will have the option for renewal for a successive one (1) year term(s) through July 26, 2021, subject to the terms and conditions then in effect and written mutual agreement of the parties. Either party may terminate this Agreement without cause, expense, or penalty, effective sixty (60) days after written notice is given to the other party.
- (b) **Termination for Breach.** Either Party may terminate this Agreement for a material breach of its terms

provided that, the Party provides the other Party written notice of the breach and the other Party fails to cure the breach within thirty (30) days of its receipt of such notice.

- (c) **Bankruptcy.** Either Party may terminate this Agreement immediately by written notice to the other Party if there occurs any assignment of the other Party's assets for the benefit of creditors, any dissolution of the other Party, any voluntary act of bankruptcy by the other Party, or any involuntary filing under any bankruptcy law against the other Party which is not dismissed within thirty (30) days of filing.
- (d) **Effect.** Upon expiration or termination of this Agreement for any reason:
 - (i) All licenses and other rights granted to HDO under this Agreement will become null and void.
 - (ii) HDO must destroy any backup copies of SHIFTWISE PRODUCT(S) in its possession.
 - (iii) All outstanding obligations or commitments of either Party to pay amounts to the other Party if any, will become immediately due and payable.
 - (iv) Neither Party will have any right to receive any compensation, reimbursement or other amounts from the other Party solely as a result of such termination.
 - (v) SHIFTWISE must provide an electronic copy of all data entered into its products by HDO and verify that all such HDO data has been removed from those systems and software after that copy was made.
- (e) **HHS Audit.** If required by applicable law, ShiftWise agrees that until four (4) years after termination or expiration of this Agreement, ShiftWise will make available to the Secretary of the United States Department of Health and Human Services (the "Secretary") and the United States Comptroller General and their respective duly authorized representatives, this Agreement and all pertinent books, documents and records necessary to certify the nature and extent of the costs of the goods and services provided to HDO and any FACILITIES under this Agreement, as their respective interests may appear. This subsection 10(b) does not obligate ShiftWise to maintain records in any particular format. No attorney-client, accountant-client or other legal or equitable privilege shall be deemed to have been waived by the parties by virtue of this provision.

11. INSURANCE

Without limiting or diminishing the ShiftWise's obligation to indemnify or hold the County/HDO harmless, ShiftWise 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 covering the services to be provided by ShiftWise pursuant to Attachment A and specifically excluding the staffing services to be provided by MSVs pursuant to Attachment B. For the avoidance of doubt, ShiftWise shall not provide insurance on behalf of MSV or their STAFF or employees As respects to this insurance section only, County/HDO 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 the ShiftWise has employees as defined by the State of California, the ShiftWise 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, covering claims which may arise from or out of ShiftWise's performance of its obligations hereunder. Policy shall name County/HDO 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 ShiftWise's obligations under this Agreement, then ShiftWise 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 County/HDO as Additional Insureds.

D. Technology Errors & Omissions Including Cyber Liability:

ShiftWise shall maintain Technology errors and omissions including cyber liability insurance providing coverage for ShiftWise'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 written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and ShiftWise shall purchase at its 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 ShiftWise has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

E. General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be authorized as a surplus lines insurer with 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 (HDO) 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) ShiftWise must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$1,000,000 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 County, and at the election of the County's Risk Manager, ShiftWise's 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) ShiftWise shall cause ShiftWise's insurance carrier(s) to furnish the County of Riverside with a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein. 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.

4) 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 evidencing coverage's set forth herein and the insurance required herein is in full force and effect. ShiftWise shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

5) It is understood and agreed to by the parties hereto that ShiftWise's Commercial General Liability and Vehicle Liability insurance set forth in Sections B. and C. above 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.

6) 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 ShiftWise's has become inadequate.

7) ShiftWise shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement. This Section 11 shall not apply to MSVs contracted to provide staffing services pursuant to the terms of Attachment B.

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

9) ShiftWise 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.

12. GENERAL

- (a) **Governing Law, Complete Agreement; Modifications.** This Agreement is governed by the laws of the State of California, and HDO further consents to jurisdiction by the state and federal courts sitting in the State of California. This Agreement and the accompanying exhibits, attachment(s), and any HDO-MSV AGREEMENT are the complete agreement between ShiftWise and HDO regarding the SHIFWISE PRODUCT(S) and supersede any prior agreements between ShiftWise, MSV and HDO relating to the subject matter hereof. This Agreement will not be modified except by a properly executed written agreement. Any terms and conditions of any purchase order or other instrument issued by HDO in connection with this Agreement which are in addition to, inconsistent with, or different from the terms and conditions of this Agreement will be of no force or effect. If any provision of this Agreement is held to be unenforceable, that provision will be enforced to the extent permitted by law, and the remaining provisions will remain in full force and effect.
- (b) **Attorneys' Fees.** If either ShiftWise or HDO employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing Party will be entitled to recover its reasonable attorneys' fees, expenses and collection costs.
- (c) **Survival.** All provisions, except for Section 2, will survive termination of this Agreement for any reason.
- (d) **Assignment and Binding Effect.** Neither Party may assign this Agreement or the license granted hereunder without the express written consent of the other Party, other than in connection with an acquisition of all or substantially all of such Party's business, stock or assets by merger, sale or otherwise, and any attempt to do so will be void.
- (e) **Notices.** Any notice required to be sent to a Party under this Agreement will be in writing, effective on receipt by that Party, and will be sent by fax, first-class mail or personal delivery to the Address for Notice given for that Party below.
- (f) **Waiver and Severability.** The waiver of one breach or default under this Agreement will not constitute the waiver of any subsequent breach or default. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the Parties, it will be stricken and the remainder of this Agreement will continue in full force and effect.
- (g) **Independent Contractors.** The Parties will at all times be independent contractors and will so represent themselves to all third Parties. Neither Party has granted to the other the right to bind it in any manner whatsoever, and nothing herein will be deemed to constitute either Party the agent or legal representatives of the other nor to constitute the Parties as joint ventures.

- (h) **Export.** HDO may not export or re-export the SHIFTWISE PRODUCT(S) to a national of a country in Prohibited Country Groups without a license or a license exception from the U.S. Department of Commerce nor otherwise violate any provision of U.S. export laws.
- (i) **Government Use.** The SHIFTWISE PRODUCT(S) is a “commercial item” as that term is defined in 48 C.F.R. 2.101 consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202.1 through 227.7202.4, all U.S. Government end users acquire the SHIFTWISE PRODUCT(S) with only those rights set forth therein.
- (j) **Copyright.** SHIFTWISE PRODUCT(S) are protected by the United States Copyright Law and International Treaties. Unauthorized reproduction and distribution is subject to civil and criminal penalties. © Copyright SHIFTWISE 2004 - 2016.
- (k) **Dispute Resolution.**
 - (i) The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between executives who have authority to settle the controversy
 - (ii) If the matter has not been resolved within thirty (30) days of the disputing Party’s notice, either Party may be entitled to pursue other remedies.
 - (iii) All negotiations pursuant to this subsection 12 (m) will be confidential and will be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence (FRE 408 and any corresponding state rule) and the rules of evidence of any state.

The undersigned Parties hereby represent that each has all requisite corporate power and authority to enter into this Agreement and, further, that no consent, waiver, approval, or other authorization from any third Party is required by, or with respect to either in connection with the execution and delivery of this Agreement, or the consummation of any of the transactions and/or business contemplated herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, ShiftWise and HDO have caused this Agreement to be entered into by their duly authorized representatives as of the Effective Date written below.

COUNTY OF RIVERSIDE, a political
Subdivision of the State of California:

ShiftWise:

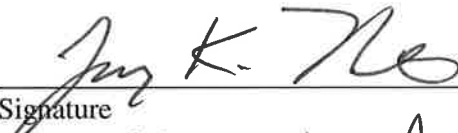
COUNTY OF RIVERSIDE

Name of Entity

Signature

Name (print)

Title



Signature
Jeffrey K. Niles

Name (print)
VP of Sales + Marketing

Title

Address for Notice:

County of Riverside on behalf of
Riverside University Health System-Medical Center
Attn: Contracts Administration
26520 Cactus Avenue
Moreno Valley, CA 92555
Phone: (951) 486-4463

Address for ShiftWise:

ShiftWise, Inc.
Attn: CEO ShiftWise
1800 SW 1st Ave., Suite 510
Portland, OR 97201
Phone: (503) 548-2030
Fax: (503) 548-1299

ATTEST:

Kecia Harper-Ihem
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

Gregory P. Priamos
County Counsel

By: 

Martha Ann Knutson,
Deputy County Counsel

ATTACHMENT A
To Software License and Services Agreement for ShiftWise Products
Fees and Terms

Application Services

VMS – Vendor Management Service	Supplier Funded (No Cost)
SHIFTWISE BRIDGE –	\$500 per month (optional)
SHIFTWISE CONNECT –	<i>(available upon request)</i>
STT – Staff Time Tracker	Included No cost
VERISTAFF	Included – no cost

Professional Services

1. Order Management.

- (a) HDO will place all orders for the temporary positions noted in Attachment B through the SELECTED APPLICATION SERVICE as of a date agreed to in writing by the parties (“Go Live Date”). ShiftWise will utilize the SELECTED APPLICATION SERVICE to release orders to MSVs that are contracted with ShiftWise pursuant to the terms set forth in Attachment B.
- (b) All new starts and extensions/renewals after the Go Live Date shall be managed by ShiftWise through the SELECTED APPLICATION SERVICE. ShiftWise will not be responsible for managing any portion of temporary healthcare personnel already on assignment as of the Go Live Date. All temporary healthcare professionals on assignment with HDO as of the Go Live Date will continue at the original contracted bill rate agreed to by HDO and the supplier who provided the temporary personnel for the duration of the original assignment length. Should HDO wish to extend or renew the temporary personnel beyond the original assignment length, such assignments will continue pursuant to the terms set forth in Attachment B and subject to the applicable supplier becoming a MSV.
- (c) HDO shall make commercially reasonable efforts to obtain written acknowledgement from its existing vendor neutral MSP provider, “Rightsourcing” (“Supplier”) that it: (1) will remove any contract limitations and not otherwise limit ShiftWise or any third party staffing agencies from providing services to HDO under this Agreement; and (2) will not penalize any third party agencies from participating in any other programs for other clients serviced by such Supplier. In the event Client’s existing Supplier refuses to provide such acknowledgement, and ShiftWise or its potential MSVs are prevented or hindered in their ability to participate in the ShiftWise program for HDO, the parties agree to meet and confer to develop an action plan and modify the terms of the Agreement as necessary to ensure a successful program.
- (d) HDO will work cooperatively with ShiftWise on a vendor communication plan to ensure successful participation by MSVs in this program.

2. Compliance Documentation. MSVs will be required to submit all required accurate documentation as set forth in Attachment B in the SELECTED APPLICATION SERVICE prior to the start of assignment by such STAFF at HDO. HDO shall be solely responsible for verifying the completeness of all information provided by the MSV on the SELECTED APPLICATION SERVICE prior to the start of the STAFF’s assignment and for the duration of such assignment. HDO may view such documentation within the SELECTED APPLICATION.

3. On-Site Account Manager. ShiftWise will provide to HDO an onsite account manager to manage the PROFESSIONAL SERVICES (“Onsite Manager”) at no cost to HDO for the first 6 months after the Go Live Date. --- ---HDO shall provide appropriate space and furniture for Onsite Manager and access to fax and printer machines, including data lines and/or wifi (if available), at no cost to ShiftWise.

Training

Web Conference No Cost

Customer Support

Gold: 24/7/365 live toll free phone support No cost

Payment Terms

All payments due to ShiftWise are due within twenty (20) days of weekly invoice date and shall be paid by check or EFT. Credit card payments shall not be permitted without ShiftWise written consent, which may be withheld in its sole discretion.

HDO reserves the right to correct errors within fifteen (15) days from the date of receiving ShiftWise’s invoices, after prior notification and discussion with ShiftWise, and pay to ShiftWise only corrected amounts.

**ATTACHMENT B
CLINICAL STAFFING SERVICE TERMS**

Any and all candidates made available to HDO through a SHIFTWISSE product will be offered through an MSV that has contracted with SHIFTWISSE according to the terms set out in this Attachment.

1. Scope of Staffing Services.

- (a) MSV agrees to use commercially reasonable efforts to supply HDO with qualified STAFF in the positions set forth in the rate grid below and as may be requested by ShiftWise from time to time. STAFF shall be provided in accordance with HDO's requirements as set forth in this Attachment B.
- (b) All new start assignments and extensions/renewals for STAFF commencing on or after the applicable Go Live Date shall be managed by ShiftWise pursuant to this Agreement.

2. Credential Requirements.

- (a) Prior to the start of any MSV Travel STAFF's or Per Diem STAFF's assignment at HDO, MSV will ensure that all such STAFF's files are in compliance with State of California employment laws. MSVs will maintain all documents required under this Section in the personnel files for each STAFF placed at the HDO Facility. MSV further agrees to have MSV Travel STAFF and Per Diem STAFF files available for periodic on-site or off-site audits by ShiftWise.
- (b) MSVs will be required to upload all documents, certifications and clearances set forth in the Requirements under subsection (d) below prior to the start of Travel STAFF's assignment. For Per Diem STAFF MSV's will be required to upload all documents, certifications and clearances set forth in the Requirements under subsection (d) below prior to Per Diem STAFF's first confirmed shift or as mutually agreed to in writing by the parties. MSV agrees to maintain the Requirements to ensure that they are up-to-date throughout the term of this Agreement. Upon STAFF's arrival to HDO's Facility, HDO will verify the identity of each STAFF by a visual check of STAFF's photo identification and professional license or certification.
- (c) HDO shall interview candidates within 3 business days (excluding Per Diem STAFF) of file submission and shall determine whether STAFF is confirmed for assignment within one (1) business day of interview.
- (d) "Clinical" STAFF Requirements:
 - a. Primary Source On-Line verification of licensure
 - b. Current CPR (BLS) from the American Heart Association, or other advanced certification dependent upon the clinical area that the staff is requested to work in --- or as required by the job description for staffs type and specialty."
 - c. Alcohol and Drug Screen Results
 - d. Background Result shall include but, not be limited to, criminal history report, past employment, licenses, education and skills; and background reference checks, criminal record and or significant job-related problems in prior employment as reported under a legally compliant background check. Requires a nationwide criminal records search and nationwide sex-offender registry search. Any misdemeanor or felony record in their criminal record search will be reviewed with the HDO prior to start date. Candidates shall not be assigned with an arrest pending adjudication that is in conflict to the duties to be assigned at the HDO. If MSV becomes aware of any arrest of a STAFF placed for assignment with HDO, MSV shall notify HDO immediately.
 - e. Annual Health Screen report shall include, but not be limited to, Tuberculosis Testing, Chest X-Ray, a record of vaccination for Measles, Mumps, Rubella (MMR) series or record of positive MMR titer, proof of immunization of Diphtheria, Tetanus, Trivalent Polio, Hepatitis B, seasonal Influenza and general physical examination clearance.

- g. Profile/Resume
- h. Professional References
- i. Skills Checklist
- j. Annual TJC In-Service
- k. Online patient care orientation
- l. Pre-Employment Testing
- m. Physical Exam
- n. MMR & Varicella
- o. Flu Vaccination
- p. Hepatitis B
- q. Photo Identification
- r. Fingernail Hygiene Policy
- s. Job Description to be provided by HDO
- t. OIG/EPLS/NSO cleared; "proof of clearance" shall be provided.

(e) "Non-Clinical" Requirements:

Prior to the start of any MSV "Non-Clinical" STAFF assignment at HDO, MSV will ensure that all such STAFF have completed the following:

- a. On-Site Verification Sign-Off Form (HDO supplied form)
- b. Target Start Date (optional)
- c. Annual Negative TST – (current as within 12 months of start date at HDO)
- d. Background Check - Background Result shall include but, not be limited to, criminal history report, past employment, licenses, education and skills; and background reference checks, criminal record and or significant job-related problems in prior employment as reported under a legally compliant background check. Requires a nationwide criminal records search and nationwide sex-offender registry search. Any misdemeanor or felony record in their criminal record search will be reviewed with the HDO prior to start date. Candidates shall not be assigned with an arrest pending adjudication that is in conflict to the duties to be assigned at the HDO. If MSV becomes aware of any arrest of a STAFF placed for assignment with HDO, MSV shall notify HDO immediately.
- e. Drug Screen (10 panel with Alcohol)
- f. OIG/EPLS/NSO Cleared
- g. Positive TST = TB Questionnaire (to be updated Annually)
- h. Positive TST Documentation = Negative X-Ray Result Da
- i. CA License
- j. Primary Source On-Line Verification
- k. Compliance Cleared (optional, HDO supplied form)
- l. On-Site Verification Sign-Off Form (HDO supplied form)
- m. Target Start Date (optional, HDO supplied form)

After the start of any MSV "Non-Clinical" STAFF assignment at HDO, and throughout STAFF's engagement with HDO MSV will ensure that all such STAFF have completed the following:

- a. POST –RUHS Photo Authorization Form (HDO supplied form)
- b. POST – Receipt and Acknowledgment Form (HDO supplied form)
- c. POST – Temporary Staff Orientation Test (HDO supplied form)
- d. POST – Unified Agreement Signature Page (HDO supplied form)
- e. POST – Unit Competency 12 weeks (HDO supplied form)
- f. POST – Unit Competency within Annual (HDO supplied form)
- g. POST – Unit Competency within 2 weeks (HDO supplied form)

- g. POST – Unit Competency within 2 weeks (HDO supplied form)
- h. POST – Facility Job Description (HDO supplied form)
- i. POST – Hand Hygiene Module (HDO supplied form)
- j. POST – Initial Evaluation – Completed and returned in first week (HDO supplied form)
- k. POST – Monthly Evaluation (HDO supplied form)
- l. POST – Patient Safety Fair Module (HDO supplied form)
- m. POST – Patient Safety for Everyone module (HDO supplied form)
- n. POST- RUHS Fingernail Policy (HDO supplied form)
- o. POST – Abuse Training/Reporting Form (HDO supplied form)
- p. POST – Age Specific Module (HDO supplied form)
- q. POST – Computer Orientation Competency Form (HDO supplied form)

3. Rate Schedule.

(a) The rates set forth below shall go into effect for all new starts and extensions to existing assignments commencing on or after the Go Live Date. These rates shall apply until such time as HDO publishes and communicates to ShiftWise and MSV in writing any rate changes and the effective date for such rate changes (a "Rate Change") for any classification of STAFF. Any Rate Change would only apply to new start assignments or new extensions to existing assignments commencing after the effective date of the Rate Change. The hourly regular rates include recruitment, housing and compensation, as applicable for each STAFF placed with HDO, unless otherwise noted in an order confirmation and as approved by HDO's Chief Nursing Officer (CNO) or Chief Operations Officer (COO). The pricing list is mutually agreed upon by both parties and shall not increase in excess of ten (10) percent the rate per hour, per fiscal year. HDO agrees to pay for all hours worked by STAFF, including any hours spent in orientation.

(b) Travel Staff Rates.

The rate schedule set forth below shall apply to extended assignments, typically thirteen (13) weeks in duration (herein referred to as "Travel STAFF").

(c) Per Diem STAFF Rates. The following rate schedule set forth below shall apply to day-to-day STAFF assignments greater than one (1) day and less than two (2) weeks (herein referred to as "Per Diem STAFF");

CLASSIFICATION	SHIFTWISE	
	TRAVEL RATE	PER DIEM RATE
Admissions Representative	\$25.00	\$25.00
Angio Technician	\$48.00	\$45.00
C.N.A.	\$28.00	\$26.00
C.A.T. Technologist	\$75.00	\$74.00
Cardiac Cath R.N.	\$89.00	\$93.60
Cardiac Cath Technologist	\$79.00	\$84.50
Cardiac Echsonographer	\$82.00	\$76.00
Clinical Lab Assistant	\$60.00	
Clinical Lab Scientist	\$75.00	

Clinical Lab Scientist	\$75.00	
Coder, certified		\$60.00
Cytotechnologist	\$65.00	
Dietician, registered	\$99.00	\$47.00
EEG Technician	\$70.00	\$56.00
Electrocardiograph (EKG) Technician	\$70.00	\$66.00
Histology Technician	\$65.00	\$54.00
Interventional Radiology Technologist (aka vascular interventional technologist or angio technologist)	\$78.00	\$60.00
L.V.N.	\$50.00	\$46.00
Language Pathologist	\$80.00	\$72.00
LVN Case Manager		\$45.00
Mammography Radiology Technologist	\$75.00	\$75.00
Medical Therapy Aide	\$64.00	\$62.00
Miscellaneous Licensed I	\$30.00-\$50.00	\$30.00-\$50.00
Miscellaneous Licensed II	\$51.00-\$70.00	\$51.00-\$70.00
Miscellaneous Licensed III	\$71.00-\$90.00	\$71.00-\$90.00
Miscellaneous Licensed IV	\$91.00-\$120.00	\$91.00-\$120.00
MRI Technologist	\$71.50	\$71.50
Neuro interventional R.N.	\$89.00	\$93.60
Neuro interventional Technologist	\$85.00	
Nuclear Medicine Technologist	\$71.00	\$68.50
Occupational Therapist	\$75.00	\$70.00
Occupational Therapist Asst	\$62.00	\$60.00
Pathology Aide	\$16.00	
PET Scan Technologist	\$75.00	\$74.00
Pharmacist	\$110.00	\$110.00
Pharmacy Assistant	\$28.00	\$32.00
Pharmacy Technician	\$28.00	\$32.00
Phlebotomist	\$34.30	\$26.00
Physical Therapist	\$71.50	\$70.00
Physical Therapist Assistant	\$61.50	\$60.00

Psychologist		\$100.00
R.N. Intermediate Care	\$68.00	\$63.00
R.N. C.D.I.	\$98.00	\$89.00
R.N. Case Manager	\$69.00	\$65.00
R.N. ED	\$72.00	\$67.00
R.N. ICU	\$72.00	\$67.00
R.N. L&D	\$83.00	\$73.20
R.N. Med/Surg	\$68.00	\$63.00
R.N. NICU	\$80.00	\$75.00
R.N. Nursery	\$76.00	\$63.00
R.N. Neuro	\$68.00	\$65.00
R.N. OB/GYN	\$69.00	\$63.60
R.N. OR	\$87.50	\$73.60
R.N. PACU	\$79.50	\$73.20
R.N. PCU	\$80.50	\$63.30
R.N. Peds	\$75.50	\$68.00
R.N. PICU	\$80.00	\$75.00
R.N. Post Partum	\$73.00	\$65.00
R.N. Psych	\$70.80	\$65.20
R.N. Supervisor	\$76.00	\$75.00
R.N. Tele Travel Diagnostic Imaging	\$73.50	\$64.70
Radiology Technologist (Diagnostic)	\$68.00	\$65.00
Recreation Therapist	\$35.50	
Respiratory Care Practitioner		\$55.00
Respiratory Therapist	\$66.00	\$55.00
Speech Therapist	\$80.00	\$72.00
Sterile Processing Technician	\$52.00	\$36.00
Surgical (scrub) Technologist	\$48.00	\$45.00
Tomography Radiology Technologist	\$74.00	
Ultrasound Radiology Technologist	\$93.00	\$60.00

Under the critical EPIC project implementation period:

HDO will pay Per Diem STAFF R.N.s who have documented experience within the last 2 years utilizing the EPIC documentation system, an additional \$120 per 12-hour shift worked during HDO's defined dates for EPIC implementation for a maximum of a two-week period. Per Diem Staff R.N. must demonstrate their EPIC experience and ability during their work shift. The two-week period is anticipated to be October 2 through October 16, 2016. HDO reserves the right to adjust the actual dates based on any project start delays. The Per Diem STAFF R.N. must work in the Emergency Department or any HDO inpatient department to qualify, and must complete the full 12 hour shift.

During the 4 weeks prior to EPIC implementation date, HDO will pay \$70 bonus in addition to the contracted rate for Per Diem STAFF R.N. who complete a full 12-hour shift within the Intensive Care Unit or Emergency Department only. EPIC experience is not required in this pre-implementation phase. HDO reserves the right to define the four-week period based on any project delays to the anticipated implementation date of October 2, 2016.

The prior clause does not pertain to Travel STAFF R.N.s

4. **Charge Rate.** In the event STAFF is required to perform lead or supervisory duties during his or her assignment, a charge rate of \$2.00 per hour will be billed in addition to the applicable regular rate for all such hours worked.
5. **Overtime.** HDO agrees to pay one and one-half times (1.5) the regular rate set forth above for all hours worked by STAFF more than forty (40) hours in one week. If any applicable law requires MSV to pay STAFF daily overtime (an overtime multiple such as 1.5 times or 2 times the applicable regular rate per hour), HDO shall pay the same multiple on the regular rate for such hours. MSV may comply with HDO's policies regarding overtime when such compliance accords with MSV's obligations under state and federal law, and are communicated to MSV at least ninety (90) days prior to the effective date of such changes.
6. **Holidays.** HDO shall pay one and one-half times (1.5) the regular rate set forth above for time worked by STAFF on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve Day and Christmas Day. A holiday begins at 12:00 a.m. on holiday and ends at 11:59 p.m. on the day of the holiday. HDO shall pay for hours worked on the day of the holiday.
7. **On Call/Call Back.** HDO shall pay uncontrolled on-call hours, defined as hours where STAFF is not required to stay on the HDO's premises, at the rate of \$5.00 per hour. HDO will pay controlled on-call hours, defined as hours where STAFF is required to stay on the premises, at the regular rate set forth herein. STAFF must arrive at HDO within 45 minutes of receiving call. If STAFF is called back to work for HDO while serving in an "on-call" capacity, the "on-call" charge will cease and HDO shall instead pay one and one-half (1.5) times the regular rate set forth above for the duration of the call-back period. The minimum callback period is one and one-half (1.5) hours.
8. **Mileage.** For home health assignments, HDO shall pay for all STAFF local mileage on daily visits in accordance with the current IRS guidelines and rates.
9. **Minimum Work Week.** For Travel STAFF confirmed for eight (8), ten (10) or any combination of eight (8), ten (10) and twelve (12) hour shifts, HDO shall provide such STAFF a guaranteed minimum of forty (40) scheduled hours per each weekly payroll period. For Travel STAFF confirmed for twelve (12) hour shifts, HDO shall provide such STAFF a guaranteed minimum of thirty-six (36) scheduled hours per each weekly payroll period. The guaranteed minimum workweek applies to all workweeks, including weeks during which orientation is provided, weeks with holidays and weeks during which there may be unit closures for all or any portion of such week. HDO's workweek begins on Thursday and ends on Wednesday. Should HDO not

provide the minimum guaranteed hours, HDO will be invoiced and shall pay the regular rate for all hours below the minimum for such STAFF, except that HDO shall have the option to cancel one (1) shift per two week period without penalty as needed for low census or changes in staffing needs provided HDO makes best efforts to provide an alternate comparable shift during the same pay period to such STAFF. The calculation of the guaranteed minimum workweek includes regular hours, call back hours and overtime hours worked, but does not include any "on-call" time. A guaranteed minimum workweek does not apply to Per Diem STAFF.

10. Additional Obligations.

- (a) HDO shall be responsible for compliance with all relevant safety and health laws and regulations during the period of a STAFF's assignment under HDO's supervision, including but not limited to applicable Joint Commission regulations relating to orientation and evaluation and HIPAA regulations. HDO will provide each STAFF with all necessary site-specific training, orientation, equipment (including Respiratory Fit Testing) and evaluations required by federal, state or local occupational safety laws or rules, including Joint Commission and HIPAA, for members of HDO's workforce. HDO will only utilize STAFF for the need requested and will only assign STAFF to work in the clinical specialty areas in which they are professionally qualified and oriented to work. HDO agrees to float a STAFF only in accordance with HDO's floating policies for all staff, and the clinical experience of STAFF. HDO confirms that HDO's policies on floating comply with current (and will comply with any future) Joint Commission standards, including the provision of a 12-hour orientation to the new unit, unless unit is of the same specialty. ICU and Intermediate Care units are considered the same specialty by HDO. HDO agrees that it will not request, require or permit STAFF to act as preceptors.
- (b) STAFF shall perform work at HDO's location(s) and under HDO's supervision and direction. HDO has full medical responsibility of its patients in general and shall provide and be responsible for oversight of STAFF in connection with the temporary professional services provided by STAFF for HDO. HDO will control the details of the work and will be responsible for the work product of STAFF. ShiftWise or MSV will not provide office space, equipment or other materials required for the performance of work by STAFF assigned to HDO hereunder.
- (c) HDO shall not seek to terminate a STAFF's placement, nor shall it refuse STAFF's services, for a discriminatory reason, including race, sex, national origin, religion, age, disability, marital status, veteran status, or any other protected classification. HDO shall not use any information provided to it by ShiftWise regarding STAFF in an unlawful manner or for any unlawful purpose. However, since HDO has responsibility for the rights and safety of its patients it may terminate any individual's assignment if that individual acts in a way that compromises either patient rights or safety. HDO will be required to pay for any hours worked by STAFF up until termination from assignment for cause.
- (d) In the event of any occupational safety hazards, sentinel event or actual or threatened claim arising out of or relating to the acts or omissions of STAFF, HDO shall provide ShiftWise written notice of such claim immediately and, in no event, 30 days after HDO knew, or reasonably should have known, of such claim. HDO shall make available to ShiftWise or MSV copies of all non-privileged documentation about problems or incidents in which STAFF are involved.
- (e) HDO agrees to complete an evaluation regarding the performance of each STAFF upon completion of STAFF's assignment with a skill assessment within the first 2 weeks, and a performance evaluation quarterly.
- (f) MSV will manage all employment aspects of their respective STAFF assigned to HDO, to include hiring, employment-based counseling, terminations, salary review, annual performance evaluations, and placement. MSV shall be responsible for the payment of wages to their employed STAFF for work performed on assignments hereunder, including compliance with applicable local, state and federal payroll, income, unemployment and social security tax requirements. MSV shall verify the identity and right to

work of each STAFF under the United States immigration laws. MSV will hold HDO Harmless from any claim by a members of MSV's staff for wages, benefits or other employment related obligations.

- (g) The parties acknowledge that they have a reimbursement arrangement with respect to housing and meals. The reimbursement amount is included in the fee HDO pays for staffing services. MSV will provide substantiation of the reimbursement amount. Amounts reimbursed by HDO may be subject to tax deduction limitations.
- (h) HDO may hire or retain the services of (on any basis, including but not limited to a full-time, part-time, contract or temporary employee) STAFF placed on assignment only in accordance with this Agreement. HDO shall not directly or indirectly cause or encourage any STAFFs to transfer to or work for another personnel or employee staffing company other than the MSV who originally confirmed STAFF.

11. Insurance Requirements for MSV.

- (a) MSV shall procure and maintain or cause to be maintained at its own expense the following insurance during the term of this Agreement:
 - (i) For any MSV STAFF that are employees as defined by the State of California MSV shall maintain Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. This policy shall include Employer's liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 each accident, each employee ;
 - (ii) Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, covering claims which may arise from or out of MSV's performance of its obligations hereunder. This policy shall name HDO as Additional Insured for liability arising solely from the negligent acts or omissions of MSV and its employees (STAFF) to the extent caused by the acts or omissions of MSV arising from or out of MSV's performance of its obligations under this Agreement. This Policy's limits of liability shall not be less than \$1,000,000 per occurrence combined single limit. If the 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;
 - (iii) Vehicle Liability. If vehicles or mobile equipment is used in the performance of STAFF's performance of services pursuant to this Agreement, then MSV 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. This policy shall name HDO as an Additional Insured, for liability arising solely from the negligent acts or omissions of MSV and MSV STAFF.
 - (iv) Professional Liability. In the event that MSV will be placing clinical STAFF to HDO under this Agreement, then MSV shall maintain or cause its STAFF to procure and maintain Professional Liability Insurance providing coverage clinical STAFF'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 this policy is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of the STAFF's assignment and MSV shall purchase at its sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from the new insurer with a retroactive date back to the date of, or prior to, the inception of the assignment; or 3) demonstrate through certificates of insurance that continuous coverage has been maintained with the same or original insurer.

- (b) MSV shall provide ShiftWise with certificates of insurance evidencing the liability insurance required above covering MSV and its employees and STAFF prior to the commencement of any staffing services. Any insurance required under this Section shall be obtained from a company that is duly licensed to do business and that either: (a) has a Best's rating of at least "A: VII (A:8)" unless such requirements are waived in writing by HDO's Risk Manager. If the HDO's Risk Manager waives a requirement for a particular insurer such waive is only valid for that specific insurer and only for one policy term.. MSV shall provide for written notice to ShiftWise and HDO at least thirty (30) days prior to the cancellation or modification of any above-mentioned insurance. ShiftWise shall have no liability or responsibility to provide insurance on behalf of MSV or their STAFF or employees.
- (c) General Insurance Provisions – All lines:
- (i) Any insurance carrier providing insurance coverage hereunder shall be authorized within 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 HDO's Risk Manager. If the HDO's Risk Manager waives a requirement for a particular insurer such waive is only valid for that specific insurer and only for one policy term.
 - (ii) MSV must declare its insurance self-insurance retention for each coverage required herein. If any such self-insured retention exceeds \$1,000,000 per occurrence each such retention shall have the prior written consent of HDO's Risk Manager before commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the HDO, and at the election of the HDO's Risk Manager, MSV's carriers shall procure a bond, which guarantees payment of losses and related investigations, claims administration, and defense of costs and expenses.
 - (iii) 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 any equipment to be used in the performance of the scope of the work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; HDO and ShiftWise reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the HDO Risk Manager's and ShiftWise's reasonable judgment, the amount or type of insurance carried by MSV (or where applicable MSV's STAFF) has become inadequate.

12. Assignment Cancellations.

- (a) Travel STAFF Cancellations. HDO may immediately terminate an assignment of STAFF upon providing notice in writing that STAFF is incapable of performing the duties of the position, commits acts of professional negligence, is absent from the position without HDO's permission during scheduled times, is insubordinate, engages in substance abuse, violates HDO's express rules or regulations, or engages in other unprofessional conduct or breach or neglect of duty. HDO shall make available to ShiftWise copies of all non-privileged documentation about problems or incidents in which STAFFs are involved. In the event HDO wishes to terminate a STAFF's assignment for reasons other than those listed above, HDO agrees to give ShiftWise thirty (30) days written notice of cancellation. In the event HDO fails to provide thirty (30) days prior written notice of cancellation, HDO agrees to pay a cancellation fee of two (2) weeks of guaranteed minimum hours at the Travel STAFF's confirmed hourly billing rate.
- (b) Per Diem STAFF Cancellations and Late Shift Starts.
- (i) For Per Diem STAFF, HDO shall provide two (2) hours' notice of cancellation before a scheduled shift or it will be considered a late cancellation and HDO shall pay for two (2) hours at the regular rate for the Per Diem STAFF. If the scheduled Per Diem STAFF has reported to HDO and is later not needed

and sent home HDO shall pay the greater of (i) the number of hours worked by Per Diem STAFF at the regular rate or (ii) four (4) hours at the regular rate for Per Diem STAFF, it being understood that HDO reserves the right to work the Per Diem STAFF for such four (4) hours if it chooses.

- (ii) If a Per Diem STAFF is late for a scheduled shift, HDO will only pay for actual hours worked by the Per Diem STAFF. If ShiftWise does not give HDO two (2) hours' notice of a cancellation it will be considered a late cancellation on the part of MSV and two (2) hours credit will be due HDO, unless MSV is able to locate a replacement Per Diem STAFF acceptable to HDO to work the assignment. If ShiftWise is contacted by HDO to schedule a shift less than two (2) hours in advance of the start of that shift, HDO will pay for the entire shift requested, as long as the Per Diem STAFF arrives within one (1) hour of the shift start time. If Per Diem STAFF does not arrive within one (1) hour of the shift start time, HDO will pay for all hours worked by Per Diem STAFF from arrival at HDO's facility to the end of his/her shift. If a Per Diem STAFF does not show up for a scheduled shift, two (2) hours credit will be due to HDO, unless MSV is able to locate a replacement Per Diem STAFF acceptable to HDO to work the assignment.

13. Hiring of STAFFs by HDO. For purposes of this entire Section, hours of STAFF include all hours worked at HDO pursuant to this Agreement.

- (a) HDO will have sole responsibility for making hiring decisions with respect to STAFFs that HDO decides to hire ("Conversion Candidate"). HDO acknowledges and agrees that, effective on the date they are hired by HDO, Conversion Candidates are employees of HDO and MSV shall have no liability for any acts or omissions of such Conversion Candidates.
- (b) **Right to Hire Travel STAFF.** Following confirmation of assignment, HDO may subsequently hire a Travel STAFF only after the completion of at least 468 consecutive hours or 13 consecutive weeks on assignment and the current or confirmed assignment. Should HDO hire any STAFF and STAFF has worked less than 468 hours or 13 weeks, HDO shall pay a reassignment fee (no fee applies in Minnesota or where prohibited by law) calculated as follows: 25% of STAFF's annualized base salary reduced by the percentage of hours worked of 468 hours. Example: assuming 520 hours worked and annualized base salary of \$50,000 this calculates to: $(\$50,000 \times .25) = \$12,500$, $520/1,560 = 33\%$, $\$12,500 - 33\% = \$8,375$. HDO shall provide ShiftWise thirty (30) days' prior written notice of its intent to directly hire any STAFF, including the date of anticipated hire.
- (c) **Right to Hire Per Diem STAFF.** HDO may subsequently hire a Per Diem STAFF only after the completion of at least 520 hours on assignment. Should HDO directly hire any Per Diem STAFF and Per Diem STAFF has worked less than the 520 hours, HDO shall pay a reassignment fee (no fee applies in Minnesota or where prohibited by law) calculated as follows: 25% of STAFF's annualized base salary reduced by the percentage of hours worked of the 520 hours. Example: assuming 140 hours worked and annualized base salary of \$50,000. HDO shall provide ShiftWise thirty (30) days' prior written notice of its intent to directly hire any STAFFs, including the date of anticipated hire.
- (d) The obligations of this Right to Hire provision survive the expiration or termination of this Agreement for any reason for a period of 6 months.

14. Medicare Access. In compliance with Section 420.302(b) of the Medicare regulations, until the expiration of four years after the furnishing of the Services provided under this Agreement, MSV will make available to the Secretary, U.S. Department of Health and Human Services, the U.S. Comptroller General, and their representatives, this Agreement and all books, documents and records necessary to certify the nature and extent of the costs of the Services provided hereunder.

15. Equal Employment Opportunity Policy. ShiftWise, HDO and MSV each acknowledge that they are equal opportunity employers and agree that they do not and will not discriminate against, harass, or retaliate against any employee or job applicant on the basis of race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity, or any other status or condition protected by applicable federal, state or local laws. HDO will promptly investigate allegations of discrimination, harassment and retaliation and will report to MSV and ShiftWise any suspected discrimination, harassment and/or retaliation either by or against STAFF immediately.

16. Confidential Information.

- (a) Each party shall keep confidential all Confidential Information of the other party (“owning party”), and shall not use or disclose such Confidential Information either during or at any time after the term of this Agreement, without owning party’s express written consent, unless required to do so by law, court order or subpoena in which case a party shall not disclose such information until it has provided advance notice to owning party such that owning party may timely act to protect such disclosure. For purposes of this provision, “Confidential Information” means non-public information about either party or its employees that is disclosed or becomes known to the other party as a consequence of or through its activities under this Agreement, including, but not limited to, matters of a business nature, such as STAFF and prospective STAFF names and information, bill rates and the terms of this Agreement, compensation and benefits packages and structure, hiring decision-making process, hiring needs and/or requests for placement, costs, profits, margins, markets, sales, business processes, information systems, quarterly and annual review documents, reports generated, and any other information of a similar nature. HDO agrees to use commercially reasonable security measures to protect ShiftWise, MSV and their respective subsidiaries’ employee and/or STAFF personal information from unauthorized access, destruction, use, modification, or disclosures in accordance with all federal and state privacy laws.
- (b) Upon termination or expiration of this Agreement, both parties will return, within two (2) weeks, all confidential information of the other, including copies thereof, without notice or request.
- (c) This Section 16. will survive any termination or expiration of this Agreement.

ATTACHMENT C
HIPAA Business Associate Agreement
Addendum to Contract
Between the County of Riverside and ShiftWise, Inc.

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Underlying Agreement between the County of Riverside ("County") and ShiftWise, Inc. and shall be effective as of the date the Underlying Agreement 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 County 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:
- 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 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.**

1. 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 third party liability whatsoever based upon any services of Contractor, its officers, employees, or representatives arising out of or in any way relating to a breach of 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 negligent performance of Contractor, its officers, agents, employees, 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 third party claim or action based upon such alleged negligent acts or omissions arising from a breach of this Addendum.
 - A. 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.
 - B. 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 as set forth in Section 9 A. above.

C. 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.

D. 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 specific only to the subject issue included within 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	County HIPAA Privacy
Officer Phone Number:	(951) 486-6471	
County HIPAA Privacy Fax Number:	(951) 486-4475	