

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

333



**FROM:** Human Resources Department

**SUBMITTAL DATE:**  
April 7, 2011

**SUBJECT:** 2011 Voluntary Employee Beneficiary Association (VEBA)/Post Employment Program (PEP) Health Savings Plan (HSP) - Renewal of Professional Services Agreement with VEBA Service Group, LLC.

**RECOMMENDED MOTION:** That the Board of Supervisors 1) ratify and approve the VEBA Service Group, LLC, Professional Services renewal Agreement, effective January 1, 2011 through December 31, 2011 (Attachment A); 2) ratify and approve the schedule of fees (Attachment B); 3) authorize the Chairperson to sign four (4) copies of the agreement; and 4) retain one (1) copy of the signed agreement and return three (3) copies of the signed agreements to Human Resources for distribution.

**BACKGROUND:** The County of Riverside Voluntary Employee Beneficiary Association (VEBA) Health Savings Plan (HSP) was approved by the Board on November 26, 2002 and ratified on June 10, 2003. The VEBA HSP plan is designed to provide tax-free reimbursement for IRS qualified medical expenses

FORM APPROVED COUNTY COUNSEL  
BY: TAMMY V. LIEU DATE: 4/13/11  
Departmental Concurrence

*Barbara A. Olivier*  
Barbara A. Olivier  
Asst. County Executive Officer/Human Resources Dir.

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

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

**C.E.O. RECOMMENDATION:** **APPROVE**

BY: *Elizabeth J. Olson*  
Elizabeth J. Olson

**County Executive Office Signature**

- Consent
- Policy
- Consent
- Policy

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Buster, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

**Ayes:** Buster, Tavaglione, Stone, Benoit and Ashley  
**Nays:** None  
**Absent:** None  
**Date:** April 26, 2011  
 xc: 301, 760 HRM 5:08

Kecia Harper-Ihem  
Clerk of the Board  
By: *Kecia Harper-Ihem*  
Deputy

**Prev. Agn. Ref.:** 1/27/2009, 3.45; 6/10/2003, 3.30 | **District:** All | **Agenda Number:**

**3.35**

**BACKGROUND (continued):**

incurred by the participant and/or the participant's eligible dependents. Eligible expenses are detailed in the IRS Publication 502 and include such things as the purchase of post employment health coverage-medical, dental, vision, etc; and co-payment and deductibles.

VEBA Service Group, LLC (VEBA group) provides consulting services for the VEBA HSP and advises the County on regulatory requirements and plan operations. There are approximately 4,529 participants in the Plan with account balances totaling \$24.5 million.

The Human Resources Department recommends the renewal of the professional service agreement (Attachment A) with the VEBA group from January 1, 2011 through December 31, 2011, with an option to terminate the agreement within sixty (60) days. The Human Resources Department intends to conduct a Request for Proposal (RFP) within the term of the agreement.

The schedule of fees for the VEBA group for the 2011 calendar year is outlined in Attachment B, which includes a new fee of \$375 per month for legal services. This fee covers additional legal review and amendments to address legislative requirements of Health Care Reform and Health Information Technology for Economic and Clinical Health (HITECH) Act.

There is no cost to the County for this recommendation; monthly fees are paid by Plan participants; and the current fees are sufficient to cover legal fees.

**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**RIVERSIDE COUNTY**

**AND**

**VEBA Service Group, LLC**

APR 26 2011 3.35

**PROFESSIONAL SERVICES AGREEMENT  
RIVERSIDE COUNTY**

This Professional Services Agreement is made and entered into by and between Riverside County, ("COUNTY") a political subdivision of the State of California, and the VEBA Service Group, LLC, a Washington limited liability company ("CONTRACTOR") with references to the following facts:

**RECITALS**

WHEREAS, COUNTY is in need of the professional services offered by CONTRACTOR, and this Agreement shall be presented to the Board of Supervisors of COUNTY for adoption and authorization; and,

WHEREAS, CONTRACTOR has offered evidence of having the relevant specialized training and/or experience and/or knowledge and is interested in providing the scope of work as set forth herein, including any attachments hereto; and,

WHEREAS, this Agreement is effective only upon the authorization of the Board of Supervisors of COUNTY;

NOW THEREFORE in consideration of the mutual promises, covenants and conditions hereinafter contained, including any attachments hereto, which are incorporated herein by reference, the Parties hereto mutually agree as follows:

1. **SERVICES**

A. **DESCRIPTION OF SERVICES.** CONTRACTOR shall provide employee benefit consulting services to COUNTY for a defined contribution health reimbursement arrangement (hereinafter referred to as the "Plan") offered through a voluntary employees' beneficiary association 501(c)(9) trust (hereinafter referred to as the "Trust"), with such services as set forth in Attachment A attached hereto, and incorporated herein by reference.

B. **SCOPE OF SERVICES.** CONTRACTOR shall furnish labor necessary to perform in a complete, skillful and professional manner all those services described in Attachment A attached hereto, and incorporated herein by reference.

2. **PERIOD OF PERFORMANCE**

The term of this Agreement shall become effective on January 1, 2011 and shall continue in effect through December 31, 2011, unless terminated as above or as specified in Section 8 (TERMINATION).

3. **COMPENSATION**

In consideration of services provided by CONTRACTOR pursuant to this Agreement, CONTRACTOR shall be entitled to receive payment by COUNTY as follows:

- A. COMPENSATION for services rendered shall be paid by the Trust on behalf of the County as per the terms of this Agreement.
- B. Said invoices or bills shall be based upon those rates as described and set forth in Attachment B - Schedule of Fees, attached hereto, and incorporated herein by reference.
- C. Payment shall be made "net-30" terms from the completion date of any service as noted above.

4. **INDEPENDENT CONTRACTOR**

It is understood and agreed that CONTRACTOR is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Neither CONTRACTOR nor CONTRACTOR'S officers, agents, employees or subcontractors, shall be entitled to any benefits payable to employees of COUNTY including Worker's Compensation Benefits.

5. **INDEMNIFICATION**

CONTRACTOR shall indemnify and hold harmless COUNTY, its officers, directors, Board of Supervisors, employees and agents from any liability whatsoever, including wrongful death, based on alleged negligence, gross negligence or willful misconduct of the CONTRACTOR, its employees, subcontractors and agents relating to or in any way connected with the accomplishment of the work or performance of service under this Agreement. As part of the foregoing indemnity, CONTRACTOR agrees to protect and defend at its own expense, including attorneys' fees, COUNTY, its officers, directors, Board of Supervisors, agents and employees in any legal action based upon any such alleged negligence, gross negligence or willful misconduct.

COUNTY shall indemnify and hold harmless CONTRACTOR, its officers, employees and agents from any liability whatsoever based on alleged negligence, gross negligence or willful misconduct of the COUNTY, its officers, directors and employees, relating to or in any way connected with COUNTY's obligations under this Agreement. As part of the foregoing indemnity, COUNTY agrees to protect and defend at its own expense, including attorneys' fees, CONTRACTOR, its officers, agents and employees in any legal action based upon any such alleged negligence, gross negligence or willful misconduct.

6. **INSURANCE**

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

- A. **Workers' Compensation:** If CONTRACTOR has employees as defined by the State of California, CONTRACTOR shall maintain 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. Policy shall be endorsed to waive subrogation in favor of COUNTY; and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.
- B. **Commercial General Liability:** Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name 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. 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 are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name 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.
- D. **General Insurance Provisions - All lines:**
- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the COUNTY Risk Manager. If the COUNTY 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) The CONTRACTOR must declare its self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of COUNTY Risk Manager before the commencement of operations under this Agreement. Upon notification of self insured retentions which are deemed unacceptable to the COUNTY Risk Manager, at the election of COUNTY Risk Manager, CONTRACTOR shall either; 1) reduce or eliminate such self-insured retentions as respects this Agreement with COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.
- 3) The CONTRACTOR shall cause their insurance carrier(s) to furnish COUNTY with 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein; and / or, 2) if requested to do so orally or in writing by COUNTY, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) shall provide no less than ten (10) days written notice be given to the COUNTY prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, this Agreement shall terminate forthwith, unless the COUNTY receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages and the insurance required herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance. ***CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section.***
- 4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
- 5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work which

will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); 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 required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if; in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

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

7. **REPORTS**

- A. CONTRACTOR agrees to furnish to COUNTY reports which shall be provided as outlined and identified in Attachment A.
- B. Upon request of COUNTY, CONTRACTOR agrees to furnish to COUNTY copies of work papers, schedules or other work products related to this Agreement.

8. **TERMINATION PROVISION**

- A. Either party may terminate this Agreement at anytime without cause upon sixty (60) days written notice served upon the other party.
- B. If, for any reason, Agreement is terminated prior to full completion of services, CONTRACTOR agrees to immediately furnish to COUNTY all documents related to services rendered under this Agreement as COUNTY may reasonably request in writing.
- C. Should COUNTY reasonably determine that there is a basis for termination for cause, such termination shall be effected upon **five (5)** days written notice to CONTRACTOR.

9. **ASSIGNMENT AND DELEGATION**

No contract or agreement shall be made by CONTRACTOR with any party for the furnishing of any of the work or services described herein, and in Attachment A hereto, and this Agreement shall not be assigned by CONTRACTOR, either in whole or in part, without prior written consent of COUNTY, as approved and authorized by the Board of Supervisors of COUNTY. This provision shall not require the approval of contracts or



agreements for the employment between CONTRACTOR and personnel that have been specifically named in this Agreement or in any attachments hereto.

10. **ALTERATION AND/OR AMENDMENT**

No alteration, amendment, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Only the Board of Supervisors of COUNTY may authorize any alteration or revision of this Agreement on behalf of COUNTY. The parties expressly recognize that COUNTY personnel, including the Chief Executive Officer of COUNTY are without authorization to either change or waive any requirements of this Agreement.

11. **NONDISCRIMINATION**

This Agreement hereby incorporates by reference the provisions of Title 2, California Code of Regulations ("CCR"), Section 8107 et seq., as may be amended from time to time. CONTRACTOR agrees to comply with the provisions of Title 2, CCR, Section 8107 et seq., and further agrees to include this Nondiscrimination Clause in any and all subcontracts to perform services under this Agreement.

12. **CONFLICT OF INTEREST**

CONTRACTOR shall have no interest, and shall not acquire any interest, direct or indirect, which will conflict in any manner or degree with the performance of services required under this Agreement.

13. **CONFIDENTIALITY**

CONTRACTOR agrees to maintain as confidential any reports or advice which CONTRACTOR provided to COUNTY pursuant to this Agreement. CONTRACTOR shall not disclose such information without the prior written approval of the COUNTY.

14. **NOTICES**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted one (1) day after their deposit to the United States Postal Services or a private courier if delivered by U.S. Postal Services express mail or overnight courier that guarantees next day delivery, or five (5) days after their deposit in the United States mail, postage prepaid:

COUNTY:

Barbara Olivier  
Asst. CEO/HR Director  
County of Riverside  
4080 Lemon Street  
Riverside, CA 92501  
(951) 955-3510

CONTRACTOR:

Mark Wilkerson  
Manager  
VEBA Service Group, LLC  
906 West 2<sup>nd</sup> Avenue, Suite 400  
Spokane, WA 99201-4502  
509-838-5571

or to such other address(es) as the parties may hereafter designate.

15. LICENSES

CONTRACTOR shall maintain any professional licenses required by the laws of the State of California at all times while performing services under this Agreement.

16. WORK PRODUCT

All reports, findings, data or documents compiled or assembled by CONTRACTOR under this Agreement becomes the property of COUNTY, and shall be transmitted to COUNTY at the termination of this Agreement, if so requested by COUNTY in writing.

17. SEVERABILITY

In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

18. WAIVER

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

19. GOVERNING LAW

- A. The provisions of the Government Claims Act (Government Code Section 900, et seq.) must be followed first for any disputes under this Agreement.
- B. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

- C. All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in the county of Riverside, State of California.

20. **DISALLOWANCE**

In the event CONTRACTOR receives payment for services under this Agreement which are later disallowed for nonconformance with the terms and conditions herein, CONTRACTOR shall promptly refund the disallowed amount to COUNTY on written request. COUNTY retains the option to offset the amount disallowed from any payment due to CONTRACTOR under this Agreement, or under any other contract or agreement between CONTRACTOR and COUNTY.

21. **COMPLIANCE WITH HIPAA AND HITECH**

The Parties to this Agreement are subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191, enacted August 21, 1996, the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 ("HITECH"), Public Law 111-5, enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto. The Parties shall adhere to all terms and conditions as outlined and specified in Attachment D - Business Associate Agreement (BAA) Addendum, attached hereto and by this reference incorporated herein. The Parties agree to cooperate in accordance with the terms and intent of this Agreement and the BAA Addendum for implementation of relevant laws and/or regulations promulgated under HIPAA and HITECH, as may be amended from time to time.

22. **ENTIRE AGREEMENT**

This Agreement, including all attachments, which are hereby incorporated in this Agreement, supersedes any and all other agreements, promises, negotiations or representations, either oral or written, between the parties with respect to the subject matter and period governed by this Agreement and no other agreement, statement or promise relating to this Agreement shall be binding or valid.

23. **CERTIFICATION OF AUTHORITY TO EXECUTE THIS AGREEMENT**

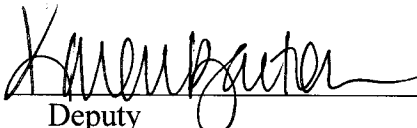
CONTRACTOR certifies that the individual signing below has authority to execute this Agreement on behalf of CONTRACTOR, and may legally bind CONTRACTOR to the terms and conditions of this Agreement, and any attachments hereto.

[ The remainder of this page was intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Professional Services Agreement as signed below.

ATTEST:  
Clerk of the Board  
Kecia Harper-Ihem

COUNTY OF RIVERSIDE


By:   
Deputy

By:   
Barbara Olivier, Assistant CEO/HR Director

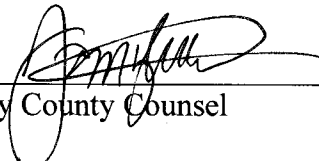
Date: APR 26 2011

Date: \_\_\_\_\_

Approved as to Form:  
Pamela J. Walls  
County Counsel

By:   
Chairman, Board of Supervisors **BOB BUSTER**

Date: APR 26 2011

By:   
Deputy County Counsel

VEBA SERVICE GROUP, LLC

By:   
Mark R. Wilkerson, Manager

Date: \_\_\_\_\_

## ATTACHMENT A

### SCOPE OF SERVICES

#### VEBA Service Group, LLC

The CONTRACTOR shall provide the following consulting services to the County:

- (1) Provide advice to County regarding Plan design and Trust operating issues;
- (2) Provide County plan adoption assistance and ongoing employer service;
- (3) Assist with drafting and design of Plan literature;
- (4) Assist with arranging of printing of Plan literature as requested including the following:
  - a. Question & Answer Brochures (Plan descriptive literature)
  - b. Enrollment Forms
  - c. Summary Plan Descriptions
  - d. Summary of Benefits
  - e. Claim Forms
  - f. Systematic Insurance Payment Forms
  - g. Plan Letterhead
  - h. Envelopes
  - i. List of Qualified Expenses
  - j. Participant Notices/Correspondence Regarding Plan Updates & Changes
  - k. COBRA Notices
  - l. HIPAA Notices
  - m. Other forms as necessary for the effective operation of the Plan and Trust;
- (5) Assist with website design if requested;
- (6) Provide toll-free service lines;
- (7) Provide periodic status reports on a quarterly basis;
- (8) Train County support staff as necessary to assist with employer support services including benefits department, payroll or accounting department, human resource department, legal department, etc.;
- (9) Assist with coordination of Trust activities between contract third party administrator, investment manager, trustee, custodian, auditor, legal counsel, etc.; and

(10) The CONTRACTOR shall also coordinate certain legal services. The CONTRACTOR, its employees, its members and the employees of its members are not attorneys, and none of the consulting services to be provided by the CONTRACTOR shall include the practice of law. The CONTRACTOR shall coordinate certain legal services as hereinafter provided, but all such legal services shall be rendered by a third party (hereinafter referred to as the "Attorney") selected by the CONTRACTOR and approved by the COUNTY. The Attorney shall be a lawyer licensed to practice law in one or more states, but need not be licensed as such in the state of California. All fees payable to the Attorney with respect to the specific matters hereinafter set forth shall be paid by the CONTRACTOR. Pursuant to Paragraph 9 of this Agreement, the COUNTY hereby approves and authorizes furnishing of the work or services hereinafter described by the Attorney. The work and services to be provided by the Attorney are as follows:

a. Preparation and submission of an application package to the IRS requesting qualification of the Plan and Trust as a voluntary employees' beneficiary association under Section 501(c)(9) of the Internal Revenue Code. The County agrees the Attorney shall be named as attorney-in-fact for the TRUST with respect to said application package.

b. Provide answers to legal questions, review reports, tax returns, other materials (when requested), review developments, and provide advice and recommendations when requested to do so.

c. Drafting of the Plan and the Trust Agreement.

d. Additional services as necessary to handle extraordinary or unanticipated legal matters, such as negotiation or supplemental submissions to the IRS during the initial qualification process or IRS audit; revision to governing instruments; responding to legislative or regulatory changes impacting the Plan or Trust; etc. Such work would be charged at standard hourly rates and paid from the Trust. advance notice would be given to the COUNTY prior to any such work so that the COUNTY would have the opportunity to decide not to have such work performed or make other arrangements with other attorneys to perform the services with respect to the Plan and Trust.

## **ATTACHMENT B**

### **SCHEDULE OF FEES**

#### **VEBA Service Group, LLC**

As compensation for all such services and commencing with the first day of the plan year, the County shall cause its contract third-party administrator to pay a monthly fee to the CONTRACTOR of \$375 per month plus \$0.20 per participant account per month plus an amount computed as .020833% of the Average Monthly Assets (as hereinafter defined). The term "Average Monthly Assets" as used herein shall mean a sum computed as the dollar amount of the Trust's cash and cash equivalents plus the fair market value of all securities and other assets of the Trust, averaged on a daily basis for all investments as to which such daily averaging is reasonably possible, and for assets as to which daily averaging is not reasonably possible, averaged on such other basis as will reasonably reflect fluctuations occurring during each calendar month. The County shall cause its contract third party administrator to compute the amount of such fees for each calendar month during the term of this Agreement and to provide the CONTRACTOR with a true and complete copy of such computations for each such calendar month on or before the fifteenth (15th) day of the following calendar month. The fees so computed in respect of each such calendar month shall be paid by the Trust to the CONTRACTOR as a deduction from Trust assets, or directly to the CONTRACTOR at the County's discretion in arrears on or before the fifteenth (15th) day of the following calendar month. The County may, from time to time, authorize payment of fees or commissions to the CONTRACTOR in respect of other insurance products or consulting services obtained by the County through the CONTRACTOR.

**ATTACHMENT C**

**OWNERSHIP INFORMATION**

Please indicate how your organization is legally organized (circle one):

**Corporation**

**Partnership**

**Sole Proprietorship**

**Other** (please describe): Limited Liability Corporation organized under the laws of the State of Washington

Please indicate the names of the owners that have greater than 10% ownership/interest of CONTRACTOR and their ownership interest. If corporation is publicly traded on a US stock market, indicate "Publicly Traded Corp."

<u>Name</u>	<u>Title</u>	<u>Ownership % (as applicable)</u>
Wilkerson & Associates, Inc. (Wilkerson & Associates, Inc., is a S corporation organized under the laws of the State of Washington and is owned 100% by Mark Wilkerson)		50%
HRA Consultants, Inc. (HRA Consultants, Inc. is a S corporation organized under the laws of the State of Washington and is owned 100% by Mark Wilkerson)		50%



## 1 HIPAA Business Associate Agreement

## 2 Addendum to Contract

3 Between the County of Riverside and VEBA Service Group, LLC

4

5 This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the  
6 Professional Service Agreement (the "Underlying Agreement") between the County of Riverside  
7 ("County") and VEBA Service Group, LLC ("Contractor") and shall be effective as of the date the  
8 Underlying Agreement is approved by both Parties (the "Effective Date").

9

## RECITALS

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

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

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

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

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

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

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

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

- 3 1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning  
4 as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from  
5 time to time.
- 6 A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of  
7 PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of  
8 the PHI, and shall have the meaning given such term in 45 CFR §164.402. For purposes of this  
9 definition, "compromises the security or privacy of PHI" means poses a significant risk of  
10 financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not  
11 include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach  
12 excludes:
- 13 (1) Any unintentional acquisition, access or use of PHI by a workforce member or person acting  
14 under the authority of a covered entity or business associate, if such acquisition, access or use  
15 was made in good faith and within the scope of authority and does not result in further use or  
16 disclosure in a manner not permitted under subpart E of the Privacy Rule.
- 17 (2) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or  
18 business associate to another person authorized to access PHI at the same covered entity,  
19 business associate, or organized health care arrangement in which County participates, and the  
20 information received as a result of such disclosure is not further used or disclosed in a  
21 manner not permitted by subpart E of the Privacy Rule.
- 22 (3) A disclosure of PHI where a covered entity or business associate has a good faith belief that  
23 an unauthorized person to whom the disclosure was made would not reasonably have been  
24 able to retain such information.
- 25 B. "Data aggregation" has meaning given such term in 45 CFR §164.501.
- 26 C. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by  
27 or for a covered entity that may include: the medical records and billing records about  
28 individuals maintained by or for a covered health care provider; the enrollment, payment, claims  
29 adjudication, and case or medical management record systems maintained by or for a health  
30 plan; or, used, in whole or in part, by or for the covered entity to make decisions about  
31 individuals.
- 32 D. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means  
33 protected health information transmitted by or maintained in electronic media.
- 34 E. "Electronic health record" means an electronic record of health-related information on an  
35 individual that is created, gathered, managed, and consulted by authorized health care clinicians  
36 and staff, and shall have the meaning given such term in 42 USC §17921(5).
- 37 F. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- 38 G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health  
39 information.

- 1 H. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation,  
2 professional association or corporation, or other entity, public or private.
- 3 I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- 4 J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which  
5 includes ePHI.
- 6 K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- 7 L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").
- 8 M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- 9 N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means  
10 PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a  
11 technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2)  
12 on the HHS web site.

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

- 14 A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI  
15 and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying  
16 Agreement or to perform functions, activities or services for, or on behalf of, County as specified  
17 in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule  
18 and/or Security Rule.
- 19 B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or  
20 authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2),  
21 Contractor may:
- 22 (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration  
23 and to carry out its legal responsibilities; and,
- 24 (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and  
25 administration or to carry out its legal responsibilities, only if:
- 26 (a) The disclosure is required by law; or,
- 27 (b) Contractor obtains reasonable assurances, in writing, from the person to whom  
28 Contractor will disclose such PHI and/or ePHI that the person will:
- 29 (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose  
30 for which Contractor disclosed it to the person, or as required by law; and,
- 31 (ii) Notify Contractor of any instances of which it becomes aware in which the confidentiality of  
32 the information has been breached; and,
- 33 (3) Use PHI to provide data aggregation services relating to the health care operations of County  
34 pursuant to the Underlying Agreement or as requested by County; and,

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

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

8 3. **Prohibited Uses and Disclosures.**

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

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

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

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

20 (1) Not to use or disclose PHI for fundraising or marketing purposes, unless pursuant to the  
21 Underlying Agreement and as permitted by and consistent with the requirements of 42 USC  
22 §17936;

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

27 (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by  
28 42 USC §17935(d)(2) and with the prior written consent of County. This prohibition shall  
29 not apply to payment by County to Contractor for services provided pursuant to the  
30 Underlying Agreement.

31 4. **Obligations of County.**

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

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

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

1 eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing  
2 by County.

3 K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure,  
4 or access of PHI and/or ePHI.

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

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

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

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

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

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

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

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

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

34 A. Implement the administrative, physical, and technical safeguards that reasonably and  
35 appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor  
36 creates, receives, maintains, or transmits on behalf of County as required by the Security Rule,  
37 including without limitations, each of the requirements of the Security Rule at 45 CFR  
38 §§164.308, 164.310, and 164.312;

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

1 (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to  
2 individuals, and to protect against any further breaches; and,

3 (f) Contact procedures for individuals to ask questions or learn additional information, which shall  
4 include a toll-free telephone number, an e-mail address, web site, or postal address.

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

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

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

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

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

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

30 A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special  
31 Districts and Departments of County, their respective directors, officers, Board of Supervisors,  
32 elected and appointed officials, employees, agents and representatives from any liability  
33 whatsoever, based or asserted upon any services of Contractor, its officers, employees,  
34 subcontractors, agents or representatives arising out of or in any way relating to this Addendum,  
35 including but not limited to property damage, bodily injury, death, or any other element of any  
36 kind or nature whatsoever arising from the performance of Contractor, its officers, agents,  
37 employees, subcontractors, agents or representatives from this Addendum. Contractor shall  
38 defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of  
39 investigation, defense and settlements or awards, of County, all Agencies, Districts, Special  
40 Districts and Departments of County, their respective directors, officers, Board of Supervisors,  
41 elected and appointed officials, employees, agents or representatives in any claim or action based  
42 upon such alleged acts or omissions.



- 1 B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor  
2 shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of  
3 County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or  
4 compromise any such action or claim without the prior consent of County; provided, however,  
5 that any such adjustment, settlement or compromise in no manner whatsoever limits or  
6 circumscribes Contractor's indemnification to County as set forth herein. Contractor's  
7 obligation to defend, indemnify and hold harmless County shall be subject to County having  
8 given Contractor written notice within a reasonable period of time of the claim or of the  
9 commencement of the related action, as the case may be, and information and reasonable  
10 assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation  
11 hereunder shall be satisfied when Contractor has provided to County the appropriate form of  
12 dismissal relieving County from any liability for the action or claim involved.
- 13 C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in  
14 no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County  
15 herein from third party claims arising from issues of this Addendum.
- 16 D. In the event there is conflict between this clause and California Civil Code §2782, this clause  
17 shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the  
18 Contractor from indemnifying County to the fullest extent allowed by law.
- 19 E. In the event there is a conflict between this indemnification clause and an indemnification clause  
20 contained in the Underlying Agreement of this Addendum, this indemnification shall only apply  
21 to the subject issues included within this Addendum.
- 22 10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI  
23 and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of  
24 County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI,  
25 protections are extended to such information, in accordance with section 11.B of this Addendum.
- 26 11. **Termination.**
- 27 A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either  
28 party shall constitute a material breach of the Underlying Agreement and will provide grounds  
29 for terminating this Addendum and the Underlying Agreement with or without an opportunity to  
30 cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary.  
31 Either party, upon written notice to the other party describing the breach, may take any of the  
32 following actions:
- 33 (1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other  
34 party breaches a material provision of this Addendum.
- 35 (2) Provide the other party with an opportunity to cure the alleged material breach and in the  
36 event the other party fails to cure the breach to the satisfaction of the non-breaching party in  
37 a timely manner, the non-breaching party has the right to immediately terminate the  
38 Underlying Agreement and this Addendum.
- 39 (3) If termination of the Underlying Agreement is not feasible, the non-breaching party may  
40 report the problem to the Secretary, and upon the non-breaching party's request, the

1 breaching party at its own expense shall implement a plan to cure the breach and report  
2 regularly on its compliance with such plan to the non-breaching party.

3 **B. Effect of Termination.**

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

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

17 **12. General Provisions.**

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

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

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

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

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

30 **F. Interpretation of Addendum.**

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

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

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

6                               Name: Barbara A. Olivier

7                               Title: Assistant CEO/Human Resources Director

8                               Address: 4080 Lemon St. 7<sup>th</sup> floor

9   Riverside, CA 92502