

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

843



FROM: Community Health Agency / Department of Public Health

SUBMITTAL DATE:
August 16, 2011

SUBJECT: Ratify the Sole Source Agreement with FirstWatch to Provide software, support and maintenance for the Public Health (DOPH) Real-Time Early Warning System. (Contract #11-114)

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Ratify the Agreement with FirstWatch to provide technical support and maintenance for the DOPH Real-Time Early Warning System for a five (5) year term to include the addition of the Transfer of Care (TOC) and the Performance PLUS Enhancement (PPE) modules without securing complete bids; and
- 2) Authorize the Chairperson to sign four (4) originals of said Agreement on behalf of the County; and
- 3) Authorize Purchasing Agent to sign future amendments not to exceed approved funding and CPI increases.

BACKGROUND:
(continued on page 2)

BB:bm

Susan D. Harrington
Susan Harrington, Director of Public Health

FINANCIAL DATA

Current F.Y. Total Cost:	\$24,999	In Current Year Budget:	Yes
Current F.Y. Net County Cost:	\$-0-	Budget Adjustment:	No
Annual Net County Cost:	\$-0-	For Fiscal Year:	11/12

SOURCE OF FUNDS: 100% funded by Semi-annual payments from American Medical Response as stipulated in the County/AMR contract for database system.	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature

BY: *Debra Cournoyer*
Debra Cournoyer

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Buster, Tavaglione, Benoit and Ashley
Nays: None
Absent: Stone
Date: September 13, 2011
xc: CHA/Public Health, Purchasing

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

3.30

Prev. Agn. Ref.: 11/7/06 3.14 District: All Agenda Number:

ATTACHMENTS FILED

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS
Departmental Concurrence

Purchasing: *[Signature]*
Mark Seifer, Assistant Director

Policy

Consent

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

SUBJECT: Ratify the Sole Source Agreement with FirstWatch to provide software, support and maintenance for the Public Health (DOPH) Real-Time Early Warning System. (Contract #11-114)

BACKGROUND: (continued)

The ratification of this Agreement will allow DOPH to continue to use the FirstWatch Real-Time Early Warning System for Syndromic surveillance Countywide. The original Sole Source Agreement ratified by the Board of Supervisors on November 7, 2008 provided for the licensing and installation cost of over \$70,000.

In the unlikely event that another vendor could be found to supply similar software and services, it would require duplicating initial installation at a higher cost. Additionally, since the initial costs of the Real-Time Early Warning System have been paid, it allows for the addition of the TOC and PPE modules at a reasonable price.

The ability to monitor ambulance data on a real time basis enhances the County's early detection capabilities so that problems can be detected much sooner than when relying solely on hospital Emergency Department (ED) reportable disease data. Additionally, the problem of ambulances being delayed in EDs has caused a significant negative impact on the EMS system. The addition of the TOC and PPE modules will allow the EMS Agency to more effectively monitor, collect and analyze ambulance wait time data resulting in the continued development of solutions to this system wide problem.

FINANCIAL INFORMATION: Currently the cost of the Real-Time Early Warning System is \$13,074 annually. The addition of the TOC and the PPE module upgrades will increase the annual costs to a total of \$24,999 annually for FY 11/12 and FY 12/13. The annual costs for FY 12/13 will be \$18,273 and for FY 13/14 and 14/15 it will be \$16,924. The total cost of the system over five (5) years will be \$102,119 (see table below).

FY 11/12	\$24,999
FY 12/13	\$24,999
FY 12/13	\$18,273
FY 13/14	\$16,924
FY 14/15	\$16,924
Total	\$102,119

COUNTY OF RIVERSIDE
COMMUNITY HEALTH AGENCY

Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

FOR COUNTY USE ONLY



COUNTY DEPT/DIVISION: DOPH/EMS		CONTRACT NO. 11-114	RFP NO. sole source
FUND: 10000	DEPARTMENT IDs: 4200101700	PROJECT-GRANT n/a	PROGRAM 933300
CLASS/LOCATION: NO. 6572-33222		CONTRACT AMOUNT \$102,118	ACCOUNT 525440
PERIOD OF PERFORMANCE: July 1, 2011 through June 30, 2016			
COUNTY CONTACT: Brian MacGavin (951) 358-5029		CONTRACTOR REPRESENTATIVE: Marc Baker (760) 943-9123 x208	
PROGRAM NAME: Real Time Early Warning System, Transfer of Care module and Performance Plus Enhancement			

This Agreement is made and entered into by and between the County of Riverside, a political subdivision of the State of California, through its **Community Health Agency, [Department of Public Health Emergency Medical Services]**, hereinafter referred to as ("COUNTY"), and **FirstWatch Solutions, Inc. dba FirstWatch**, hereinafter referred to as ("CONTRACTOR").

WITNESSETH:

WHEREAS, the COUNTY wishes to continue to use FirstWatch Real Time Early Warning System for Syndromic surveillance, and

WHEREAS, the COUNTY is desirous to add the Transfer of Care and Performance PLUS Enhancement modules to the Real Time Early Warning system; and

WHEREAS, CONTRACTOR has the capacity, skills, and knowledge to install, support and maintain the system and modules stated above.

NOW THEREFORE in consideration of the mutual promises, covenants and conditions hereinafter contained, the Parties hereto mutually agree as provided on pages 2 through 16, Exhibit A, consisting of one (1) page(s), Exhibit B, consisting of two (2) page(s), and Attachment 1, consisting of nine (9) page(s), attached hereto and incorporated herein.

CONTRACTOR

By

[Signature]

TODD STOUT

Print Name

Date

02-15-12

COUNTY

By

[Signature]

Chairman of Board of Supervisors

BOB BUSTER

Print Name

Date

SEP 13 2011

ATTEST: Kecia Harper-Ihem, Clerk of Board

By

[Signature]

SEP 13 2011

3:30

FORM APPROVED COUNTY COUNSEL
DATE
BY: NEAL R. KIPNIS

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1 **1. DESCRIPTION OF SERVICES**

2 **1.1** CONTRACTOR shall provide all services as outlined and specified in Exhibit A,
3 Scope of Services.

4 **1.2** CONTRACTOR represents that it has the skills, experience and knowledge
5 necessary to fully and adequately perform under this Agreement and the
6 COUNTY relies upon this representation. CONTRACTOR shall perform to the
7 satisfaction of the COUNTY and in conformance to and consistent with the
8 highest standards of firms/professionals in the same discipline in the State of
9 California.

10 **1.3** CONTRACTOR affirms this it is fully apprised of all of the work to be performed
11 under this Agreement; and the CONTRACTOR agrees it can properly perform
12 this work at the price(s) stated in Exhibit B, Payment Provisions. CONTRACTOR
13 is not to perform services or provide products outside of the Agreement.

14 **1.4** Acceptance by the COUNTY of the CONTRACTOR's performance under this
15 Agreement does not operate as a release of CONTRACTOR's responsibility for
16 full compliance with the terms of this Agreement.

17 **2. PERIOD OF PERFORMANCE**

18 **2.1** This Agreement shall be effective upon signature of this Agreement by both
19 parties and continue in effect through June 30, 2016. CONTRACTOR shall
20 commence performance upon signature of this Agreement by both parties and
21 shall diligently and continuously perform thereafter.

22 **3. COMPENSATION**

23 **3.1** The COUNTY shall pay the CONTRACTOR for services performed, products
24 provided and expenses incurred in accordance with the terms of Exhibit B,
25 Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall
26 not exceed one hundred two thousand, one hundred eighteen (\$102,118) including
27 all expenses.

28 **3.2** The COUNTY is not responsible for any fees or costs incurred above or beyond
the contracted amount and shall have no obligation to purchase any specified
amount of services or products. Unless otherwise specifically stated in Exhibit B,

1 COUNTY shall not be responsible for payment of any of CONTRACTOR's
2 expenses related to this Agreement.

- 3 **3.3** The COUNTY obligation for payment of this Agreement beyond the current
4 fiscal year end is contingent upon and limited by the availability of COUNTY
5 funding from which payment can be made. No legal liability on the part of the
6 COUNTY shall arise for payment beyond June 30 of each calendar year unless
7 funds are made available for such payment. In the event that such funds are not
8 forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR
9 in writing; and this Agreement shall be deemed terminated, have no further force,
and effect.

10 **4. ALTERATION OR CHANGES TO THE AGREEMENT**

- 11 **4.1** The Board of Supervisors and the COUNTY Purchasing Agent and/or his
12 designee is the only authorized COUNTY representatives who may at any time,
13 by written order, alter this Agreement. If any such alteration causes an increase or
14 decrease in the cost of, or the time required for the performance under this
15 Agreement, an equitable adjustment shall be made in the Agreement price or
16 delivery schedule, or both, and the Agreement shall be modified by written
amendment accordingly.

17 **5. TERMINATION**

- 18 **5.1.** COUNTY may terminate this Agreement without cause upon 30 days written
19 notice served upon the CONTRACTOR stating the extent and effective date of
20 termination.
- 21 **5.2** COUNTY may, upon five (5) days written notice, terminate this Agreement for
22 CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the
23 terms of this Agreement or fails to make progress to endanger performance and
24 does not immediately cure such failure. In the event of such termination, the
25 COUNTY may proceed with the work in any manner deemed proper by
COUNTY.
- 26 **5.3** After receipt of the notice of termination, CONTRACTOR shall:
27 (a) Stop all work under this Agreement on the date specified in the notice of
28 termination; and

1 (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY
 2 any materials, reports or other products, which, if the Agreement had been
 3 completed or continued, would have been required to be furnished to
 4 COUNTY.

5 **5.4** After termination, COUNTY shall make payment only for CONTRACTOR's
 6 performance up to the date of termination in accordance with this Agreement and
 7 at the rates set forth in Exhibit B.

8 **5.5** CONTRACTOR's rights under this Agreement shall terminate (except for fees
 9 accrued prior to the date of termination) upon dishonesty or a willful or material
 10 breach of this Agreement by CONTRACTOR; or in the event of
 11 CONTRACTOR's unwillingness or inability for any reason whatsoever to
 12 perform the terms of this Agreement. In such event, CONTRACTOR shall not be
 13 entitled to any further compensation under this Agreement.

14 **5.6** The rights and remedies of COUNTY provided in this section shall not be
 15 exclusive and are in addition to any other rights and remedies provided by law or
 16 this Agreement.

17 **5.7** Upon termination of agreement, COUNTY shall promptly discontinue using the
 18 Software and return to CONTRACTOR or certify in writing, the destruction of all
 19 Software, Documentation, and CONTRACTOR'S training material.

20 **6. OWNERSHIP OF DATA**

21 The CONTRACTOR agrees that all materials, reports or products in any form, including
 22 electronic, created by CONTRACTOR for which CONTRACTOR has been compensated
 23 by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and
 24 may be used by the COUNTY for any purpose COUNTY deems to be appropriate,
 25 including, but not limit to, duplication and/or distribution within the COUNTY or to third
 26 parties. CONTRACTOR agrees not to release or circulate in whole or part such
 27 materials, reports or products without prior written authorization of the COUNTY.

28 **7. CONDUCT OF CONTRACTOR**

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not
 limited to, other projects or contracts, and shall not acquire any such interest,
 direct or indirect, which would conflict in any manner or degree with

1 CONTRACTOR's performance under this Agreement. The CONTRACTOR
2 further covenants that no person or subcontractor having any such interest shall be
3 employed or retained by CONTRACTOR under this Agreement. The
4 CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's
5 interests, if any, which are or may be perceived as incompatible with the
6 COUNTY's interests.

7 **7.2** The CONTRACTOR shall not, under circumstances which could be interpreted as
8 an attempt to influence the recipient in the conduct of his/her duties, accept any
9 gratuity or special favor from individuals or firms with whom the
10 CONTRACTOR is doing business or proposing to do business, in accomplishing
11 the work under this Agreement.

12 **7.3** The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and
13 entertainment directly or indirectly to COUNTY employees.

14 **8. INSPECTION OF SERVICE; QUALITY CONTROL/ASSURANCE**

15 **8.1** All performance (which includes services, workmanship, materials, supplies and
16 equipment furnished or utilized in the performance of this Agreement) shall be
17 subject to inspection and test by the COUNTY or other regulatory agencies at all
18 times. The CONTRACTOR shall provide adequate cooperation to any inspector
19 or other COUNTY representative to permit him/her to determine the
20 CONTRACTOR's conformity with the terms of this Agreement. If any services
21 performed or products provided by CONTRACTOR are not in conformance with
22 the terms of this Agreement, the COUNTY shall have the right to require the
23 CONTRACTOR to perform the services or provide the products in conformance
24 with the terms of the Agreement at no additional cost to the COUNTY. When the
25 services to be performed or the products to be provided are of such nature that the
26 difference cannot be corrected, the COUNTY shall have the right to: (1) require
27 the CONTRACTOR immediately to take all necessary steps to ensure future
28 performance in conformity with the terms of the Agreement; and/or (2) reduce the
Agreement price to reflect the reduced value of the services performed or
products provided. The COUNTY may also terminate this Agreement for default

1 and charge to CONTRACTOR any costs incurred by the COUNTY because of
2 the CONTRACTOR's failure to perform.

3 **8.2** CONTRACTOR shall establish adequate procedures for self-monitoring and
4 quality control and assurance to ensure proper performance under this Agreement;
5 and shall permit a COUNTY representative or other regulatory official to monitor,
6 assess or evaluate CONTRACTOR's performance under this Agreement at any
7 time upon reasonable notice to CONTRACTOR.

8 **9. INDEPENDENT CONTRACTOR**

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

22 **10. SUBCONTRACT FOR WORK OR SERVICES**

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

28 **11. DISPUTES**

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If
that is not successful, the dispute shall be referred to the senior management of
the parties. Any dispute relating to this Agreement, which is not resolved by the

1 parties, shall be decided by the COUNTY's Purchasing Department's Compliance
 2 Contract Officer who shall furnish the decision in writing. The decision of the
 3 COUNTY's Compliance Contract Officer shall be final and conclusive unless
 4 determined by a court of competent jurisdiction to have been fraudulent,
 5 capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith.
 6 The CONTRACTOR shall proceed diligently with the performance of this
 7 Agreement pending the resolution of a dispute.

8 **11.2** Prior to the filing of any legal action related to this Agreement, the parties shall be
 9 obligated to attend a mediation session in Riverside County before a neutral third
 10 party mediator. A second mediation session shall be required if the first session is
 11 not successful. The parties shall share the cost of the mediations.

12 **12. LICENSING AND PERMITS**

13 CONTRACTOR shall comply with all State or other licensing requirements, including
 14 but not limited to the provisions of Chapter 9 of Division 3 of the Business and
 15 Professions Code. All licensing requirements shall be met at the time proposals are
 16 submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits,
 17 approvals, certificates, waivers and exemptions necessary for performance of this
 18 Agreement as required by the laws and regulations of the United States, the State of
 19 California, the County of Riverside and all other governmental agencies with jurisdiction,
 20 and shall maintain these throughout the term of this Agreement.

21 **13. USE BY OTHER POLITICAL ENTITIES**

22 The CONTRACTOR agrees to extend the same pricing, terms and conditions as stated in
 23 this Agreement to each and every political entity, special district, and related non-profit
 24 entity in Riverside County. It is understood that other entities shall make purchases in
 25 their own name, make direct payment, and be liable directly to the CONTRACTOR; and
 26 COUNTY shall in no way be responsible to CONTRACTOR for other entities'
 27 purchases.

28 **14. NON-DISCRIMINATION**

CONTRACTOR shall not be discriminate in the provision of services, allocation of
 benefits, accommodation in facilities, or employment of personnel on the basis of ethnic
 group identification, race, religious creed, color, national origin, ancestry, physical

1 handicap, medical condition, marital status or sex in the performance of this Agreement;
2 and, to the extent they shall be found to be applicable hereto, shall comply with the
3 provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et
4 seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities
5 Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

6 **15. RECORDS AND DOCUMENTS**

7 CONTRACTOR shall make available, upon written request by any duly authorized
8 Federal, State or COUNTY agency, a copy of this Agreement and such books, documents
9 and records as are necessary to certify the nature and extent of the CONTRACTOR's
10 costs related to this Agreement. All such books, documents and records shall be
11 maintained by CONTRACTOR for at least five years following termination of this
12 Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to
13 the COUNTY reports and information related to this Agreement as requested by
14 COUNTY.

15 **16. CONFIDENTIALITY**

16 **16.1** The CONTRACTOR shall not use for personal gain or make other improper use
17 of privileged or confidential information which is acquired in connection with this
18 Agreement. The term "privileged or confidential information" includes but is not
19 limited to: unpublished or sensitive technological or scientific information;
20 medical, personnel, or security records; anticipated material requirements or
21 pricing/purchasing actions; COUNTY information or data which is not subject to
22 public disclosure; COUNTY operational procedures; and knowledge of selection
23 of contractors, subcontractors or suppliers in advance of official announcement.

24 **16.2** The CONTRACTOR shall protect from unauthorized disclosure names and other
25 identifying information concerning persons receiving services pursuant to this
26 Agreement, except for general statistical information not identifying any person.
27 The CONTRACTOR shall not use such information for any purpose other than
28 carrying out the CONTRACTOR's obligations under this Agreement. The
CONTRACTOR shall promptly transmit to the COUNTY all third party requests
for disclosure of such information. The CONTRACTOR shall not disclose, except
as otherwise specifically permitted by this Agreement or authorized in advance in

1 writing by the COUNTY, any such information to anyone other than the
2 COUNTY. For purposes of this paragraph, identity shall include, but not be
3 limited to, name, identifying number, symbol, or other identifying particular
4 assigned to the individual, such as finger or voice print or a photograph.

5 **16.3** CONTRACTOR shall comply with the regulations of the Health Insurance
6 Portability and Accountability Act as set forth in Attachment 1, HIPAA
7 BUSINESS ASSOCIATED AGREEMENT, attached and incorporated herein.

8 **17. ADMINISTRATION/CONTRACT LIAISON**

9 The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf
10 of the COUNTY. The Purchasing Department is to serve as the liaison with
11 CONTRACTOR in connection with this Agreement.

12 **18. NOTICES**

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

16 **COUNTY OF RIVERSIDE**

17 **Riverside County Community Health Agency**
18 **ISS Procurement and Contracts Division**
19 **4065 County Circle Drive**
20 **Riverside, CA 92503**

CONTRACTOR

FirstWatch
322 Encinitas Blvd, Suite 100
Encinitas, CA 92024

21 **19. FORCE MAJEURE**

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

26 **20. EDD REPORTING REQUIREMENTS**

27 In order to comply with child support enforcement requirements of the State of
28 California, the COUNTY may be required to submit a Report of Independent

1 Contractor(s) form **DE 542** to the Employment Development Department. The
2 CONTRACTOR agrees to furnish the required data and certifications to the COUNTY
3 within 10 days of notification of award of Agreement when required by the EDD. This
4 data will be transmitted to governmental agencies charged with the establishment and
5 enforcement of child support orders. Failure of the CONTRACTOR to timely submit the
6 data and/or certificates required may result in the contract being awarded to another
7 contractor. In the event a contract has been issued, failure of the CONTRACTOR to
8 comply with all federal and state reporting requirements for child support enforcement or
9 to comply with all lawfully served Wage and Earnings Assignments Orders and Notices
10 of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has
11 any questions concerning this reporting requirement, please call (916) 657-0529.
12 CONTRACTOR should also contact its local Employment Tax Customer Service Office
13 listed in the telephone directory in the State Government section under "Employment
14 Development Department" or access their Internet site at www.edd.ca.gov.

14 **21. HOLD HARMLESS/INDEMNIFICATION**

15 **21.1** CONTRACTOR shall indemnify and hold harmless the County of Riverside, its
16 Agencies, Districts, Special Districts and Departments, their respective directors,
17 officers, Board of Supervisors, elected and appointed officials, employees, agents
18 and representatives (individually and collectively hereinafter referred to as
19 Indemnitees) from any liability whatsoever, based or asserted upon any services
20 of CONTRACTOR, its officers, employees, subcontractors, agents or
21 representatives arising out of or in any way relating to this Agreement, including
22 but not limited to property damage, bodily injury, or death or any other element of
23 any kind or nature whatsoever arising from the performance of CONTRACTOR,
24 its officers, employees, subcontractors, agents or representatives Indemnitors
25 from this Agreement. CONTRACTOR shall defend, at its sole expense, all costs
26 and fees including, but not limited, to attorney fees, cost of investigation, defense
27 and settlements or awards, the Indemnitees in any claim or action based upon
28 such alleged acts or omissions.

21.2 With respect to any action or claim subject to indemnification herein by
CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use

1 counsel of their own choice and shall have the right to adjust, settle, or
 2 compromise any such action or claim without the prior consent of COUNTY;
 3 provided, however, that any such adjustment, settlement or compromise in no
 4 manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to
 5 Indemnitees as set forth herein. CONTRACTOR'S obligation hereunder shall be
 6 satisfied when CONTRACTOR has provided to COUNTY the appropriate form
 7 of dismissal relieving COUNTY from any liability for the action or claim
 8 involved.

9 **21.3** The specified insurance limits required in this Agreement shall in no way limit or
 10 circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the
 11 Indemnitees herein from third party claims.

12 **21.4** In the event there is conflict between this clause and California Civil Code
 13 Section 2782, this clause shall be interpreted to comply with Civil Code 2782.
 14 Such interpretation shall not relieve the CONTRACTOR from indemnifying the
 15 Indemnitees to the fullest extent allowed by law.

16 **21.5** CONTRACTOR's indemnification obligations shall also apply to any action or
 17 claim regarding actual or alleged intellectual property infringement related to any
 18 material or product provided to COUNTY pursuant to this Agreement. In the
 19 event of any such action or claim, CONTRACTOR shall provide immediate
 20 notice to COUNTY of the action or claim. CONTRACTOR may defend or settle
 21 the action or claim as CONTRACTOR deems appropriate; however,
 22 CONTRACTOR shall be required to obtain for COUNTY the right to continue to
 23 use the material or product (or a similar non-infringing material or product with
 24 the same function) on terms identical to those stated in this Agreement.

25 **22. INSURANCE**

26 **22.1** Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or
 27 hold the COUNTY harmless, CONTRACTOR shall procure and maintain or
 28 cause to be maintained, at its sole cost and expense, the following insurance
 coverage's during the term of this Agreement. As respects to the insurance section
 only, the COUNTY herein refers to the County of Riverside, its Agencies,
 Districts, Special Districts, and Departments, their respective directors, officers,

1 Board of Supervisors, employees, elected or appointed officials, agents or
2 representatives as Additional Insureds.

3 **22.2** Workers' Compensation: If the CONTRACTOR has employees as defined by the
4 State of California, the CONTRACTOR shall maintain statutory Workers'
5 Compensation Insurance (Coverage A) as prescribed by the laws of the State of
6 California. Policy shall include Employers' Liability (Coverage B) including
7 Occupational Disease with limits not less than \$1,000,000 per person per
8 accident. The policy shall be endorsed to waive subrogation in favor of the
9 County of Riverside.

10 **22.3** Commercial General Liability: Commercial General Liability insurance coverage,
11 including but not limited to, premises liability, unmodified contractual liability,
12 products and completed operations liability, personal and advertising injury, and
13 cross liability coverage, covering claims which may arise from or out of
14 CONTRACTOR'S performance of its obligations hereunder. Policy shall name
15 the COUNTY as Additional Insured. Policy's limit of liability shall not be less
16 than \$1,000,000 per occurrence combined single limit. If such insurance contains
17 a general aggregate limit, it shall apply separately to this agreement or be no less
18 than two (2) times the occurrence limit.

19 **22.4** Vehicle Liability: If vehicles or mobile equipment are used in the performance of
20 the obligations under this Agreement, then CONTRACTOR shall maintain
21 liability insurance for all owned, non-owned or hired vehicles so used in an
22 amount not less than \$1,000,000 per occurrence combined single limit. If such
23 insurance contains a general aggregate limit, it shall apply separately to this
24 agreement or be no less than two (2) times the occurrence limit. Policy shall name
25 the COUNTY as Additional Insureds.

26 **22.5** Contractor shall maintain Professional Liability Insurance providing coverage for
27 the Contractor's performance of work included within this Agreement, with a
28 limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual
aggregate. If Contractor's Professional Liability Insurance is written on a claims
made basis rather than an occurrence basis, such insurance shall continue through
the term of this Agreement and CONTRACTOR shall purchase at his sole

1 expense either 1) an Extended Reporting Endorsement (also, known as Tail
 2 Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date
 3 back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate
 4 through Certificates of Insurance that CONTRACTOR has Maintained continuous
 5 coverage with the same or original insurer. Coverage provided under items; 1), 2),
 6 or 3) will continue as long as the law allows.

6 **22.6 General Insurance Provisions - All lines:**

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

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

23 3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish
 24 the County of Riverside with either 1) a properly executed original Certificate(s) of
 25 Insurance and certified original copies of Endorsements effecting coverage as
 26 required herein, and 2) if requested to do so orally or in writing by the County Risk
 27 Manager, provide original Certified copies of policies including all Endorsements
 28 and all attachments thereto, showing such insurance is in full force and effect.
 Further, said Certificate(s) and policies of insurance shall contain the covenant of
 the insurance carrier(s) that thirty (30) days written notice shall be given to the

1 County of Riverside prior to any material modification, cancellation, expiration or
2 reduction in coverage of such insurance. In the event of a material modification,
3 cancellation, expiration, or reduction in coverage, this Agreement shall terminate
4 forthwith, unless the County of Riverside receives, prior to such effective date,
5 another properly executed original Certificate of Insurance and original copies of
6 endorsements or certified original policies, including all endorsements and
7 attachments thereto evidencing coverage's set forth herein and the insurance
8 required herein is in full force and effect. *CONTRACTOR shall not commence*
9 *operations until the COUNTY has been furnished original Certificate (s) of*
10 *Insurance and certified original copies of endorsements and if requested, certified*
11 *original policies of insurance including all endorsements and any and all other*
12 *attachments as required in this Section. An individual authorized by the insurance*
13 *carrier to do so on its behalf shall sign the original endorsements for each policy*
14 *and the Certificate of Insurance.*

15 4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S
16 insurance shall be construed as primary insurance, and the COUNTY'S insurance
17 and/or deductibles and/or self-insured retention's or self-insured programs shall
18 not be construed as contributory.

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

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

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

1 8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or
2 any incident or event that may give rise to a claim arising from the performance of
3 this Agreement.

4 **23. GENERAL**

5 **23.1** CONTRACTOR shall not delegate or assign any interest in this Agreement,
6 whether by operation of law or otherwise, without the prior written consent of
7 COUNTY. Any attempt to delegate or assign any interest herein shall be deemed
8 void and of no force or effect.

9 **23.2** Any waiver by COUNTY of any breach of any one or more of the terms of this
10 Agreement shall not be construed to be a waiver of any subsequent or other
11 breach of the same or of any other term of this Agreement. Failure on the part of
12 COUNTY to require exact, full and complete compliance with any terms of this
13 Agreement shall not be construed as in any manner changing the terms or
14 preventing COUNTY from enforcement of the terms of this Agreement.

15 **23.3** In the event the CONTRACTOR receives payment under this Agreement, which
16 is later disallowed by COUNTY for nonconformance with the terms of the
17 Agreement, the CONTRACTOR shall promptly refund the disallowed amount to
18 the COUNTY on request; or at its option the COUNTY may offset the amount
19 disallowed from any payment due to the CONTRACTOR.

20 **23.4** CONTRACTOR shall not provide partial delivery or shipment of services or
21 products unless specifically stated in the Agreement.

22 **23.5** CONTRACTOR shall not provide any services or products subject to any chattel
23 mortgage or under a conditional sales contract or other agreement by which an
24 interest is retained by a third party. The CONTRACTOR warrants that it has good
25 title to all materials or products used by CONTRACTOR or provided to
26 COUNTY pursuant to this Agreement, free from all liens, claims or
27 encumbrances.

28 **23.6** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same
type or equivalent equipment, products, materials or services from other sources,
when deemed by the COUNTY to be in its best interest. The COUNTY reserves
the right to purchase more or less than the quantities specified in this Agreement.

- 1 **23.7** The COUNTY agrees to cooperate with the CONTRACTOR in the
2 CONTRACTOR's performance under this Agreement, including, if stated in the
3 Agreement, providing the CONTRACTOR with reasonable facilities and timely
4 access to COUNTY data, information, and personnel.
- 5 **23.8** CONTRACTOR shall comply with all applicable Federal, State and local laws
6 and regulations. CONTRACTOR will comply with all applicable COUNTY
7 policies and procedures. In the event that there is a conflict between the various
8 laws or regulations that may apply, the CONTRACTOR shall comply with the
9 more restrictive law or regulation.
- 10 **23.9** CONTRACTOR shall comply with all air pollution control, water pollution,
11 safety and health ordinances, statutes, or regulations, which apply to performance
12 under this Agreement.
- 13 **23.10** CONTRACTOR shall comply with all requirements of the Occupational Safety
14 and Health Administration (OSHA) standards and codes as set forth by the U.S.
15 Department of Labor and the State of California (Cal/OSHA).
- 16 **23.11** This Agreement shall be governed by the laws of the State of California. Any
17 legal action related to the performance or interpretation of this Agreement shall be
18 filed only in the Superior Court of the State of California located in Riverside,
19 California, and the parties waive any provision of law providing for a change of
20 venue to another location. In the event any provision in this Agreement is held by
21 a court of competent jurisdiction to be invalid, void, or unenforceable, the
22 remaining provisions will nevertheless continue in full force without being
23 impaired or invalidated in any way.
- 24 **23.12** This Agreement, including any attachments or exhibits, constitutes the entire
25 Agreement of the parties with respect to its subject matter and supersedes all prior
26 and contemporaneous representations, proposals, discussions and
27 communications, whether oral or in writing. This Agreement may be changed or
28 modified only by a written amendment signed by authorized representatives of
 both parties.

EXHIBIT A
SCOPE OF SERVICE

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CONTRACTOR agrees:

1. to continue to provide maintenance services to the already install Real-Time Early Warning System in an annually basis.
2. install and configure Transfer of Care (TOC) module which includes the following:
 - a. install and configure TOC and Performance Plus Enhancement (PPE) modules to capture patient transfer of care timestamps form hospitals within Riverside County.
 - b. provide support and maintenance for TOC and PPE modules.

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EXHIBIT B
PAYMENT PROVISIONS

CONTRACTOR shall be entitled to receive payment for those fees relative to the products to be purchased by COUNTY under the conditions of this agreement as follows:

1. Pricing:

Modules and Support fees are specified in Exhibit B-1, attached and incorporated herein.

2. Invoice:

2.1 COUNTY agrees to pay acceptable invoice(s), as per requirements in item 2.2 below, submitted by CONTRACTOR as soon as reasonable in accordance with the County policy and procedures. Payment by the COUNTY of an invoice shall not preclude the COUNTY from subsequently raising any errors which were present on such invoice and/or from taking a set off in the amount of such error from any amount the COUNTY still owes CONTRACTOR.

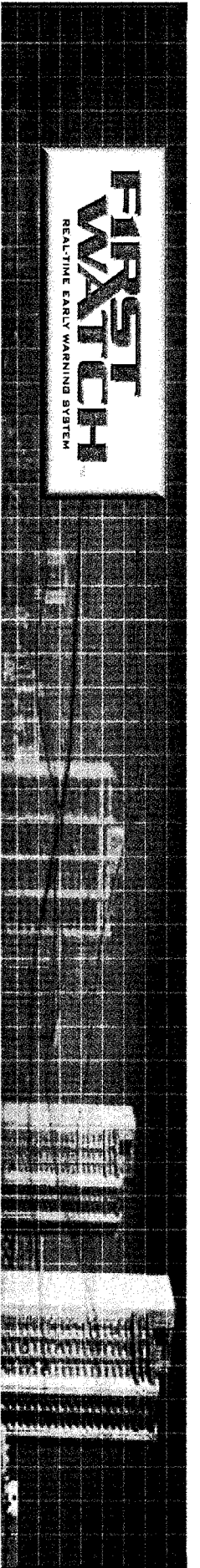
2.2 Invoice(s) shall itemize actual expense incurred, CONTRACTOR'S name and address, date, Purchase Order Number (to be assigned after execution of agreement) and original signature of CONTRACTOR.

2.3 CONTRACTOR shall submit monthly invoice(s) to the following address for processing:

Riverside County Community Health Agency
Fiscal Division, Accounts Payable
P.O. BOX 7849
Riverside, CA 92513

3. Compensation payable to CONTRACTOR by COUNTY shall not exceed one hundred two thousand, one hundred eighteen dollars (\$102,118) annually including all expenses.

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Riverside County FirstWatch System

ADDING TOC & PP Modules to "existing system"
All projected system & module support fees over next 5 years

QTY	Description	Unit Cost	Item Total
ADD 1	Transfer of Care (TOC) enhancement module	\$15,000.00	\$15,000.00
ADD 1	Performance PLUS (PP) enhancement module	\$2,500.00	\$2,500.00
ADD 2	Annual Support for TOC module	\$3,300.00	\$6,600.00
ADD 2	Annual Support for PP module	\$550.00	\$1,100.00
	subtotal		<u>\$25,200.00</u> **

**Per customer request, TOC & PP enhancement module fees to be paid over 2 annual system support renewal periods (hence year 2 of support added above for both modules). Installation Payment Breakdown is as follows: \$11,925.45 to be paid with July 2011 support renewal fees and \$11,925.45 to be paid with July 2012 support renewal fees and balance (\$1,349.10) to be paid along with 2013 support renewal fees.

System Support for FW System in Riverside Co / interfaced with AMR Riverside TT CAD, PLUS (2) enhancement modules

Year	Description	System Support Renewal	**TOC & PP Payments (from above)	TOC & PP module Support	Total Annual Renewal Invoice
2011	Annual FirstWatch System Support Renewal	\$13,073.55	PLUS	\$11,925.45	incl \$24,999.00
2012	Annual FirstWatch System Support Renewal	\$13,073.55	PLUS	\$11,925.45	incl \$24,999.00
2013	Annual FirstWatch System Support Renewal	\$13,073.55	PLUS	\$1,349.10	\$3,850.00
2014	Annual FirstWatch System Support Renewal	\$13,073.55	PLUS		\$3,850.00
2015	Annual FirstWatch System Support Renewal	\$13,073.55	PLUS		\$3,850.00

1 Attachment 1
2 HIPAA Business Associate Addendum to the Agreement
3 Between the County of Riverside
4 and
5 FirstWatch
6

7 This HIPAA Business Associate Agreement Addendum (“Addendum”) supplements, and
8 is made part of the Agreement for Services (the “Underlying Agreement”) between the
9 COUNTY OF RIVERSIDE (“County”) and FirstWatch (“Contractor”) as of the date of approval
10 by both parties (the July 1, 2011”).

11 RECITALS

12 WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to
13 which Contractor provides services to County, and in conjunction with the provision of such
14 services certain Protected Health Information (“PHI”) and/or certain electronic Protected Health
15 Information (ePHI) may be made available to Contractor for the purposes of carrying out its
16 obligations under the Underlying Agreement; and,

17 WHEREAS, the provisions of the Health Insurance Portability and Accountability Act,
18 Pub. L. No. 104-161 of 1996 (“HIPAA”), more specifically the regulations found at Title 45,
19 CFR, Parts 160 and 164 (the “Privacy Rule”) and/or Part 162 (the “Security Rule”), as may be
20 amended from time to time, which are applicable to the protection of any disclosure of PHI and
21 /or ePHI pursuant to the Underlying Agreement; and,

22 WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and,

23 WHEREAS, Contractor, when a recipient of PHI and/or ePHI from County, is a Business
24 Associate as defined in the Privacy Rule; and,

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

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

1 Definitions. Unless otherwise provided in this Addendum, capitalized terms shall have
2 the same meanings as set forth in the Privacy Rule and/or Security Rule, as may be amended
3 from time to time.

4 2. Scope of Use and Disclosure by Contractor of County Disclosed PHI and/or ePHI

5 A. Contractor shall be permitted to use PHI and/or ePHI disclosed to it by the
6 County:

7 (1) On behalf of the County, or to provide services to the County for the
8 purposes contained herein, if such use or disclosure would not violate the Privacy
9 Rule and/or Security Rule;

10 (2) As necessary to perform any and all of its obligations under the
11 Underlying Agreement.

12
13 B. Unless otherwise limited herein, in addition to any other uses and/or disclosures
14 permitted or authorized by this Addendum or required by law, Contractor may:

15 (1) Use the PHI and/or ePHI in its possession for its proper management and
16 administration and to fulfill any legal obligations.

17 (2) Disclose the PHI and/or ePHI in its possession to a third party for the
18 purpose of Contractor's proper management and administration or to
19 fulfill any legal responsibilities of Contractor. Contractor may disclose
20 PHI and/or ePHI as necessary for Contractor's operations only if:

21 (a) The disclosure is required by law; or

22 (b) Contractor obtains written assurances from any person or
23 organization to which Contractor will disclose such PHI and/or
24 ePHI that the person or organization will:

25 (i) Hold such PHI and/or ePHI in confidence and use or
26 further disclose it only for the purpose of which Contractor
27 disclosed it to the third party, or as required by law; and,
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1 (ii) The third party will notify Contractor of any instances of
2 which it becomes aware in which the confidentiality of the
3 information has been breached.

4 (3) Aggregate the PHI and/or ePHI aggregate the PHI and/or ePHI with that
5 of other data for the purpose of providing County with data analyses
6 related to the Underlying Agreement, or any other purpose, financial or
7 otherwise, as requested by County.

8 (4) Not disclose PHI and/or ePHI disclosed to Contractor by County not
9 authorized by the Underlying Agreement or this Addendum without
10 patient authorization or de-identification of the PHI and/or ePHI as
11 authorized in writing by County.

12 (5) De-identify any and all PHI and/or ePHI of County received by Contractor
13 under this Addendum provided that the de-identification conforms to the
14 requirements of the Privacy Rule and/or Security Rule and does not
15 preclude timely payment and/or claims processing and receipt.

16 C. Contractor agrees that it will neither use nor disclose PHI and/or ePHI it receives
17 from County or from another business associate of County, except as permitted or
18 required by this Addendum, or as required by law, or as otherwise permitted by
19 law.

20 D. Notwithstanding the foregoing, in any instance where applicable state and/or
21 federal laws and/or regulations are stricter in their requirements than the
22 provisions of HIPAA and prohibit the disclosure of mental health, and/or
23 substance abuse records, the applicable state and/or federal laws and/or
24 regulations shall control the disclosure of records.

25 3. Obligations of County.

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

3 B. County agrees that it will make its best efforts to promptly notify Contractor in
4 writing of any changes in, or revocation of, permission by any Individual to use or
5 disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's
6 ability to perform its obligations under the Underlying Agreement, or this
7 Addendum.

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

11 D. County shall not request Contractor to use or disclose PHI and/or ePHI in any
12 manner that would not be permissible under the Privacy Rule and/or Security
13 Rule.

14 E. County will obtain any authorizations necessary for the use or disclosure of PHI
15 and/or ePHI, so that Contractor can perform its obligations under this
16 Addendum and/or the Underlying Agreement.

17 4. Obligations of Contractor. In connection with its use of PHI and/or ePHI disclosed by
18 County to Contractor, Contractor agrees to:

19 A. Use or disclose PHI and/or ePHI only as permitted or required by this Addendum
20 or as required by law.

21 B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI
22 and/or ePHI other than as provided for by this Addendum.

23 C. To the extent practicable, mitigate any harmful effect that is known to Contractor
24 of a use or disclosure of PHI and/or ePHI by Contractor in violation of this
25 Addendum.

26 D. Report to County any use or disclosure of PHI and/or ePHI not provided for by
27 this Addendum of which Contractor becomes aware.
28

- 1 E. Require sub-contractors or agents to whom Contractor provides PHI and/or ePHI
2 to agree to the same restrictions and conditions that apply to Contractor pursuant
3 to this Addendum.
- 4 F. Use appropriate administrative, technical and physical safeguards to prevent
5 inappropriate use or disclosure of PHI and/or ePHI created or received for or from
6 the County.
- 7 G. Obtain and maintain knowledge of the applicable laws and regulations related to
8 HIPAA, as may be amended from time to time.
- 9 5. Access to PHI, Amendment and Disclosure Accounting. Contractor agrees to:
- 10 A. Provide access, at the request of County, within five (5) days, to PHI in a
11 Designated Record Set, to the County, or to an Individual as directed by the
12 County.
- 13 B. To make any amendment(s) to PHI in a Designated Record Set that the County
14 directs or agrees to at the request of County or an Individual within sixty (60)
15 days of the request of County.
- 16 C. To assist the County in meeting its disclosure accounting under HIPAA:
- 17 (1) Contractor agrees to document such disclosures of PHI and information
18 related to such disclosures as would be required for the County to respond
19 to a request by an Individual for an accounting of disclosures of PHI.
- 20 (2) Contractor agrees to provide to County or an Individual, within sixty (60)
21 days, information collected in accordance with this section to permit the
22 County to respond to a request by an Individual for an accounting of
23 disclosures of PHI.
- 24 (3) Contractor shall have available for the County the information required by
25 this section for the six (6) years preceding the County's request for
26 information (except the Contractor need have no information for
27 disclosures occurring before April 14, 2003).
- 28

1 D. Make available to the County, or to the Secretary of Health and Human Services,
2 Contractor's internal practices, books and records relating to the use of and
3 disclosure of PHI for purposes of determining Contractor's compliance with the
4 Privacy Rule, subject to any applicable legal restrictions.

5 E. Within thirty (30) days of receiving a written request from County, make
6 available any and all information necessary for County to make an accounting of
7 disclosures of County PHI by Contractor.

8 F. Within thirty (30) days of receiving a written request from County, incorporate
9 any amendments or corrections to the PHI in accordance with the Privacy Rule in
10 the event that the PHI in Contractor's possession constitutes a Designated Record
11 Set.

12 G. Not make any disclosure of PHI that County would be prohibited from making.

13 6. Access to ePHI, Amendment and Disclosure Accounting. In the event contractor needs
14 to create or have access to County ePHI, Contractor agrees to:

15 A. Implement and maintain reasonable and appropriate administrative, physical, and
16 technical safeguards to protect the confidentiality of, the integrity of, the
17 availability of, and authorized persons' accessibility to, County ePHI as
18 applicable under the terms and conditions of the Underlying Agreement. The
19 ePHI shall include that which the Contractor may create, receive, maintain, or
20 transmit on behalf of the County.

21 B. Ensure that any agent, including a subcontractor, to whom Contractor provides
22 ePHI agrees to implement reasonable and appropriated safeguards.

23 C. Report to County any security incident of which Contractor becomes aware that
24 concerns County ePHI.

25 7. Term and Termination.

26 A. Term – this Addendum shall commence upon the Effective Date and terminate
27 upon the termination of the Underlying Agreement, except as terminated by
28 County as provided herein.

- 1 B. Termination for Breach – County may terminate this Addendum, effective
2 immediately, without cause, if County, in its sole discretion, determines that
3 Contractor has breached a material provision of this Addendum. Alternatively,
4 County may choose to provide Contractor with notice of the existence of an
5 alleged material breach and afford Contractor with an opportunity to cure the
6 alleged material breach. In the event Contractor fails to cure the breach to the
7 satisfaction of County in a timely manner, County reserves the right to
8 immediately terminate this Addendum.
- 9 C. Effect of Termination – upon termination of this Addendum, for any reason,
10 Contractor shall return or destroy all PHI and/or ePHI received from the County,
11 or created or received by Contractor on behalf of County, and, in the event of
12 destruction, Contractor shall certify such destruction, in writing, to County. This
13 provision shall apply to all PHI and/or ePHI, which is in possession of
14 subcontractors or agents of Contractor. Contractor shall retain no copies of the
15 PHI and/or ePHI.
- 16 D. Destruction not Feasible – in the event that Contractor determines that returning
17 or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written
18 notification to County of the conditions which make such return or destruction not
19 feasible. Upon determination by Contractor that return or destruction of PHI is
20 not feasible, Contractor shall extend the protections of this Addendum to such
21 PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI
22 to those purposes which make the return or destruction not feasible, for so long as
23 Contractor maintains such PHI and/or ePHI.
- 24 8. Hold Harmless/Indemnification
- 25 A. Contractor shall indemnify and hold harmless all Agencies, Districts, Special
26 Districts and Departments of the County, their respective directors, officers,
27 Board of Supervisors, elected and appointed officials, employees, agents and
28 representatives from any liability whatsoever, based or asserted upon any services
of Contractor, its officers, employees, subcontractors, agents or representatives
arising out of or in any way relating to this Addendum, including but not limited

1 to property damage, bodily injury, or death or any other element of any kind or
 2 nature whatsoever including fines, penalties or any other costs and resulting from
 3 any reason whatsoever arising from the performance of Contractor, its officers,
 4 agents, employees, subcontractors, agents or representatives from this Addendum.
 5 Contractor shall defend, at its sole expense, all costs and fees including but not
 6 limited to attorney fees, cost of investigation, defense and settlements or awards
 all Agencies, Districts, Special Districts and Departments of the County, their
 respective directors, officers, Board of Supervisors, elected and appointed
 officials, employees, agents and representatives in any claim or action based upon
 such alleged acts or omissions.

- 7 B. With respect to any action or claim subject to indemnification herein by
 Contractor, Contractor shall, at their sole cost, have the right to use counsel of
 8 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
 9 or claim without the prior consent of County; provided, however, that any such
 adjustment, settlement or compromise in no manner whatsoever limits or
 10 circumscribes Contractor's indemnification to County as set forth herein.
 Contractor's obligation to defend, indemnify and hold harmless County shall be
 11 subject to County having given Contractor written notice within a reasonable
 12 period of time of the claim or of the commencement of the related action, as the
 13 case may be, and information and reasonable assistance, at Contractor's expense,
 for the defense or settlement thereof. Contractor's obligation hereunder shall be
 14 satisfied when Contractor has provided to County the appropriate form of
 dismissal relieving County from any liability for the action or claim involved.
- 15 C. The specified insurance limits required in the Underlying Agreement of this
 Addendum shall in no way limit or circumscribe Contractor's obligations to
 16 indemnify and hold harmless the County herein from third party claims arising
 17 from the issues of this Addendum.
- 18 D. In the event there is conflict between this clause and California Civil Code
 Section 2782, this clause shall be interpreted to comply with Civil Code 2782.
 19 Such interpretation shall not relieve the Contractor from indemnifying the County
 to the fullest extent allowed by law.
- 20 E. In the event there is a conflict between this indemnification clause and an
 indemnification clause contained in the Underlying Agreement of this Addendum,
 21 this indemnification shall only apply to the subject issues included within this
 22 Addendum.

23 9. General Provisions.

- 24 A. 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 the
 25 Privacy Rule and HIPAA generally.
- 26 B. Survival – the respective rights and obligations of this Addendum shall survive
 27 the termination or expiration of this Addendum.
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- C. Regulatory References – a reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended.
- D. Conflicts – any ambiguity in this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- E. Interpretation of Addendum – this Addendum shall be construed to be a part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of HIPAA.

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