

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

953



FROM: Human Resources Department

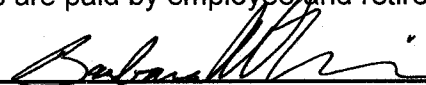
SUBMITTAL DATE:
December 4, 2012

SUBJECT: 2013 – American Dental Professional Services, LLC., Dental Plan Administration Agreement

RECOMMENDED MOTION: That the Board of Supervisors 1) approve the American Dental Professional Services, LLC., Dental Plan Administration Agreement (Attachment A), extending the terms of the agreement for a two (2) year period beginning January 1, 2013 through December 31, 2014; 2) authorize the Chairperson to sign four (4) copies of the attached Agreements; and 3) retain one (1) of the signed Agreements and return three (3) copies to Human Resources for distribution.

BACKGROUND: Since 2001, American Dental Professional Services (ADPS) has provided administrative services for the County's self-funded dental plans (Local Advantage Plus and Local Advantage Blythe). Human Resources has successfully negotiated a two (2) year rate pass, thereby the administrative service rate will remain unchanged and is guaranteed at \$3.02 per enrolled employee per month through December 31, 2014.

The attached Agreement (Attachment A) renews the term of the agreement and consolidates previous amendments to the plan. Dental plan premiums fund administrative services; there is no direct cost to the County for this recommended action. Fees are paid by employee and retiree premiums

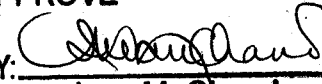

Barbara A. Olivier
Asst. County Executive Officer/Human Resources Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 19,715	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

SOURCE OF FUNDS: Dental Plan Premiums	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

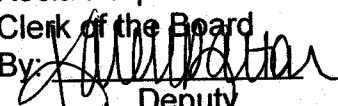
BY: 
Ivan M. Chand 12/6/2012

County Executive Office Signature

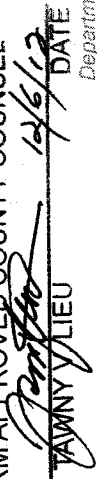
MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Tavaglione 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: December 18, 2012
xc: HR

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

Prev. Agn. Ref.: 09/29/2009, 3.60 | District: All | Agenda Number: **3.25**

FORM APPROVED COUNTY COUNSEL.
BY: 
TAMMY LIEU
DATE: 12/6/12
Departmental Concurrence

Policy Policy
Consent Consent
Dept's Recomm.:
Per Exec. Ofc.:

County of Riverside
DENTAL PLAN ADMINISTRATION AGREEMENT
BETWEEN
COUNTY OF RIVERSIDE AND
AMERICAN DENTAL PROFESSIONAL SERVICES, LLC, A DELAWARE LIMITED
LIABILITY COMPANY

This Dental Plan Administration Agreement ("Agreement") between the County of Riverside, (hereafter "County"), a political subdivision of the State of California, and American Dental Professional Services, LLC, a Delaware limited liability company (hereafter "ADPS").

RECITALS

- A. WHEREAS, County has established a self-funded dental benefit plan (the "Plan") designed to provide dental benefits ("Benefits") to eligible County employees and their eligible dependents.
- B. WHEREAS, ADPS offers a variety of administrative services, as an independent contractor, related to the operation of certain dental benefit plans established, funded and operated by other parties.
- C. WHEREAS, County desires to retain ADPS to provide certain administrative services in connection with the Plan, and ADPS desires to provide such services, and County and ADPS (the "Parties") are entering into this Agreement for that purpose.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, County and ADPS hereby acknowledge the accuracy of the foregoing Recitals and agree as follows:

ARTICLE I

RESPONSIBILITIES OF COUNTY

1.1 Plan Documentation.

- a) County shall prepare, or cause to be prepared, the necessary documentation relating to the Plan, including without limitation a summary description of the Plan (the "Summary Description"), applicable schedules of benefits, annual reports, enrollment forms, information guides, Provider directories and other information required to be given to participants in the Plan ("Participants")

under applicable law, each as amended from time to time to reflect changes in the Plan or other changed circumstances from time to time (collectively, the "Plan Documentation").

- b) County shall provide to ADPS promptly upon the execution of this Agreement and thereafter from time to time, as appropriate, an executed copy of the Plan and any amendments thereto, it being understood that the Summary Description is considered part of the Plan. Notwithstanding the foregoing, County shall not make any amendment to the Plan which has the effect of materially changing the nature of ADPS's obligations under this Agreement without the prior written consent of ADPS, and upon a breach by County of this provision, ADPS may suspend its obligations under this Agreement by giving 15 days notice of its intent to do so.

1.2 Determination of Eligibility. The determination of which individuals are eligible to participate in the Plan and the determination of which of such individuals are Participants shall be made by County, and ADPS may conclusively rely on each such determination. Any disputes or inquiries regarding eligibility or participation shall be referred to and resolved by County, which shall advise ADPS of each such determination.

1.3 Enrollment of Participants; Eligibility Lists; Changes In Status. County shall enroll eligible individuals in the Plan as Participants and shall provide to ADPS, not less often than monthly, names and identifying data for the Participants, including without limitation specific identification of (a) those Participants who are newly eligible to receive benefits under the Plan; (b) those former Participants who are no longer eligible to receive benefits under the Plan; and (c) the primary Provider selected by each new Participant or newly selected by a current Participant. County shall promptly provide ADPS notice of each change in participation status of a Participant. To the extent possible, each Participant and former Participant shall be so identified prior to the effective date of coverage, or termination of coverage, as the case may be, of such Participant under the Plan. When feasible, the Participant data shall be delivered electronically by computer diskette or on-line. ADPS shall have no liability to County for, and shall be indemnified by County against, all claims and liabilities arising out of ADPS's honoring or refusing any claim of a Provider for payment if such action is consistent with the most recent eligibility information provided to ADPS in writing prior to such action.

1.4 Continuation of Coverage. County shall, as applicable: (a) determine the occurrence of "qualifying events" as that term is defined for purposes of

continuation coverage under "COBRA" or any similar applicable state laws, (b) notify Participants of their continuation coverage rights under such laws, as applicable, and (c) notify ADPS of all Participants who have elected continuation coverage, the duration of such coverage and the termination of such coverage.

- 1.5 County's Designated Representative. County shall maintain a representative (the "Designated Representative") to serve as a contact point for interactions between County and ADPS. The Designated Representative shall be authorized to act on behalf of County with respect to all matters relating to administration of the Plan. Unless otherwise required by law or this Agreement, if ADPS is required to give notice to Participants with regard to matters covered by this Agreement, it shall be sufficient for ADPS to give such notice to the Designated Representative, and it shall be the Designated Representative's obligation to provide such notice to Participants.
- 1.6 Network Administration. County shall (a) arrange for Providers and (b) resolve controversies between Participants and Providers.
- 1.7 Account. County shall deposit into the Account (defined in § 2.1), by wire transfer or similar transfers of funds, all amounts invoiced by ADPS related to the payment of Claims (defined in § 2.2), Administrative Fee or other amounts payable, no later than one week from the date of the invoice. County shall be solely responsible for the adequacy of the funds in the Account to pay for these services.

ARTICLE II ADPS RESPONSIBILITIES

- 2.1 Account Administration. ADPS shall establish and maintain, or cause to be established and maintained, a bank account to receive the transfer of funds from County (the "Account"). ADPS shall have the authority to issue checks or drafts against the Account, or initiate bank wire transfers or similar transfers of funds from the Account on behalf of County, to pay Benefits in accordance with the Plan and this Agreement and to pay the Administrative Fee. ADPS shall promptly deliver to the person entitled thereto or deposit into the Account any funds received by it in connection with the Plan. ADPS shall pay only the following from the Account: (a) Premium payments to an insurer entitled thereto; (b) Allowed Claims; and (c) the Administrative Fee or amounts payable to Providers for utilization review, prescription drugs or other necessary services or supplies. ADPS shall reconcile monthly and report to County any funds received into the

Account on behalf of the County or Plan, and all amounts distributed from the Account on behalf of the County or Plan.

2.2 Payment of Claims. ADPS shall furnish the claims administration services:

- a) ADPS shall accept claims (each, a "Claim") for benefits under the Plan (the "Benefits") which are made pursuant to procedures established in connection therewith, and, after due evaluation of each Claim and any other relevant information available to ADPS, determine the eligibility of the Participant to whom the Services were provided, based on the eligibility information provided by County.
- b) If the facts as stated in the Claim entitle the Participant to receive Benefits, ADPS shall arrange for the payment thereof from the Account. In so doing, ADPS shall make provision for, and honor, any assignment of Benefits by a Participant to a Provider.
- c) If the facts as stated in the Claim or as determined by ADPS do not entitle the Participant to Benefits, the Claim shall be denied (in whole or in part) or modified in writing by ADPS, setting forth the reason(s) for such action. If a claim is wholly or partially denied by ADPS, ADPS shall send a written notice to the Participant describing the reason(s) for denial and a description of any additional information which might be necessary for the reconsideration of the Claim.
- d) Except as provided in § 2.2(e) below, ADPS' determination regarding any Claim shall be final and conclusive.
- e) ADPS shall maintain a grievance resolution procedure which shall be made available to a Participant in writing upon request. ADPS may compromise or adjust any Claim properly submitted under such procedure. If there is a change to a determination of a Claim by virtue of the resolution procedure, ADPS shall make the necessary changes in its records and comply with the final decision. ADPS shall have no responsibility or liability on account of any determination or payment with respect to a Claim that is subsequently changed upon review.

2.3 Benefit Payments. ADPS shall mail benefit checks made payable to a provider of dental care or services directly to such provider, or, if any benefit checks have the Participant as the named payee, to County for distribution to the covered employee/covered person.

2.4 Claim Forms. Subject to the requirements of the Plan and this Agreement, ADPS shall arrange for the printing and publication of, and maintain a supply of the forms necessary for the administration of the Plan, including without limitation Claim forms, Claim denial forms, and Claim payment forms.

- 2.5 Records. ADPS shall assist County with the development, design and installation of administrative and record keeping systems. All records maintained by ADPS with respect to its claim payment services under this Agreement shall be made available for review by County upon its request. Subject to the requirements of applicable law, upon termination of this Agreement, all such records shall be delivered to County, at its expense.
- 2.6 Reports. ADPS shall submit to County the reports specified on Exhibit A attached to this Agreement and such other reports as may be reasonably requested by County from time to time during the Term.
- 2.7 Customer Services. ADPS shall (a) maintain a toll-free telephone number for Participants, (b) make available trained customer service representatives knowledgeable about the Plan to answer Participants' questions regarding the Plan Monday through Friday, 8 a.m. to 5 p.m., and (c) prepare and mail to Participants, subject to County's request, (i) an enrollment notification, identification card and any other available information regarding the Plan, (ii) termination notices, and (iii) any notifications required by applicable law.
- 2.8 Additional Services. ADPS may make available to County from time to time additional administrative or other services not provided for in this Agreement. If County elects to engage ADPS to provide such services, the applicable fees shall be established by agreement of the Parties at that time.
- 2.9 Limitations.
- a) Notwithstanding anything in this Article II, ADPS shall have no liability with respect to any of the following:
- (i) delays in the processing of a Claim to the extent such delay was not caused by the acts or omission of ADPS;
 - (ii) any liability, loss or consequential or other damage resulting from the activities of any third party unrelated to ADPS, including without limitation any preferred provider organization, health maintenance organization, managed care organization or similar entity engaged to reprice, manage or review any Claim or to perform any similar service with respect to the Plan;
 - (iii) the cost of printing any forms, which shall be paid by County; or
- b) ADPS shall not be responsible for pursuing any rights of recovery, subrogation or coordination of benefits to recover amounts paid with respect to Claims, provided that, if authorized and requested by County, and if County agrees to compensate ADPS therefor, ADPS shall assist with such activity.

ARTICLE III
FEES AND COMMISSIONS

- 3.1 Administrative Fee. ADPS shall be entitled to a fee for its services under this Agreement. Claims Administration for the Local Advantage Plans are \$3.02 per enrolled employee per month through December 31, 2014. ADPS is authorized to withdraw the Fee directly from the Account, as described in § 2.1(c).
- 3.2 Claims Run Out Period. ADPS will provide for a claims run out period of up to six months past the termination date of the Agreement if elected by County. The claims run out fee is 33% of the Administrative fee at either the average fee due during the most recent twelve months prior to the termination date of this Agreement or the fee due for the final month prior to the termination date of this Agreement, whichever is higher. This fee is to be paid each month of the Claim Run Out Period.
- 3.4 Network Lease Payment to First Dental Health. American Dental Professional Services will make payments to First Dental Health (FDH), a California corporation, on behalf of the County of Riverside as follows:
- a) Shared savings percentage to be paid to FDH monthly.
 - b) Shared savings percentage to be determined by calculating 25% of the total money saved in-network compared to costs out-of-network.
 - c) Calculation of in-network savings is based upon the difference between (a) the Participating Provider's billed amount and the FDH discounted amount; or if the dentist bills the FDH discounted fee, the difference between the 80th percentile of Medicode and the FDH discounted fee.
 - d) FDH shared savings apply to all claims savings realized through the Local Advantage network (excluding the offices of Riverside Dental Group and Hospitality Dental).

ARTICLE IV
CONFIDENTIAL INFORMATION AND PROPRIETARY RIGHTS

- 4.1 Confidential and Proprietary Information. Neither Party shall, in any manner or at any time, directly or indirectly, disclose any of the Confidential Information (defined below) of the other Party to any person, firm, association, organization or entity, or use, or permit or assist any person, firm, association, organization or entity to use, any of the Confidential Information, excepting only: (a) disclosures (i) required by law, as reasonably determined by the disclosing Party or its legal counsel, or (ii) made on a confidential basis to the disclosing Party's

shareholders, directors, officers, employees (limited to those who need to know such Confidential Information) and legal, accounting and other professional advisors (collectively, the "Permitted Recipients"); or (b) use of such Confidential Information by Permitted Recipients in connection with this Agreement; provided that each Party shall (i) make its Permitted Recipients aware of the requirements of this Agreement, (ii) take reasonable steps to prohibit disclosure of such Confidential Information by any Permitted Recipient to any other person or entity except another Permitted Recipient, including without limitation taking such steps as that Party customarily takes to protect its own Confidential Information, and (iii) be responsible and liable for any disclosure or use of such Confidential Information by any of its Permitted Recipients, except disclosures or uses permitted by this Agreement. The term "Confidential Information" shall mean, with respect to a Party, all trade secrets, proprietary data and other information (whether written or oral) of a confidential nature relating directly or indirectly to that Party or its business, including without limitation all business management, marketing and economic studies and methods, proprietary forms, financial, tax, accounting and other information regarding business operations or structure, business plans, ideas, concepts, policies and procedures and any other information which that Party is obligated to treat as confidential pursuant to any law, agreement or course of dealing by which that Party is bound, whether or not such Confidential Information is disclosed or otherwise made available pursuant to this Agreement.

"Confidential Information" shall not include any information which (i) is or becomes known or available to the public and did not become so known or available through the breach of this Agreement by either Party, (ii) has been lawfully acquired from a third party without any breach of any confidentiality restriction, (iii) is already in the possession of the receiving Party at the time it was disclosed to the receiving Party at the time it was disclosed to the receiving Party by the disclosing Party, or (iv) is subject to disclosure by County in accordance with the California Public Records Act (Government Code section 6250 et seq.) and/or Brown Act (Government Code section 54950 et seq.)

This Section 4.1 does not apply to Protected Health Information (PHI). With respect to PHI, the Parties shall comply with Section 4.3.

4.2 Trademarks and Copyrights. The Parties reserve the right to the control and use of their respective names and all of their respective copyrights, symbols, trademarks and service marks presently existing or later established. Except as expressly permitted in this Agreement, neither Party shall use the other Party's name, copyrights, symbols, trademarks or service marks in any manner without

the prior written consent of such other Party. Any permitted use by one Party of a name, copyright, symbol, trademark or service mark of the other Party shall cease immediately upon the earlier of: (a) written notice of a demand to cease such use or (b) termination of this Agreement. Each Party may use the other Party's name, address and/or telephone number if such use is necessary in order to fulfill its obligations under this Agreement. In addition, ADPS shall have the right to identify County in presentations or promotional materials provided to other employers or groups as Participants or as potential sponsors of a Plan or participants in a similar plan.

- 4.3 Health Insurance Portability and Accountability Act (HIPAA). 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. ADPS agrees to cooperate in accordance with the terms and intent of this Agreement for implementation of relevant law(s) and/or regulation(s) promulgated under HIPAA and HITECH. ADPS further agrees that it shall be in compliance, and shall remain in compliance with the requirements of HIPAA, HITECH and the laws and regulations promulgated subsequent hereto, as may be amended from time to time. The Parties shall adhere to all terms and conditions as outlined and specified in Exhibit B, Business Associate Agreement, attached hereto and incorporated herein by this reference.

ARTICLE V TERM AND TERMINATION

- 5.1 Term. The term of this Agreement shall become effective January 1, 2013, and shall continue in effect for two (2) years, until December 31, 2014 unless terminated as provided herein.
- 5.2 Termination for Material Cause – Either party, as appropriate, may terminate this Agreement immediately for cause as set forth herein upon written notice of termination stating the actions of the other party constituting cause for termination.
- 5.3 Breach. Notwithstanding anything in this Article V to the contrary, if (a) County fails to pay when due any payment to be made by it to ADPS under this Agreement and such failure continues for 10 days after notice by ADPS to County or (b) any other breach of this Agreement by either Party occurs and

such breach continues for 60 days after notice by the non-breaching Party to the breaching Party, the non-breaching Party shall have the right to terminate this Agreement effective immediately upon notice to the breaching Party.

- 5.3 Effects of Termination. Upon termination of this Agreement as provided in this Article V, neither Party shall have any further obligations under this Agreement, except for: (a) obligations accruing prior to the date of termination, including without limitation payment of the amounts due but unpaid under Article IV; and (b) rights and obligations under § 1.6 or Articles IV, VI or VII, all of which shall survive the expiration or termination of this Agreement.
- 5.4 Retention of Records. Upon notice of termination by either Party, County may request ADPS in writing to return all records held by it regarding the Plan at County's expense and in accordance with reasonable instructions given by County, provided that if no such request is made to ADPS under this Agreement within 60 days from the date of termination of this Agreement, ADPS shall no longer be responsible for the safekeeping of such records and may destroy such records unless prohibited by applicable law.
- 5.5 Termination Without Cause. In the event either party desires to terminate this Agreement without cause, the terminating party shall give the other party at least sixty (60) days written notice of termination.

ARTICLE VI

INSURANCE; INDEMNIFICATION; LIMITATION OF LIABILITY

- 6.1 Requirements of ADPS. Without limiting or diminishing ADPS's obligation to indemnify or hold the County harmless, ADPS shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement.
- 6.2 Workers' Compensation. If ADPS has employees as defined by the State of California, ADPS shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include County's Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

- 6.3 Commercial General Liability. Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, cross liability coverage and employment practices liability, covering claims which may arise from or out of ADPS'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 Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.
- 6.4 Vehicle Liability. If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then ADPS 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 Insured.
- 6.5 Professional Liability Insurance. ADPS shall maintain Professional Liability Insurance providing coverage for ADPS's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If ADPS'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 ADPS shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that ADPS has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue for a period of five (5) years beyond the termination of this Agreement.
- 6.6 General Insurance Provisions – All lines:
- A. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than

- A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer, such waiver is only valid for that specific insurer and only for one policy term.
- B. ADPS's insurance carrier(s) must declare its self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence, such deductibles and/or retentions shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of deductibles or self-insured retention's unacceptable to the County, and at the election of the County's Risk Manager, ADPS's carriers shall either; 1) reduce or eliminate such deductibles or self-insured retention's as respects this Agreement with the County, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- C. ADPS shall cause ADPS's insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *ADPS shall not commence operations until the County has been furnished original Certificate(s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*
- D. It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and 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.

- E. The County's Reserved Rights—Insurance. 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 to 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 ADPS has become inadequate.
 - F. ADPS shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
 - G. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the County.
 - H. ADPS 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.
- 6.7 Limitation of ADPS Liability. The Parties acknowledge that, in performing its obligations under this Agreement, ADPS is acting only as an agent and not a Plan Administrator or underwriter. ADPS shall not be liable to advance any funds for the payment of Claims or expenses, and County shall have the final responsibility and liability for such payment of Claims and expenses. ADPS shall not be liable in any proceeding at law or in equity for any failure or refusal by it to pay or honor any Claim or appeal made pursuant to this Agreement, except in the event of (and only to the extent of) its own negligence, gross negligence, willful misconduct, gross abuse of discretion or arbitrary and capricious denial.
- 6.8 Indemnification Obligation of ADPS. ADPS shall indemnify and hold harmless County (and its officers, employees, agents, and affiliates) from and against any and all claims, demands, damages, costs, expenses (including without limitation reasonable attorneys' fees) and liabilities (collectively, "Damages") directly or indirectly arising out of or in connection with any failure of ADPS to perform or observe the obligations and/or conditions to be performed by it under this Agreement.
- 6.9 Indemnification Obligation of County. County shall indemnify and hold harmless ADPS (and its officers, employees, agents, and affiliates) from and against any and all Damages directly or indirectly arising out of or in connection with any failure of County to perform or observe the obligations and/or conditions to be

performed by it under this Agreement, including payment or denial of a Claim by ADPS in accordance with this Agreement.

ARTICLE VII
MISCELLANEOUS

- 7.1 Relationship of Parties. The relationship of the Parties is and shall be that of independent contractors. Nothing in this Agreement shall be construed or deemed to create a relationship of employer and employee, partnership or joint venture.
- 7.2 Legal Requirement. If at any time any federal, state or local law requires agreements of this type to include any provision which is not already included in this Agreement, the Parties shall amend this Agreement to include such provision promptly following the request of either Party. In addition, if (a) there is (i) any change in any federal, state or local statute, law, regulation, legislation, rule, policy or general instruction or guideline, or (ii) any ruling, judgment, decree or interpretation by any court, agency or other governing body having jurisdiction over either Party (in any such case, for purposes of this section, a "Regulatory Matter"), and (b) such Regulatory Matter materially and adversely affects, or is reasonably likely so to affect, the manner in which either Party is to perform or be compensated for its services under this Agreement or which shall make this Agreement unlawful, the Parties shall immediately use their best efforts to enter into a new arrangement that complies with such Regulatory Matter and approximates as closely as possible the position of the Parties under this Agreement, economically and otherwise, prior to such Regulatory Matter. If the Parties are unable to reach a new agreement within a reasonable period of time following the date upon which such Regulatory Matter arises or it becomes reasonably certain that such Regulatory Matter will arise, then either Party may terminate this Agreement pursuant to Section 5.5 (Termination without Cause). If termination is not feasible, either Party may submit the issue to binding arbitration before the American Arbitration Association ("AAA") in accordance with the AAA's then-current commercial arbitration rules for a single arbitrator. All arbitration hearings shall be held in the State of California. Arbitration proceedings shall be initiated with appropriate written notice to the other Party and to AAA. The decision of the arbitrator shall be final, and judgment on such decision may be entered in any state or federal court of competent jurisdiction within the State of California. All costs and expenses of arbitration shall be borne by the Parties as determined by the arbitrator.

- 7.3 Participants' Freedom to Choose. Nothing in this Agreement shall be construed to interfere with Participants' freedom to choose to receive services from any Provider or non-Provider.
- 7.4 Remedies. Each Party hereby acknowledges that: (a) the provisions of Article IV are fundamental for the protection of the other Party's legitimate business interests; (b) such provisions are reasonable and appropriate in all respects; and (c) in the event it violates any of such provisions the other Party would suffer irreparable harm and its remedies at law would be inadequate. Accordingly, in the event either Party violates or attempts to violate any provision of Article IV, the other Party shall be entitled to a temporary restraining order, temporary and permanent injunctions, specific performance and other equitable relief, without any showing of irreparable harm or damage or the posting of any bond. All rights and remedies of each Party under this Agreement are cumulative and in addition to all other rights and remedies which may be available to that Party from time to time, whether under any other agreement, at law or in equity.
- 7.5 No Third Party Benefit. This Agreement is intended for the exclusive benefit of the Parties and their respective successors and assigns, and nothing contained in this Agreement shall be construed as creating any rights or benefits in or to any third party.
- 7.6 Assignment; Successors. Neither Party shall assign this Agreement, any interest in this Agreement, or any rights or obligations under this Agreement without the prior written consent of the other Party. Any purported assignment which does not comply with this provision shall be void. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the successors and assigns of each Party.
- 7.7 Notices. Any notice required to be given hereunder shall be in writing either delivered personally or sent by registered or certified mail, return receipt requested, to either County or Contractor at the addresses listed below, or at such other address as either County or Contractor may hereafter designate to the other:

County of Riverside:
4080 Lemon St, 7th Floor
Riverside, CA 92501
Attn: Stacey M. Beale,
HR Division Manager

American Dental Professional Services, LLC:
9054 North Deerbrook Trail
Milwaukee, WI 53223
Attn: Terri M. Lawler, President

All notices shall be deemed given on the date of delivery if delivered personally or on the fifth (5th) business day after such notice is deposited in the United States mail, addressed and sent as provided above.

- 7.8 Entire Agreement. This Agreement (including the attached Exhibits, the Plan, and the Summary Description, all of which are hereby incorporated herein by reference) constitutes the entire agreement between the Parties concerning its subject matter and supersedes any previous agreements or understandings, written or oral, between the Parties with respect to the subject matter. This Agreement shall not be changed or amended except by a writing signed by both Parties. Except as permitted by this Agreement or required by applicable law, the Plan, as in effect for purposes of this Agreement, shall not be changed or amended except with the written consent of both Parties.
- 7.9 Captions. The captions of the various articles and sections of this Agreement are not part of the context of this Agreement, are only labels to assist in locating and reading those sections, and shall be ignored in construing this Agreement.
- 7.10 Severability. The intention of the Parties is to comply fully with all applicable laws and public policies, and this Agreement shall be construed consistently with all laws and public policies to the extent possible. If and to the extent that any court of competent jurisdiction determines that it is impossible to construe any provision of this Agreement consistently with any law or public policy and consequently holds that provision to be invalid, such holding shall in no way affect the validity of the other provisions of this Agreement, which shall remain in full force and effect. With respect to any provision in this Agreement finally determined by such a court to be invalid or unenforceable, such court shall have jurisdiction to reform this Agreement (consistent with the intent of the Parties) to the extent necessary to make such provision valid and enforceable, and, as reformed, such provision shall be binding on the Parties.
- 7.11 Non-Waiver. No failure by either Party to insist upon strict compliance with any term of this Agreement, to exercise any option, enforce any right, or seek any remedy upon any default of the other Party shall affect, or constitute a waiver of, the first Party's right to insist upon such strict compliance, exercise that option, enforce that right or seek that remedy with respect to that default or any prior, contemporaneous or subsequent default; nor shall any custom or practice of the Parties at variance with any provision of this Agreement affect or constitute a

waiver of, either Party's right to demand strict compliance with all provisions of this Agreement.

- 7.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.
- 7.13 Legal Provisions. Any provision required to be in this Agreement by any applicable federal or state law, and regulations thereto shall bind County and ADPS, whether or not expressly provided in this Agreement.
- 7.14 Governing Law; Venue. This Agreement shall be governed and construed by the laws of the State of California without regard to its conflict of law principles. All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state and federal courts located in the County of Riverside, State of California.
- 7.15 Conflict of Interest. The parties hereto and their respective employees or agents shall have no interest, and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required under this Agreement.
- 7.16 Government Claims Act. The provisions of the Government Claims Act (Government Code section 900 et seq.) must be followed first for any disputes arising under this Agreement.

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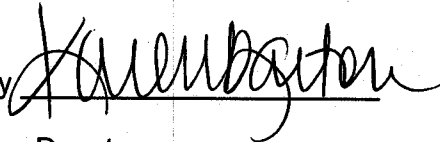
IN WITNESS WHEREOF, the parties hereto have caused their duly appointed representatives to execute this Agreement as set forth below.

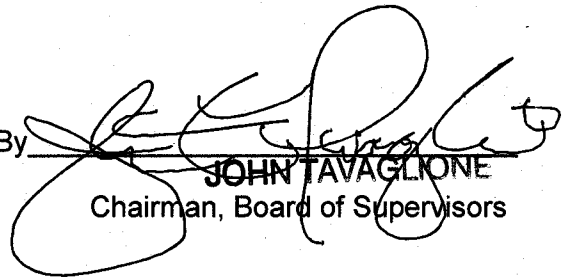
ATTEST:

COUNTY OF RIVERSIDE:

Clerk to the Board

Kecia Harper-Ihem

By: 
Deputy

By: 
JOHN TAVAGLIONE
Chairman, Board of Supervisors

Date DEC 18 2012

Date DEC 18 2012

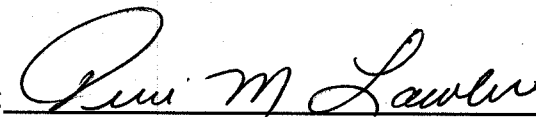
Approved as to form:

Pamela J Walls

County Counsel

By: 
Deputy County Counsel

AMERICAN DENTAL PROFESSIONAL SERVICES, LLC

By: 

Printed Name: Terri M. Lawler

Title: President

Date: 11/20/2012

EXHIBIT A

Reports

ADPS will send the County the following monthly reports:

- Cost Summary
- Claim Summary
- Claim Detail by Plan
- Claim Adjustments (if any)
- First Dental Health Network Fees ("Total vs. Discount")
- Invoice for COBRA TPA fees

EXHIBIT B

HIPAA Business Associate Agreement

Addendum to Contract

Between the County of Riverside and American Dental Professional Services, LLC

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Dental Plan Administration Agreement (the "Underlying Agreement") between the County of Riverside ("County") and American Dental Professional Services, LLC ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

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

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

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

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

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

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

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

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

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.
 - A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402. For purposes of this definition, "compromises the security or privacy of PHI" means poses a significant risk of financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:
 - (1) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.
 - (2) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
 - (3) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
 - B. "Data aggregation" has meaning given such term in 45 CFR §164.501.
 - C. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record

systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.

- D. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- E. "Electronic health record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- F. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- H. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").
- M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2) on the HHS web site.

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

- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.

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

3. **Prohibited Uses and Disclosures.**

- A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.

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

- (1) Not to use or disclose PHI for fundraising or marketing purposes, unless pursuant to the Underlying Agreement and as permitted by and consistent with the requirements of 42 USC §17936;
- (2) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
- (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by 42 USC §17935(d)(2) and with the prior written consent of County. This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

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

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

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional

privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.

- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
- C. Use appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
- D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
- E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware.
- F. Require any subcontractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
- G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
- H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
- I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
- J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
- K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
- L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.

6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI and electronic health record.** Provide access to PHI in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524. If Contractor uses or maintains electronic health records, Contractor shall, at the request of County, provide electronic health records in electronic format to enable County to fulfill its obligations under 42 USC §17935(e).
 - B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
 - C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
 - (1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
 - (2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
 - (3) Make available for County information required by this section for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
7. **Security of ePHI.** In the event Contractor needs to create, receive, or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §§164.314(a)(2)(i), and 164.306, Contractor shall:
- A. Implement the administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County as required by the Security Rule, including without limitations, each of the requirements of the Security Rule at 45 CFR §§164.308, 164.310, and 164.312;
 - B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;

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

- (d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
- (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
- (f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

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

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

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

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

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

9. Hold Harmless/Indemnification.

A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers,

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

- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
 - C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.
 - D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
 - E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.
10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

- A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will

provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

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

B. Effect of Termination.

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

12. General Provisions.

- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.

- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.
- D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.
- F. **Interpretation of Addendum.**
- (1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
 - (2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.
- G. **Notices to County.** All notifications required to be given by Contractor pursuant to the terms of this Addendum shall be in writing and delivered to the County by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability at the address listed below, or at such other address as County may hereafter designate. All notices provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

Name: Barbara A. Olivier

Title: Assistant CEO/Human Resources Director

Address: 4080 Lemon St. 7th floor

Riverside, CA 92502