

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

133



FROM: Riverside County Regional Medical Center (RCRMC)

SUBMITTAL DATE:
April 23, 2013

SUBJECT: Professional Services Agreement with Medical Data Exchange (MDX)

RECOMMENDED MOTION: Move that the Board of Supervisors:

1. Ratify and authorize the Chairman to sign the multi-year Agreement with Medical Data Exchange to provide EDI 837I Claim Submission Services effective January 1, 2013 through December 31, 2018, for an amount not to exceed \$550,000 annually; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise automatic renewal options, based on the availability of fiscal funding, to sign amendments that do not change the substantive terms of the agreement, and allow the Purchasing Agent to increase the annual amount not more than ten percent should the need for services exceed the estimated volume of claims.

(cont'd on page 2)

Douglas D. Bagley

Douglas D. Bagley, Hospital Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$550,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2013/2014

SOURCE OF FUNDS: 100% Hospital Enterprise Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: **APPROVE**
BY: *Debra Cournoyer*
Debra Cournoyer

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: April 23, 2013
xc: RCRMC, Purchasing

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

Prev. Agn. Ref.: **District:** All **Agenda Number:** **3-52**
ATTACHMENTS FILED

FORM APPROVED BY COUNTY COUNSEL
 BY: *Neal R. Kipnis*
 DATE: *4/23/13*
 Departmental Concurrence
 Purchasing: *Mark Seller*
 Assistant Director
 Policy Consent
 Policy Consent
 Dept't Recomm.:
 Per Exec. Ofc.:

BOARD OF SUPERVISORS

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BACKGROUND:

On behalf of Riverside County Regional Medical Center (RCRMC), County Purchasing released a Request for Proposal (RFP MCARC201), to secure EDI 837I claim submission services necessary for RCRMC's electronic data claims processing for Medi-Cal and Medicare claims. Submission of UB04 data to payer sources must be 837I compliant and meet all testing and submission standards as identified under the National Uniform Billing Standards, state and federal regulatory standards, including 4010, 5010, and ICD 9 and 10 requirements.

As a result of RFP MCARC201, solicitations were sent to four prospective vendors specializing in these services and advertised on the County's Internet/Website as well as public works website. Three proposals were received and evaluated by three RCRMC personnel staff with expertise in Medi-Cal claims submission. The evaluation team reviewed and scored each proposal based on the evaluation criteria as specified in the RFP, including the bidder's overall responsiveness to the RFP requirements, their experience with other comparable size hospital facilities, their references and technical capabilities as well as their financial status. Scores ranged from 47.53 to 96.93 with Medical Data Exchange receiving the highest score, overall meeting the requirements of the RFP.

Since 1985, MDX has provided to its customers a proven high level claims processing system that has dramatically decreased claim denials with a corresponding increase in revenues. It is MDX's philosophy that once a clean claim is transmitted the claim ought to be paid. MDX offers competitive pricing with no additional costs and has a "paid first submission average of 97%" in the industry.

PRICE REASONABLENESS:

To ensure each vendor submit the best possible price and any value added components; County Purchasing conducted a Best and Final Offer (BAFO). As a result of the BAFO, Medical Data Exchange (MDX) presented an overall cost less than the other two vendors. MDX offered a monthly flat rate of \$27,375 which includes: services for claims billing and eligibility system; Medi-Cal, Medicare, Medi-Cal Managed Care and commercial claims; ERA cash posting services; Medicare FISS direct data services, Suspense Management Accounts Receivable (SMART) system; and fiscal reporting services, including but not limited to, claim scrubbing and all appropriate edits necessary to secure a clean claim per state and federal regulations.

FINANCIAL IMPACT:

100% Hospital Funds

REVIEW/APPROVAL:

County Purchasing
County Counsel

DB:ns

***EDI 837I Claims Submission Services
Custom System Agreement***

By and Between

Medical Data Exchange

and

County of Riverside

Riverside Country Regional Medical Center

**EDI 837I CLAIMS SUBMISSION SERVICES
CUSTOM SYSTEM AGREEMENT**

This CUSTOM SYSTEM AGREEMENT, (this "Agreement"), made and entered into this twenty-ninth day of March, 2013, by and between, Medical Data Exchange, a California Corporation ("MDX"), and County of Riverside, a political subdivision of the State of California, through Riverside County Regional Medical Center ("Client" or "COUNTY"). The parties agree as follows:

RECITALS

WHEREAS, Client desires for MDX to implement MDX's system at Client's facilities, listed in Exhibit A. Such implementation shall provide services relating to the MDX/MAX II Relational Data-base System for claims processing (the "MAX II System"); and

WHEREAS, MDX shall provide to Client claims processing and related services through the implementation of the MDX System at Client's site. Such services shall include Medi-Cal, Medicare, and/or Commercial claims processing.

NOW, THEREFORE, in consideration of the mutual covenants, representations and agreements made herein, and of the mutual benefits derived hereby, the parties agree as follows:

1. DUTIES, REPRESENTATIONS AND WARRANTIES OF MDX

1.1 MDX hereby represents and warrants that all of the Client's facilities listed in Exhibit A shall have connectivity and operational access to the MAX II System at MDX's Long Beach headquarters according to the specifications set forth in Schedule 1.1.a. Additional Client facilities shall be incorporated into this Agreement by mutual execution of Exhibit B, attached.

1.2 MDX shall review each claim and edit it to conform to Medi-Cal and/or Medicare laws, regulations, and payment policies.

1.3 MDX will use the appropriate fiscal intermediary's and appropriate commercial electronic criteria and submission schedule to submit edited claims.

1.4 MDX warrants that the MAX II System supports billing for exceptional claims which require hard-copy billing and affords Client the ability to generate and submit hard-copy claims. MDX will provide hard-copy submission and/or follow-up services to Client, if requested. Such requests' terms and conditions shall be negotiated and incorporated in this document by means of an appropriate Amendment.

1.5 MDX shall make appropriate and timely modifications to its software to accommodate changes in Medi-Cal, Medicare and/or Commercial Insurance billing procedures and regulations provided in published bulletins or similar correspondence from the appropriate intermediaries or payors.

1.6 MDX shall use its best efforts to comply with and adhere to all federal, state and local laws, rules and regulations applicable to Client's activities, and to the duties and responsibilities to be performed by MDX under this Agreement. MDX shall immediately notify Client should MDX be notified of, or become aware that, any governmental or regulatory agency is or will be conducting an investigation of Client's business.

2. DUTIES, REPRESENTATIONS AND WARRANTIES OF CLIENT

2.1 Client acknowledges and agrees that the MAX II System, all edits to claims and any and all software, instructional materials or other literature provided by MDX, and all copies of the foregoing, remain the exclusive proprietary information and property of MDX. Except as specifically authorized in writing, Client shall not make any copies of the proprietary information or property of MDX. Upon termination of this Agreement, Client shall return all proprietary property of MDX, including copies thereof, to MDX.

2.2 Client agrees that MDX, exclusively, shall process all of Client's claims as described herein.

2.3 Client shall be solely responsible for selecting the proper CPT codes for each claim. Client agrees to indemnify MDX against any and all claims relating to the CPT coding of claims.

2.4 Client shall not hire as an employee, consultant or otherwise any former employee of MDX within one year of the termination of such employee's employment with MDX.

2.5 Client acknowledges that MDX may from time to time in its sole discretion, without liability to Client, suspend, revise, modify or update any part of its services or the MAX II System; provided, however, that MDX shall notify Client of any such event, either electronically or in writing, with reasonable promptness after determining that such event will occur.

2.6 Client shall comply with all password security requirements or guidelines established by MDX.

2.7 Client acknowledges that this Agreement neither creates a license in, nor confers any property rights relating to, any of the intellectual or other property of MDX. Client disclaims any ownership interest in or license to use any of the intellectual or other property of MDX.

3. PAYMENTS AND FEES

3.1 Client shall pay to MDX a monthly flat fee of \$27,375.00 for all services provided and identified within this Agreement and as specified in Exhibits A thru E and Attachment 1 thru 3 as attached hereto and incorporated herein. Should Client's claim and/or eligibility transactions increase by an average of more than 10% per month over a six month period, MDX will have the option to increase the monthly flat fee by an amount equal to the same percentage increase. Should Client request additional MDX products or services, the monthly flat fee shall be adjusted to represent the additional fees for said products or services. The additional fee shall be mutually agreed upon by both parties as it pertains to this document.

3.2 Maximum payments by Client to MDX shall not exceed five hundred fifty thousand dollars (\$550,000) annually including all expenses. Client shall not be responsible for payment of any of MDX's expenses related to this Agreement.

3.3 The Monthly Flat Fee shall incorporate the following claim types processed by MDX.

- Claims Billing and Eligibility System.
- Medi-Cal, Medicare, Medi-Cal Managed Care (I.E.H.P., Molina, etc.) and commercial claims.
- ERA Cash Posting services for Medi-Cal, Medicare, I.E.H.P. and additional payers.
- Medicare FISS direct data services.
- Medicare SMART System (suspense management accounts receivable) for Medicare claim reporting and eligibility.
- Fiscal Reporting Services

The above represents all services associated with the entire billing process as described in the RFP# MCARC201, including but not limited to: Claim scrubbing and all appropriate edits necessary to secure a clean claim in 4010 or 5010 format. 837 & 835 Eligibility verification Adhoc and custom reporting needs. Daily, Monthly, Quarterly, and Annual reporting needs relating to organization trending and usage. All training and technical support for system. Post back billing response to the Invision System.

training and technical support for system. Post back billing response to the Invision System.

Additionally, MDX can perform initial billing and follow up services by Client requesting Optional Follow-Up Enhancement services as specified in Attachment 1 and Attachment 2 for a separate per claim fee.

3.4 After Client approval of the initial installation, should Client's IT Staff reconfigure the initial installation, MDX's technical staff will be made available for further Client assistance at a rate of One Hundred Fifteen Dollars (\$115.00) per staff member per hour, plus travel expenses.

3.5 All invoices for amounts under Section 3 are due and payable upon thirty (30) working days of receipt from MDX. MDX reserves the right to suspend use of the MAX II System by Client and all claims processing on behalf of Client within 10 days following written notice by MDX of such past due amounts. Prepare invoices for this Agreement and send to:

Riverside County Regional Medical Center
26520 Cactus Avenue
Moreno Valley, CA 92555
Attn: Accounts Payable
Copy to: Patient Accounts

4. TERM AND TERMINATION

4.1 The term of this Agreement shall be five (5) years commencing on the effective date of signature by both parties, unless terminated earlier. This Agreement shall renew automatically unless either party gives notice of its intent not to renew this Agreement at least sixty (60) days in advance of the expiration of the then current term.

4.2 For cause termination – Either party may terminate the Agreement for cause as follows:

Either party may provide the other with written notice alleging cause for termination. If the matter is not resolved within thirty (30) days following the other party's receipt of the notice, the complaining party may issue notice of termination. Within ten (10) days following receipt of such notice of termination, the other party may request formal dispute resolution. If so requested, each party shall designate a representative and the representative shall establish a process for resolving the dispute. If the dispute resolution process is not requested or if the resolution process results in a finding that one party has, without adequate excuse, violated a material term of the Agreement, the other party shall be permitted to terminate the Agreement with cause. The effective date of the termination will be thirty (30) days following the date on which the parties' representatives determine cause or sixty (60) days following the notice of termination if the dispute resolution process is not requested.

4.3 MDX's liability to Client shall be limited to the extent of any fees due and payable on any claim. Under no circumstances shall any consequential, punitive or similar damages be assessable against MDX.

5. NOTICES

5.1 Any notices required by this Agreement shall be sent via certified mail, return receipt requested and addressed as follows:

If to Client:

Riverside County Regional Medical Center
26520 Cactus Avenue
Moreno Valley, CA 92555

Attn: Naomi Santos
Contracts Administrative Services Officer

If to MDX:

Medical Data Exchange
One World Trade Center, Ste 2050
Long Beach, CA 90831

Attn: Gerry Ibaniez
Chief Executive Officer

6. INSURANCE REQUIREMENTS

6.1 MDX agrees to provide, at MDX's sole cost and expense, worker's compensation insurance for MDX's employees throughout the entire term of this Agreement in accordance with the applicable laws.

6.2 MDX shall obtain and maintain for MDX and any employees or staff providing services on behalf of MDX, at MDX's sole cost and expense, throughout the entire term of this Agreement, a policy or policies of comprehensive general liability insurance with a licensed insurance company with limits of liability in a minimum amount of One Million Dollars (\$1,000,000) per claim. MDX may maintain a program of self-insurance.

6.3 MDX shall provide Client with a minimum of thirty (30) days' prior written notice in the event any of the policies set forth in Sections 6.1 or 6.2 is canceled, or the coverage thereunder reduced. MDX shall from time to time, on the reasonable request of Client, furnish to Client certificates or other written evidence of insurance.

7. INDEMNIFICATION

7.1 MDX will indemnify, defend, protect and hold Client harmless from and against any losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees), arising out of or in any manner relating to any negligent or intentional acts or omissions by MDX in connection with the performance of MDX's services under this Agreement.

7.2 Client will indemnify, defend, protect and hold MDX and MDX's contractors harmless from and against any losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees), arising out of or in any manner relating to any negligent or intentional acts or omissions by Client in connection with the performance of Client's obligations under this Agreement.

8. INDEPENDENT CONTRACTOR

8.1 In the performance of MDX's duties and obligations arising under this Agreement, MDX is at all times acting and performing as an independent contractor. Nothing in this Agreement is intended nor shall be construed to create between MDX and Client, with respect to their relationship under this Agreement, either an employer/employee, joint venture, partnership, or lease relationship. In the event that a determination is made for any reason that an independent contractor relationship does not exist between Client and MDX, Client may terminate this Agreement immediately upon written notice to MDX.

9. ASSIGNMENT AND DELEGATION

9.1 None of the rights or duties of a party to this Agreement may be assigned or delegated without the prior written consent of the other party.

9.2 Subject to Section 9.1 above, the rights and duties of this Agreement shall extend to, be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

10. MISCELLANEOUS

10.1 Each party acknowledges that during the term of this Agreement it may have access to certain proprietary information and confidential information of the other party. Each party shall preserve and maintain as confidential all such proprietary and confidential information in the same manner as it protects its own confidential and proprietary information. Without the prior written consent of the other party, neither party shall use for its own benefit or purposes, or disclose to persons within the party except on a "need to know" basis or any third person any proprietary or confidential information of MDX and Client. This provision shall survive the expiration or termination of this Agreement. Each party shall retain in confidence and not disclose to any other person, except in confidence and in accordance with this Section 10.1, the terms of this Agreement (including but not limited to the pricing of fees and payments provided for in this Agreement), and any and all confidential or proprietary information and materials of the other party. All of the foregoing are referred to as "Confidential Information"; provided, however, Confidential Information shall not include information which (a) is or will become generally available to the public other than as a result of a wrongful disclosure by the recipient, (b) was in the recipient's possession and

not known to be the Confidential Information of the other party prior to its disclosure to the recipient by the other party, (c) was independently developed by the recipient without wrongful disclosure, or (d) was disclosed by another entity entitled to make disclosure. Each party will make no use of Confidential Information of the other party except as required to perform in accordance with the terms of this Agreement. Confidential Information of the other party shall not be disclosed, in whole or in part, to any person other than in confidence to one for whom such knowledge is reasonably necessary for purposes of this Agreement and then only to the degree such disclosure is so necessary and only if the recipient has agreed in writing to maintain the confidentiality of such information. Confidential Information shall be protected by each party in a manner which shall be no less protective than the standard of care which such party then uses to protect its own similar Confidential Information, but in no event shall such standard be less than is reasonably adequate to protect such Confidential Information. The parties shall take all appropriate action by instruction, written agreement or otherwise to satisfy their obligations with respect to the use, copying, confidentiality, protection and security of the other party's Confidential Information. This provision shall survive the termination or expiration of this Agreement.

10.2 The validity, interpretation, and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

10.3 If for any reason any clause or provision of this Agreement, or the application of any such clause or provision in a particular context or to a particular situation, circumstances or person, should be held unenforceable, invalid or in violation of law by any court or other tribunal, then the application of such clause or provision in contexts or to situations, circumstances or persons other than that in or to which it is held unenforceable, invalid or in violation of law shall not be affected, and the remaining clauses and provisions hereof shall nevertheless remain in full force and effect.

10.4 Any captions to or heading of the Articles, sections or subsections of this Agreement are solely for the convenience of the parties, and shall not be interpreted to affect the validity of this Agreement or to limit or affect any rights, obligations, or responsibilities of the parties arising hereunder.

10.5 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

10.6 This Agreement constitutes the full and complete agreement and understanding between the parties and shall supersede all prior written and oral agreements concerning the subject matter. Unless otherwise provided in this Agreement, this Agreement may be modified, amended, or waived only by a written instrument executed by all of the parties.

10.7 Neither party shall be liable or deemed to breach this Agreement due to any delay or failure in performance or other interruption of service resulting, directly or indirectly, from Acts of God, civil or military authority, acts of the public enemy, riots

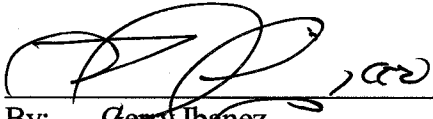
or civil disobedience, war, accidents, fires, explosions, earthquakes, flood, failure of transportation, machinery, or supplies, vandalism, strikes or other work interruptions by the employees of any party, or any other cause beyond the reasonable control of the party. However, each party shall utilize its best good faith efforts to perform under this Agreement in the event of any such occurrence or circumstances.

10.8 Whenever the context requires, the gender of all terms shall include the masculine, feminine, and neuter, and the number shall include the singular and plural.

10.9 The parties have fully negotiated and obtained legal advice on all provisions of this Agreement. Therefore, the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement.

10.10 No failure or delay by a party to insist upon the strict performance of any term, condition, covenant or agreement of this Agreement or to exercise any right, power or remedy shall constitute a waiver of any such term, condition, covenant, agreement, right, power or remedy or of any such breach or preclude such party from exercising any such right, power or remedy at any later time.

MEDICAL DATA EXCHANGE:

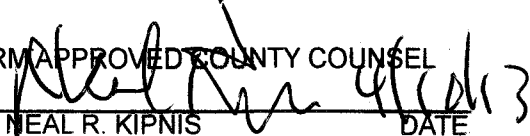

By: Gerry Ibanez
Chief Executive Officer

3/29/2013
Date:

**COUNTY OF RIVERSIDE -
RIVERSIDE COUNTY REGIONAL
MEDICAL CENTER:**


By: John Benoit
Chairman

APR 23 2013
Date:

FORM APPROVED COUNTY COUNSEL
BY: 
NEAL R. KIPNIS DATE

ATTEST:
KECIA HARPER-JHEM, Clerk
By: 
DEPUTY

MDX/MAX II ELIGIBILITY DATA ACCESS

MDX/MAX II Eligibility Data Access fee: *Included in Monthly Flat Fee*

Provides Medi-Cal member eligibility as follows:

- 1) On-line verification during editing and correction of claims via key-stroke from payor screen on Medi-Cal UB-92 and HCFA 1500.
- 2) On-line review of any prior verification during editing and correction of claims with option to re-verify eligibility.
- 3) Batch mode verification during initial claim download process. Reported eligibility data is available on-line the following business day.

Features:

- a. Eligibility response data is stored directly in the claim record and is displayed for operator to review.
 - b. Eligibility response includes county and aid code information, which then triggers applicable edits.
 - c. Eligibility response is specific to date of service on claim record.
 - d. Eligibility response displays share of cost amount, which can be cleared by billing staff. (Note: the clearing of the share of cost amount feature is currently being tested).
 - e. No additional hardware/software modification in the current MDX/MAX II configuration.
- 4) Batch mode for self pay eligibility inquiries (not included in monthly flat fee) from a hospital provided data set which must include patient account number, patient name, patient date of birth (mmddccyy), and date of service. Inquiry response is reported and returned as an added field within the data set. Fee for self pay eligibility is \$0.25 per transaction.

NOTE: Will allow Admitting Office accessibility (not included in rate). MDX will provide quote upon analysis of Admitting Office system configurations, LAN or WAN access, and required modifications.

ERA CASH POSTING SERVICE

ERA Cash Posting Service Fees: *Included in Monthly Flat Fee*

ERA Cash Posting Service includes the following features:

- 1) ERA Retrieval from Payor
- 2) Copy of ERA File Routed to Client*
- 3) ERA Hardcopy Production with Provider defined sort logic
- 4) Interactive Host Animation to Client PFS Host System for the purpose of posting:
 - a. Payments
 - b. Adjustments
 - c. Denials
 - d. Account notes, Denial Reason Codes/Descriptions*
 - e. Error Handling Routines
- 5) Reporting of ERA Activities Summary and Detailed*
 - a. Audit
 - b. Exception

Services will be performed based on ERA and Host system availability and/or Client requested instructions.*

*Indicates those areas where further definition of the process will need to be documented and agreed upon as part of the overall project plan.

SMART SERVICES

SMART, Suspense Management and Accounts Receivable Tracking fee: *Included in Monthly Flat Fee*

SMART, Suspense Management and Accounts Receivable Tracking Service, provides the most comprehensive means to ensure Medicare payment, reduce errors and to improve financial outcomes. SMART services are based on standardized report generation using predetermined sorting and filtering as defined by the Client organization. Medicare claim activity information is gathered daily by SMART and reports are then generated and forwarded to designated individuals within the Client organization via encrypted email.

SMART Services include, but are not limited to the following:

1. Daily Reports
 - a. Activity Summary
 - b. Provider Inquiry Accounts
 - c. Provider Update Accounts
 - d. Additional Documentation Request
 - e. Denied, Reject, Not Found, Inactive Accounts
2. Weekly Reports
 - a. Activity Summary
 - b. Provider Inquiry Follow-up
 - c. Provider Update Follow-up
 - d. Adjudicated Summary
 - e. Denial, Reject, Not Found, Inactive Summary
3. Monthly Reports
 - a. Activity Summary
 - b. Suspense Summary
 - c. ATB Summary
 - d. Paid, Denied, Reject, Not Found Summary
 - e. Suspense Code Summary
 - f. Top Ten Reason Code
4. Enterprise Integration/Ad Hoc Reporting
 - a. Host System Notes
 - b. Excel Tracking Reports
5. Network Access
 - a. On-line Claim Correction
 - b. On-line Report View Capability

FEE SCHEDULE

MDX shall be reimbursed as follows:

<p>* Monthly Flat Rate, includes:</p> <ul style="list-style-type: none"> • Eligibility Data Access, • Medi-Cal, Medicare, Medi-Cal Managed Cared and Commercial Claims • ERA Cash Posting Services • Medicare FISS Direct Data Services • SMART Services • Fiscal Reporting Services 	\$27,375 flat rate
Reconfiguration (after initial installation)	\$115 per staff member per hour, plus travel expenses
Self-pay Eligibility	\$0.25 per transaction
Optional Follow-Up Enhancement	\$5.00 per claim

- Should Client's claim and/or eligibility transactions increase by an average of more than 10% per month over a six month period, MDX will have the option to increase the monthly flat fee by an amount equal to the same percentage increase. Should Client request additional MDX products or services, the monthly flat fee shall be adjusted to represent the additional fees for said products or services. The additional fee shall be mutually agreed upon by both parties.

CONNECTIVITY AND OPERATIONAL ACCESS SPECIFICATIONS

1. NEW FACILITY – STRUCTURE AND REQUIREMENTS

1.1 Minimum System Requirements - Client shall provide access to, at Client's cost, for each requested user, one personal computer running Microsoft Windows 2000 or better. This personal computer must have network access to the gateway to MDX. MDX will provide WYSE 50 terminal emulation software for each workstation. Client shall provide access to a post script enabled laser printer and/or a wide carriage dot matrix printer which are necessary for the printing of reports and claim forms. MDX will provide access to a secure file server for the exchange of data. This access is to be used initially for the Client to provide test data prior to going live, either a UB04 print image or an ANSI ASC X12N version 4010A1 837 file can be accommodated. Dedicated data transmission lines and the equipment to terminate them, if required, are to be installed at MDX's expense. The Client must provide an interface to the Client's network.

1.2 Applications software will be resident on redundant MDX Systems at MDX's Long Beach, Headquarters. Because of this redundancy, should one platform experience hardware failure MDX is prepared to transfer your system processing to its resident back-up platform. In this event, processing will recommence within forty-eight (48) hours.

1.3 Client is responsible for providing telecommunications connectivity (cable) up to the interior face of the wall closest to the Client's workstation area. MDX will supply the cable specifications upon request.

1.4 Client agrees to complete and return to MDX a Provider Billing Authorization form, a Client Profile form, an Application for electronic Remittance Advice form.

1.5 Client authorizes MDX to prepare, sign and submit claims to any state and/or federal designated fiscal intermediary and/or any appropriate commercial payor.

1.6 On-site training and orientation for the MDX MAX II System will be conducted by a MDX staff member for the benefit of designated Client staff, following hardware installation. Training will consist of two segments per Client entity. The first segment is system orientation and billing functions. The second segment is first segment review, follow-up and report generation. MDX will provide one-day training for each segment per entity. Historically, this time frame has proven adequate. However, should Client determine that additional training is necessary, MDX will provide, at no cost to Client, one additional day per segment.

1.7 Instant claim status verification is accomplished by the System's availability of on-line and real-time access after the installation of the direct digital transmission-line between Client facilities and MDX. Such line is installed and maintained by MDX.

CONNECTIVITY AND OPERATIONAL ACCESS SPECIFICATIONS

1.8 Using the appropriate State or Federal, (and/or commercial when available) Electronic Remittance Advice, MDX/MAX II shall furnish Inpatient and Outpatient claims posting services for purposes of performing follow-up by Client's staff.

1.9 COMPONENTS TO BE COMPLETED AND RETURNED - to your MDX/MAX II Account Manager or sent directly to:

Medical Data Exchange
 One World Trade Center, Suite 2050
 Long Beach, CA 90831
 Attention: New Accounts Department

These Components Are:

1. This contract signed in the original.
2. Provider Billing Authorization (Supplied forms attached).
 By signing this agreement, client authorizes MDX to prepare, sign and submit claims to any State or Federal future designated fiscal intermediary and/or any designated commercial payor.
3. Client Profile (MDX supplied form, attached). Completion of this form will assure that MDX will be billing for the maximum appropriate reimbursements.
4. Application for electronic Remittance Advice (supplied form attached).

1.10 MDX/MAX II SYSTEM INSTALLATION AND STARTUP includes the following:

1. Installing MDX/MAX II system
2. "Password" assignments
3. On-site System orientation and training.
4. Enrollment of Client with the Department of Health Services as a Computer Media Claims (CMC) provider, as well as any other appropriate Fiscal Intermediary and/or designated commercial payor(s).

1.11 REPORTS:

The System, being a relational data base system, affords the client with the unique ability to generate and customize its own management reports. These reports include but are not limited to:

1. Billing reports
2. Utilization reports
3. Follow-up reports
4. Operator reports
5. Write-off reports

CONNECTIVITY AND OPERATIONAL ACCESS SPECIFICATIONS

6. Ad hoc reports
- 1.12 System Installation Includes:
 1. System set up and connectivity verification.
 2. Download interface.
 3. Upload interface for data elements of claim form and electronic media R/A for use by Client.
 4. On-site System orientation and staff training.
 5. All necessary enrollments with appropriate government agencies, Fiscal Intermediaries, and/or commercial payor(s).
 6. Frame Relay.

In order to perform the services as herein described, at no charge to Client, MDX provides MDX system maintenance, System updates, System enhancements, manuals, training, ARDS (Automated Remittance Data Service) Medi-Cal remittance advice and Wyse 50 emulation software.

CLIENT FACILITIES

CLIENT NAME: County of Riverside - Riverside County Regional Medical Center

FACILITY NAME: RIVERSIDE COUNTY REGIONAL MEDICAL CENTER

ADDRESS: 26520 Cactus Avenue

CITY /STATE/ZIP: Moreno Valley, CA 92555

CONTACT NAME: Theresa Deem, Patient Account Officer

CONTACT PHONE: 951-486-4406

Additional facilities shall be agreed upon by both parties and adhere to the provisions specified in Attachment 2, Optional Follow-Up Enhancement, as attached hereto and incorporated herein. Any such alterations are made in the Agreement, shall be modified by written amendment.

OPTIONAL FOLLOW-UP ENHANCEMENT

- 1) MDX will analyze claim (s) to determine if claim (s) are billable. If MDX deems that the claim is not billable, the claim will be returned to Client with an explanation of non-process. If the claim *is* billable with the information sent by Client, the claim data will be manually entered. The procedure after data entry of each claim is as follows:
- A) *If the claim is sent to Xerox State Healthcare ("Xerox") electronically and no A/R activity is recorded after 21 days, MDX will initiate a tracer to Xerox. If the claim is sent via hard copy to Xerox, and no A/R activity is recorded after 45 days, MDX will initiate a tracer to Xerox. In both scenarios, MDX will post the response from Xerox on the MDX A/R system. In all cases follow-up procedures are driven by information contained on Client Medi-Cal remittance advices. MDX must receive this information in a timely fashion to ensure expedient resolution to all claim issues.*
 - B) *If Xerox does not have a record of the claim (s) or claim lines in question, MDX will resubmit the claim or claim lines to Xerox.*
 - C) *If the claim is denied, a claims inquiry form (CIF) will be generated, (if denial warrants it). However, when possible and to expedite the process, the claim or claim lines will be corrected and simply resubmitted to Xerox. When a claims inquiry form (CIF) is submitted to Xerox, it is imperative to the process that the Client forward CIF acknowledgement documentation to MDX for processing. Follow-up on a CIF will begin 50 days after the CIF has been forwarded to Xerox if no A/R activity has been recorded. Any future CIF's produced for claims having a CIF record on the system but no A/R activity on the system must be generated within 6 months of the original denial date.*
 - D) *If any Inpatient claim receives a like denial on consecutive remittance advices, a First Level Appeal will be prepared. If the First Level Appeal is denied by Xerox, the claim will be deemed non-recoverable and MDX will write-off the claim from the MDX system and notify the Facility.*
 - E) *If any Outpatient claim receives a like denial on consecutive remittance advices from Xerox, the claim or claim lines will be deemed non-recoverable and MDX will write-off the claim or claim lines from the MDX system and notify the Facility.*

OPTIONAL FOLLOW-UP ENHANCEMENT

INFORMATION REQUEST

- 2) When a claim is deemed not billable but can be submitted for payment if the proper documentation is obtained, MDX will request the necessary information from the Client to submit the claim. Upon receipt of requested information, MDX will submit the claim following the procedures indicated in steps 1A-1E. Client shall dedicate a client representative to be a liaison between Client and MDX. All correspondence shall be directed to and from the liaison.

DATA REQUEST FORMS

- 3) At the time of payment posting MDX will post denied claims or claim lines. Part of the follow-up procedure is to request in writing the information necessary to pursue payment on denied claims or claim lines. Data Request Forms are generated by the system and sent to the Client. These forms contain patient claim information, the denial explanation, and the information necessary to resolve the denial. The follow-up procedure as it relates to Data Request Forms is as follows:
 - A) If the Data Request Form is received with the information requested and in a timely fashion, the follow-up procedures that will be initiated are indicated in steps 1C –1E.
 - B) If a response to the Data Request Form is not received within 60 days a second notice will be generated automatically by the system informing Client that the claim or claim lines will be written off if the information is not received within the time indicated. If the Data Request Form is received after the claim or claim lines have been written off and the denied claim or claim lines are not past statute, MDX will process the claim as a new claim.

At the request of the Facility, MDX will provide the Data Request information electronically.

WRITE-OFFS

MDX through its experience has developed a listing of denial codes that are automatic write-offs. These denials are not recoverable charges. A report reflecting the patient claim information as well as charges that have been written off is generated and forwarded to the client.

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This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the **EDI 837I Claims Submission Services Custom System Agreement** (the "Underlying Agreement") between the County of Riverside ("County") and **Medical Data Exchange** ("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:

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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.

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- 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,

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(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

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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.

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- 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).

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- 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;

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- 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,

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(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

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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:

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- (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.

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Addendum to Contract
Between the County of Riverside and **MEDICAL DATA EXHCANGE**

- 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: Riverside County Regional Medical Center, Compliance Department

Title: Compliance and Privacy Officer

Address: 26520 Cactus Avenue, Moreno Valley, CA 92555