

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



ITEM
3.21
(ID # 4364)

MEETING DATE:

Tuesday, June 6, 2017

FROM : RUHS-MEDICAL CENTER:

SUBJECT: RIVERSIDE UNIVERSITY HEALTH SYSTEM - MEDICAL CENTER: Ratification of the Professional Service Agreement with The Regents of the University of California, University of California Berkeley Optometric Eye Center (UCBOEC) without seeking competitive bids to provide retinal image evaluation services via EyePACS for five years; All Districts; [\$100,000 annually from Hospital Enterprise Funds and Health Resources and Services Administration Grant Fund],

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify the Agreement with The Regents of the University of California, University of California Berkeley Optometric Eye Center (UCBOEC) without seeking competitive bids to provide retinal image evaluation services via EyePACS effective July 1, 2016 with the option to renew annually through June 30, 2021; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459 as approved by County Counsel to sign amendments that do not change the substantive terms of the agreement and sign amendments to the compensation provisions that do not exceed ten percent (10%) annually.

ACTION: Policy

Zareh Saefian, Chief Executive Officer – Health System 5/19/2017

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Washington and Perez
Nays: None
Absent: Ashley
Date: June 6, 2017
xc: RUHS-Medical Center, Purchasing

Kecia Harper-Ihem
Clerk of the Board

By:
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 100,000	\$ 100,000	\$ 500,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Hospital Enterprise Fund (40050) – 50%; HRSA Grant Fund – 50%			Budget Adjustment:	No
			For Fiscal Year:	16/17-20/21

C.E.O. RECOMMENDATION: APPROVE

BACKGROUND:

Summary

Riverside University Health System currently uses the EyePACS Program as an innovative and cost-effective way to screen for and prevent blindness caused by diabetes. Patients with diabetes are generally recommended to have a preventive examination of the back of the eye (or retina) every 1-2 years. However, many patients with diabetes never complete this preventive eye examination because of the inconvenience of having to take time off from work or away from family in order to visit the eye specialist (optometrist or ophthalmologist). As a result, many people with diabetes develop preventable vision loss or blindness.

At Riverside University Health System (RUHS), instead of having to send all of our patients with diabetes to an eye specialist, we are able to conduct preventive eye examinations at three of our primary care clinic sites by using an EyePACS Program “retinal camera” that takes photographs of the inside of the back of the eye (or retina). Within 24 hours, we are able to get an interpretation of these “retinal photos” and know whether the patient with diabetes can wait another 1 to 2 years for another set of “retinal photos” (the majority of patients) or whether the patient might need treatment from an eye specialist (minority of patients). In other words, the EyePACS retinal camera program makes it easier and more convenient for patients with diabetes to have their eyes check and this results in improved diabetic eye screening and prevention of blindness.

Impact on Residents and Businesses

The hospital, and its site based clinics serve residents in all five Riverside County Supervisorial districts, providing more than 450,000 patient encounters each year. The local economy will reap positive benefits from the presence of a thriving regional health system where patients of all incomes can obtain high quality healthcare services that now seek providers in neighboring counties. Furthermore, patients with diabetes are able to immediately receive retinal evaluation with a digital retinal camera during their primary care visit which the medical center and its clinics hope to enhance patient satisfaction.

Contract History and Price Reasonableness

On January 24, 2011, a Professional Service Agreement with The Regents of the University of California, University of California Berkeley Optometric Eye Center to provide retinal screening

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

services for the Medical Center's Family Clinic was executed within the limits of the Purchasing Agent's authority effective January 11, 2011 through June 30, 2016 not to exceed \$25,000 annually. On August 16, 2013, another Professional Service Agreement with The Regents of the University of California, University of California Berkeley Optometric Eye Center to provide the same service for the Ambulatory Care Clinic in Palm Springs was executed and also within the Purchasing Agent's authority effective May 1, 2013 through May 31, 2018 not to exceed \$25,000 annually. Through discussions between both parties, it was decided that a consolidation of the agreements would be beneficial to both parties to help ease the annual renewal and billing processes.

The camera placement cost is \$510 monthly for each camera at each location. Any encounters over and above the initial 30 per month will be \$17.00 per patient (per retinal screening report). The cost of any eye examination using a retinal camera is significantly less than an appointment with an optometrist or ophthalmologist (at \$120-\$260 per consult). The program allows for a one-stop shop service for patients with diabetes and is a convenient and cost-effective way to preserve vision and prevent blindness.


Christopher Hans 5/30/2017


Lisa Brandt, Director of Purchasing and Fleet Services 5/19/2017


Gregory E. Priamos, Director County Counsel 5/19/2017



Riverside University HEALTH SYSTEM

Date: May 3, 2017

From: Zareh Sarrafian, CEO – Health Systems

To: Board of Supervisors/Purchasing Agent

Via: Naomi Santos, Contracts Administration

Subject: Sole Source Procurement; Request for Retinal Image Evaluation Services via EyePACS

The below information is provided in support of my Department requesting approval for a sole source.

1. **Supplier being requested:** The Regents of the University of California, University of California Berkeley Optometric Eye Center (UCBOEC)
2. **Vendor ID:** 10244
3. **Supply/Service being requested:** Retinal image evaluation/consultation via EyePACS
4. **Alternative suppliers that can or might be able to provide supply/service and extent of market search conducted:** There are no alternative suppliers who are able to provide a diabetic retinopathy program utilizing telemedicine techniques. The program utilizes specifically, EyePACS as a platform for clinical communication.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** This is a web based program developed to facilitate communication among primary care clinicians that allows the ability to share clinical data and retinal images of diabetic patients through a secure and encrypted internet connection.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** This is for direct patient care. Patients with diabetes are able to immediately receive retinal evaluation with a digital retinal camera during their primary care visit. The digital images are uploaded to the EyePACS website where they are evaluated on line. Annual retinal exams are important for the diabetic patients in order to detect sight threatening complications of diabetes.
7. **Period of Performance:** 07/01/2016 – 06/30/18 (with option to renew through 06/30/2021)

Is this an annually renewable contract? Yes.
Is this a fixed-term agreement: No.
8. **Identify all costs for this requested purchase. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each**

Re: Sole Source Request - Regents of UC Berkeley Eye Center

From:
RUHS
Request
date:
5/3/17

consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained.

Description:	FY16/17	FY17/18	FY18/19	FY19/20	FY20/21	Total
One-time Costs:						
Expenses included						
Ongoing Costs:						
(Insert description)						
Total Costs	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$500,000

9. Price Reasonableness:

The original contract was established for the Family Care Clinic in 2011 not to exceed \$25,000, approved by Central Purchasing. Then in 2013, another agreement for one of the primary care clinic as it pertains to the Federally Qualified Health Clinic (FQHC) was established for the same service not to exceed \$25,000, also approved by Central Purchasing. The contracts end life was June 30, 2016. It was decided by UC Berkeley and RUHS to combine the multiple contracts into one.

The camera placement cost is \$510 monthly for each camera at each location. Any encounters over and above the initial 30 per month will be \$17.00 per patient (per retinal screening report). The cost of any eye examination using a retinal camera is significantly less than an appointment with an optometrist or ophthalmologist (at \$120-\$260). The program allows for a one stop shop service for patients with diabetes and is a convenient and cost-effective way to preserve vision and prevent blindness.

10. Projected Board of Supervisor Date (if applicable): May 23, 2017

Jennifer L. [Signature]

Jennifer L

Department Head Signature

Print Name

Date

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

Not to exceed: \$ 100,000.00

One time

Annual Amount through

June 30, 2021
(Date)

[Signature]

5/11/17

17-242

Purchasing Agent

Date

Approval Number

(Reference on Purchasing Documents)

List Attachments: Form 11 and Contract Agreement

CLERK'S COPY

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

RETINOPATHY SCREENING PROGRAM AGREEMENT

Between

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

and

RIVERSIDE UNIVERSITY HEALTH SYSTEM

(UCBOEC-owned camera - 30 Read Minimum per
Month)

THIS AGREEMENT ("Agreement"), dated July 1, 2016 ("Effective Date"), is by and between The Regents of the University of California, a California corporation, acting on behalf of the University of California Berkeley Optometric Eye Center ("UCBOEC") and the County of Riverside, a political subdivision of the State of California, on behalf of Riverside University Health System – Care Clinics and Riverside University Health System – Medical Center ("Clinics").

Background

- A. UCBOEC is a recognized provider of vision care and seeks to provide, in conjunction with Clinics, retinal image screening services especially for, but not limited to patients with diabetes ("Retinal Screening").
- B. Clinics seek to provide Retinal Screening to their patients using telemedicine techniques for the remote evaluation of those images by credentialed telemedicine providers.
- C. Pursuant to an agreement with EyePACS LLC ("EyePACS"), UCBOEC is an authorized distributor of EyePACS' computer and web-based software, and the services of credentialed image reviewers to enable medical professionals and their personnel to capture ocular images of patients and transmit such images through EyePACS' secure Internet connection to a credentialed image reading network for evaluation and report.
- D. In connection with UCBOEC's appointment as a distributor of EyePACS related services, UCBOEC has been granted a non-exclusive license to use the software and related EyePACS documentation and intellectual property, together with the right to sublicense such use.
- E. The parties to this Agreement intend to establish a non-exclusive relationship for use of EyePACS software, provision of digital fundus cameras and the delivery of related services to patients of the Clinics.

NOW, THEREFORE, intending to be legally bound, the parties agree as follows:

1. Grant of License.

- 1.1. Subject to the terms of this Agreement, UCBOEC hereby grants Clinics a limited, revocable, non-exclusive sub-license to access, display, and use the EyePACS computer and web-based software and any and all user manuals, handbooks, training material, specifications, trademarks and service marks and other written or electronic materials relating to the software which are provided, or made available, by EyePACS ("Documentation") within the State of California during the term of this Agreement.

JUN 06 2017 3.21

- 1.2. In the exercise of its rights under this Agreement, Clinics will not state or imply that Clinics or Clinics' activities other than those required by this Agreement, are supported, endorsed, or sponsored by UCBOEC.
- 1.3. Clinics will not alter, modify, dilute or otherwise misuse the Documentation, in connection with any use of the software or Documentation without the prior written consent of EyePACS, LLC.
- 1.4. Clinics will, as reasonably requested by UCBOEC, acknowledge UCBOEC's support and continuing development of the diabetic retinopathy screening program using the EyePACS software.

2. Term and Termination of Agreement.

This Agreement shall commence on the Effective Date and expire on June 30, 2018, ("Term") with the option to renew for four (4) additional fiscal years by written amendment with an aggregate end date through June 30, 2021, unless sooner terminated by a party. This Agreement and all rights hereby granted may be revoked and terminated at any time by either party without cause on thirty (30) days' written notice to the terminated party. Upon termination, Clinics will cease to use the software and Documentation.

3. Equipment and Access.

- 3.1. Clinics will fulfill each of the technical requirements set forth in Exhibit A "Minimum Technical Requirements and Access Process" at each of the sites listed in Exhibit B.
- 3.2. UCBOEC will provide and maintain, with reasonable use, a digital fundus camera at each of the sites listed in Exhibit B for use by Clinics for the purposes of retinal screening, to be placed within each clinic in a location agreed to by UCBOEC. Clinics will be responsible for securing the retinal camera, and will be responsible for any loss or damage outside of normal wear and tear.
- 3.3. Clinics will identify to UCBOEC those individuals authorized to access the Services on behalf of Clinics ("Authorized Users") and provide a unique user ID for such Authorized Users (each, an "Access ID"). Access to the Services will be granted to Clinics as set forth in Exhibit A. All Authorized Users must have received training in the use of the software. UCBOEC shall train Authorized Users and confirm that Clinics' Authorized Users have been properly trained in the use of the Services.

4. Services.

- 4.1. Clinics will schedule patients, obtain the patient's oral or written consent for telemedicine services, and record retinal images using a digital fundus camera operated by Authorized Users, and will make the resulting images available for UCBOEC by upload using the Services.
- 4.2. UCBOEC will provide to Clinics with a "Retinal Screening Report", which shall include reading, interpretation and, if necessary, referral, within 2 business days after Clinics upload each image. Each Retinal Screening Report will be prepared by a consultant, credentialed by the Clinics. UCBOEC will deliver Retinal Screening Reports to Clinics electronically through a secure method of transmission.

- 4.3. UCBOEC will ensure that all physicians providing services under this Agreement are fully credentialed and privileged at the site where the patient receives the service. Clinic will provide credentialing services at no cost to UCBOEC
- 4.4. Upon request by Clinic, UCBOEC may, if reasonably feasible, provide Clinics with technical support for use of the software through web meetings or by telephone. Neither UCBOEC nor EyePACS shall be responsible for technical support, or liable for breaches of warranty, for issues caused by any third party hardware, software or connections, including the Clinics' Internet connection, or by Clinic's failure to maintain up-to-date anti-virus software.
- 4.5. Clinic may contract with EyePACS directly for interface development and implementation. UCBOEC shall have no responsibility to Clinic with respect to interfaces developed by EyePACS.

5. Billing for Services Rendered

- 5.1 Clinics shall have the sole and exclusive right to bill both the technical and professional interpretation components related to the delivery of each scanning service. Neither UCBOEC nor EyePACS LLC shall have the right to bill patients or their insurers for any services delivered under this Agreement.
- 5.2 Clinic will pay UCBOEC \$17.00 for each Retinal Screening Report in excess of thirty(30) delivered to Clinic during each calendar month at a particular site. No portion of a fee shall be refundable upon termination of this Agreement by either party.

6. Payment for Cameras and Services (UCBOEC-Owned Cameras)

- 6.1.1. UCBOEC will invoice Clinics and monthly fee of \$510.00 per camera. This fee will cover the following services delivered by UCBOEC to Clinic: (a) the first thirty (30) Retinal Screening reports during each calendar month following the Initial Period, (b) training and certification of Clinics' Authorized Users as set forth in Section 5.3, (c) EyePACS web support, (d) technical and logistical support for maintaining a diabetic retinopathy screening program, and (e) quality control services at both the UCBOEC and Clinics.
- 6.1.2. Clinic will pay each monthly invoice amount within thirty (30) days after receipt with a check payable to "The Regents of the University of California." Any dispute about the accuracy of a particular invoice must be raised within forty-five (45) days of receipt or it will be waived.
- 6.1.3. Initial training and certification of Authorized Users to operate the camera(s) at each location will be provided at no additional cost to Clinics. Additional on-site trainings provided prior to the certification of a clinic site's first Authorized User to operate the camera(s) will be invoiced to Clinic by UCBOEC at a fee of \$500.00 per on-site training. Any additional on-site trainings provided after the certification of that clinic location's first EyePACS certified photographer (Authorized User) are included in the monthly fee.
- 6.1.4. Maximum payments by Clinics to UCBOEC shall not exceed one hundred thousand dollars (\$100,000) annually including all expenses. Clinics are not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products.

7. University of California Name and Trademarks.

- 7.1. Clinics may use the UCBOEC name and logo subject to the terms of this Agreement and solely for the limited purposes of performing Clinics' obligations under this Agreement. Other than the rights granted herein and in Section 1.2, Clinics shall not use the name of the University of California, or any abbreviation thereof, or any name of which "University of California" is a part, or any trademarks of the University, in any commercial context, such as may appear on products, in media (including web sites) and print advertisements in cases when such use may imply an endorsement or sponsorship of Clinic, its products or services, without written prior permission.
- 7.2. All uses of the University's name and trademarks, therefore, must first receive prior written consent of The Regents of the University of California through the Office of Business Contracts and Brand Protection. This provision is in compliance with the State of California Education Code Section 92000.

8. Indemnification.

- 8.1. UCBOEC shall indemnify, defend and hold Clinics, its officers, agents, and employees, harmless from and against any and all liability, loss, expense, including reasonable attorney's fees, or claims for injury or damages arising out of the performance of this Agreement (including improper use or disclosure of patient protected health information) but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UCBOEC, its officers, agents, or employees.
 - 8.1.1. With respect to any action or claim subject to indemnification herein by UCBOEC, UCBOEC shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of Clinics; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes UCBOEC's indemnification to Indemnitees as set forth herein.
 - 8.1.2. UCBOEC's obligation hereunder shall be satisfied when UCBOEC has provided to Clinic the appropriate form of dismissal relieving Clinic from any liability for the action or claim involved.
 - 8.1.3. The specified insurance limits required in this Agreement shall in no way limit or circumscribe UCBOEC's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.
- 8.2. Clinics shall indemnify, defend and hold UCBOEC, its officers, agents, and employees, harmless from and against any and all liability, loss, expense, including reasonable attorney's fees, or claims for injury or damages arising out of the performance of this Agreement (including improper use or disclosure of patient protected health information) but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Clinics, its officers, agents, or employees.

9. Professional Liability Insurance.

Each party will keep in full force and effect during the term of this Agreement a Professional Liability/Errors and Omissions Insurance Policy or, an equivalent funded program of self- insurance:

a. Each Occurrence	\$1,000,000
B General Aggregate	\$3,000,000

10. General Liability Insurance.

- 10.1. Each party will keep in full force and effect during the term of this Agreement, Comprehensive or Commercial General Liability Insurance or an equivalent funded program of self- insurance as follows:

a. Each Occurrence	\$1,000,000
b. Personal and Advertising Injury	\$1,000,000
c. General Aggregate *	\$3,000,000

* (not applicable to comprehensive form)

Upon written request by a party, after full execution of this Agreement, the each party shall file Certificate(s) of Insurance or self-insurance with the other party delivered as specified in Section 19. Insurance certificate(s) for Commercial General Liability shall name the other party as an additional insured. Such provision shall apply in proportion to and to the extent of the negligent acts or omissions of the insuring party or of any person or persons under its direct supervision and control.

- 10.2. If insurance under section 9.1 is written on a claims-made form, following termination of the Agreement, coverage shall survive a period of three (3) years. Coverage shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement. Thirty (30) days advance written notice shall be provided either party to the other of any modification, change, or cancellation of any of the above insurance coverage.

11. Confidential and Patient-Related Information.

- 11.1. The parties acknowledge that in connection with their performance under this Agreement, each party may have access to and the use of "Confidential Information." "Confidential Information" means all non-public information of EyePACS or of either Party disclosed hereunder, including without limitation, the EyePACS software, technical information, know-how, methodology, information relating to either Party's business, including financial, promotional, sales, pricing, customer, supplier, and personnel information, financial statements, internal memoranda, reports, patient lists, and other materials or records of a proprietary nature. "Confidential Information" will not include information that: (i) is in or enters the public domain without breach of this Agreement; (ii) the receiving Party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; (iii) the receiving Party knew prior to receiving such information from the disclosing Party; or (iv) develops independently without use of or resort to the other Party's Confidential Information. To protect the Confidential Information, each party agrees that, subject to applicable law, neither it nor any of its employees or agents will, from and after the Effective Date of this Agreement and for so long as any such Confidential Information remains confidential, including beyond the expiration or termination of

the Agreement, use another party's Confidential Information or divulge such Confidential Information to any third party (except in connection with the performance of duties contemplated hereunder), without first obtaining the prior written consent of the other party, which may be withheld at such party's sole discretion.

- 11.2. Any and all patient records, charts, protected health information, and other patient-related information created by or behalf of, or received from Clinics as a result of either party's performance under this Agreement (including Retinal Screening Reports) shall be and remain the property of Clinics
- 11.3. Notwithstanding the foregoing, the use, as well as any disclosure, of patient records and other records prepared or maintained by UCBOEC containing any patient's protected health information or other information identifying a patient in any way, shall be made in compliance with the Business Associate Agreement attached hereto as exhibit C.

12. No Requirement For Referrals.

Nothing in this Agreement or in any other written or oral agreement between or among UCBOEC, Clinics or Clinics' staff, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patient to UCBOEC or Clinics. This Agreement is not intended to influence the party's judgment in choosing the medical or other clinical facility appropriate for the proper care and treatment of any patients.

13. Limitation of Liability.

- 13.1. SUBJECT TO SECTION 12.2 BELOW, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF REVENUE, AND/OR PROFITS), WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THIS AGREEMENT REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES OR OTHERWISE, AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.
- 13.2. THE LIMITATIONS ON LIABILITY SET FORTH IN SECTION 12.1 DO NOT APPLY TO ANY CLAIM FOR INDEMNITY BY EITHER PARTY ARISING OUT OF A THIRD PARTY'S CLAIM, OR TO LIABILITY ARISING FROM: (I) A BREACH OF A PARTY'S OBLIGATIONS UNDER SECTION 5 (CONFIDENTIALITY) OR UNDER THE BAA; (II) ANY INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS; OR (III) FRAUD.

14. Amendments.

This Agreement may be amended or modified only by means of a written document signed by both Parties.

15. Waiver.

No waiver by either party hereto of any breach of any of the provisions herein set forth shall be deemed a waiver as to any subsequent and/or similar breach.

16. Binding Effect.

This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

17. Relationship.

This Agreement does not constitute and shall not be construed to constitute a partnership or joint venture between UCBOEC and Clinic, nor (b) a franchise agreement between UCBOEC and Clinic. Licensee shall have no right to obligate or bind UCBOEC in any manner whatsoever, and nothing contained in this Agreement shall give or is intended to give any rights of any kind to third persons. Neither party hereto is an agent, employee or servant of the other party.

18. Governing Law.

This Agreement shall be construed in accordance with the laws of the State of California, excluding its conflict of laws rules.

19. Notices

Except as otherwise provided in this Agreement, any notice required by this Agreement shall be deemed to have been properly received when delivered (a) in person, (b) when mailed by registered first class mail to the addressees given below, or such other addressees as may be designated from time to time, (c) by facsimile transmission to the party's facsimile number, with a transmission report indicating transmission without error or (d) by email with a "delivery receipt" and/or "read receipt" to the email address provided by the parties during the term of this Agreement:

If to UCBOEC:

Optometry Eye Center, Minor Hall
Attention: Director of UC Berkeley Digital Health
University of California Berkeley
Berkeley, CA 94720
Facsimile: 510-643-1874
Email: ucb.digital.health@berkeley.edu

If to Clinics:

Riverside University Health System
Attn: Contracts Administration
26520 Cactus Avenue
Moreno Valley, CA 92555

20. Counterparts.

The parties may execute this Agreement in any number of counterparts. Each counterpart will be deemed an original and all counterparts will constitute one agreement binding on both parties. Facsimile or electronically authenticated signatures will be considered binding for all purposes.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date first above written.

UCBOEC:

The Regents of the University of California

By: _____

Date: _____

County of Riverside

By: _____

Date: _____

JUN 06 2017

APPROVED AS TO FORM:

County Counsel

By: _____

ATTEST:

KECIA HARPER-IHEM, Clerk

By: _____

DEPUTY

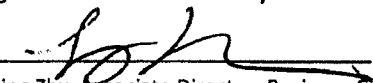
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IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date first above written.

UCBOEC:

The Regents of the University of California

By:  5/9/2017
Ling Zhu, Associate Director, Business Contracts and Brand Protection

Clinic:

Riverside University Health System

By: _____

APPROVED AS TO FORM:

County Counsel

By: _____

Exhibit A

Minimum Technical Requirements and Access Process

1. Minimum Technical Requirements for Implementing Diabetic Retinopathy Screening with EyePACS:

Summary:

1. Fast Internet connection
2. Telephone in the room
3. Four electrical outlets
4. Room that can be darkened
5. Standard printer (optional)
6. Computer (optional)

This is a list of requirements for participation in the EyePACS diabetic retinopathy screening program.

1. Connectivity:
 - Allow upload of image files to trusted Internet site
 - Allow SSL at 128 bit encryption in web browser
 - 256 kb/sec minimum connection to Internet
2. Direct telephone line at the camera available for service calls, troubleshooting, and patient consults (cell phone is acceptable).
3. Four plugs for imaging devices and computer. Maximum electrical requirement for all devices: 5 Amps
4. The room must be able to be darkened so that patients' pupils will dilate. Completely dark preferable.
5. A printer for printing retinopathy reports (just text) can either be connected directly to any Internet connected computer, or connected via the network.
6. Computers for the program must meet these minimum specifications:
 - CPU: 2 GHz
 - Hard Drive: 40 Gb - 5400 rpm
 - RAM: 512 MB
 - Two standard USB2 inputs
 - Video Card: 128 Mb vRAM; supports 1152 X 864 resolution in 24-bit color
 - 10Mb/SNIC
 - Latest virus protection and operating system updates (Windows, Mac, or Unix)
 - Monitor: 15" Flat screen or flat panel; 60 Hz refresh rate.

2. Access Process for Diabetic Retinopathy Screening with EyePACS:

1. Clinic must identify Authorized Users for EyePACS access.
2. Clinic must provide UCBOEC with Authorized User's full name and e-mail address.
3. UCBOEC will initiate an invitation e-mail through EyePACS that will be sent to the Authorized User's e-mail address.
4. The Authorized User will click on the link provided in the invitation e-mail, which will direct Authorized User to EyePACS through their web browser to create a username and password.
5. It is the Clinic's sole responsibility to notify UCBOEC in the event that the Authorized User is no longer authorized for EyePACS use. Upon notification, UCBOEC will immediately de-activate said User's account.

EXHIBIT B

List of Clinic Sites

Family Care Clinics 1 and 2
26520 Cactus Avenue
Moreno Valley, CA 92555

Rubidoux
Don Schroeder Family Care Center
5256 Mission Boulevard
Riverside, CA 92509

Palm Springs Family Care Center
1515 North Sunrise Way,
Palm Springs, CA 92262

Banning Family Care Center
3055 W. Ramsey Street
Banning, CA 92220

Corona Family Care Center
505 S. Buena Vista Ave., Suite #101
Corona, CA 92882

Hemet Family Care Center
880 N. State Street
Hemet, CA 92543

Indio Family Care Center
47-923 Oasis Street
Indio, CA 92201

Jurupa Family Care Center
9415 Mission Blvd.,
Riverside, CA 92509

Lake Elsinore Family Care Center
2499 E. Lakeshore Drive,
Lake Elsinore, CA 92530

Perris Family Care Center
308 E. San Jacinto Avenue
Perris, CA 92570

Riverside Neighborhood Health Center
7140 Indiana Avenue
Riverside, CA 92504

EXHIBIT C
Business Associate Addendum

The parties agrees as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.
 - A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.
 - (1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following four factors:
 - (a) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - (b) The unauthorized person who used the PHI or to whom the disclosure was made;
 - (c) Whether the PHI was actually acquired or viewed; and
 - (d) The extent to which the risk to the PHI has been mitigated.
 - (2) Breach excludes:
 - (a) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.
 - (b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
 - (c) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
 - B. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf of the business associate.

- C. "Data aggregation" has the meaning given such term in 45 CFR §164.501.
- D. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
- E. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- F. "Electronic health record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- G. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- H. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- I. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- J. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- K. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- L. "Required by law" has the meaning given such term in 45 CFR §164.103.
- M. "Secretary" means the Secretary of the U.S. Department of Health and Human Services ("HHS").
- N. "Security incident" as defined in 45 CFR §164.304 means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- O. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- P. "Subcontractor" as defined in 45 CFR §160.103 means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.
- Q. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2).

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

- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:
 - 1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,
 - 2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:
 - a) The disclosure is required by law; or,
 - b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:
 - i. Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
 - ii. Notify 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 , unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45 CFR §164.508;
 - 2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.508(a)(3);
 - 3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
 - 4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted by the Underlying Agreement and in compliance with the requirements of a valid authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

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

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

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

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.
- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
- C. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
- D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
- E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410.
- F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create, receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
- G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
- H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
- I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
- J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan

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

- K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
 - L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
 - M. Comply with the requirements of the Privacy Rule that apply to the County to the extent Contractor is to carry out County's obligations under the Privacy Rule.
 - N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of which Contractor becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Contractor, and if such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if feasible.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.
 - B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
 - C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
 - 1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
 - 2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
 - 3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.

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

1. Comply with the applicable requirements of the Security Rule, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;
 2. 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;
 3. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
 4. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
 5. Ensure compliance with the Security Rule by Contractor's workforce;
 6. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same restrictions and requirements contained in this Addendum and comply with the applicable requirements of the Security Rule;
 7. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
 8. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
 8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
- 1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).

- 2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
- a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
 - b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
 - c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
 - d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
 - f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.
- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to

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limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.

- F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's completed risk assessment and investigation documentation.
- G. **Additional State Reporting Requirements.** The parties agree that this Section 8.G applies only if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more stringent requirements of California Health & Safety Code §1280.15. For purposes of this Section 8.G, "unauthorized" has the meaning given such term in California Health & Safety Code §1280.15(j)(2).
- 1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.
 - 2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than two (2) business days after Contractor detects such incident. Contractor further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.

9. **Hold Harmless/Indemnification.**

- 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 upon any services of Contractor, its officers, employees, or agents arising out of this Addendum, including but not limited to property damage, bodily injury, or death in proportion to and to the extent such liability is caused by or resulting from the performance of Contractor, its officers, agents, or employees. 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 in proportion to and to the extent such liability, expense, costs, fees, attorneys' fees, costs of investigation, defense and settlements or awards are caused by or result from the performance of Contractor, its officers, agents, or employees..

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

B. Effect of Termination.

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

12. General Provisions.

- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.
- D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.
- F. **Interpretation of Addendum.**
 - 1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
 - 2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.
- G. **Notices to County.** All notifications required to be given by Contractor to County pursuant to the terms of this Addendum shall be made in writing and delivered to the County both by fax and to both of the addresses listed below²² by either registered or certified mail return receipt BCMS #_____

requested or guaranteed overnight mail with tracing capability, or at such other address as County may hereafter designate. All notices to County provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

County HIPAA Privacy Officer: HIPAA Privacy Manager

County HIPAA Privacy Officer Address: 26520 Cactus Avenue, Moreno Valley, CA 92555

County HIPAA Privacy Officer Phone Number: (951) 486-6471

County HIPAA Privacy Fax: (951) 486-4475