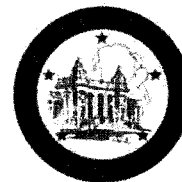


**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
3.13
(ID # 6405)

MEETING DATE:

Tuesday, March 13, 2018

FROM : RUHS-MEDICAL CENTER:

SUBJECT: RIVERSIDE UNIVERSITY HEALTH SYSTEM-MEDICAL CENTER: Ratification of Professional Service Agreement with Harbinder Brar, M.D., Inc. to provide Genetic Counseling Services without seeking competitive bids effective July 1, 2017; 3 years; Districts- All; [\$215,150 Total]; Hospital Enterprise Fund.

RECOMMENDED MOTION: That the Board of Supervisors:

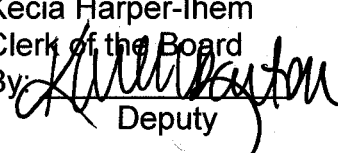
1. Ratify and execute an Agreement with Harbinder Brar, M.D., Inc. to provide Genetic Counseling Services without seeking competitive bids effective July 1, 2017 through June 30, 2020 in the amount of \$65,000 for the first year, \$71,500 for the second year and \$78,650 for the third year; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459 and as approved by County Counsel to sign amendments that do not change the substantive terms of the agreement.

ACTION: Policy

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: March 13, 2018
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	\$ 65,000	\$ 71,500	\$ 215,150	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Hospital Enterprise Fund 40050			Budget Adjustment: No	
			For Fiscal Year: 17/18-19/20	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The requested Board action will allow Riverside University Health System (RUHS) to enable patients to receive specialized genetic counseling services.

Genetic counseling provides information and support to people who have, or may be at risk for, genetic disorders. A genetic counselor meets with the patient to discuss genetic risks when planning or expecting a baby. As Riverside University Health System-Medical Center's obstetrics and gynecology services continue to grow, the need for genetic counseling plays a large part in this service. Genetics counseling is a very specialized service and this vendor is the only provider RUHS has identified within this geographic area who can provide these services to its patients. Services will be provided on-site at the Medical Center and RUHS patients will not need to travel further.

Harbinder Brar, M.D. has over 38 years of genetic counseling experience. He is board certified and specializes in Medical Genetics, Maternal and Fetal Medicine and Obstetrics and Gynecology. Dr. Brar is or has been affiliated with the following hospitals: Sharp Memorial Hospital, John F Kennedy Memorial Hospital, San Antonio Regional Hospital, Victor Valley Global Medical Center, St. Joseph Health, St. Mary, Riverside Community Hospital, Kaiser Permanente Moreno Valley Community Hospital, Redlands Community Hospital, Hemet Valley Medical Center, Desert Valley Hospital, Corona Regional Medical Center, Parkview Community Hospital Medical Center, and Community Hospital of San Bernardino. He currently provides services identical to those under this contract at Loma Linda University Hospital.

Impact on Residents and Businesses

This Agreement improves patient care by offering this specialized service to Riverside University Health System (RUHS) patients planning or expecting a baby—who have, or may be at risk for, genetic disorders.

Additional Fiscal Information

The total maximum amount of this contract is \$215,150 over three years. The source of funding will be Hospital Enterprise Fund at 100%. Illustrated below is the yearly spend:

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

Fiscal Year	FY17/18	FY18/19	FY19/20	Total
Total Costs	\$65,000	\$71,500	\$78,650	\$215,150

Contract History and Price Reasonableness

This is a specialized service which Riverside University is now able to offer to RUHS patients. The Agreement anticipates a weekly of \$1,250. The first year's annual fee is set at \$65,000. The annual fee will increase each year by an amount equivalent to the percentage increase change in the Consumer Price Index.



Date: January 9, 2018
From: Jennifer Cruikshank, CEO
To: Board of Supervisors/Purchasing Agent
Via: Naomi Santos, RUHS Contracts Administration
Subject: Sole Source Procurement; Request for Genetic Counseling Services

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

1. **Supplier being requested:** Harbinder Brar, M.D., Inc.
2. **Vendor ID:** 134815
3. **Supply/Service being requested:** Genetic Counseling Services
4. **Alternative suppliers that can or might be able to provide supply/service and extent of market search conducted:**
None who have the distinct qualifications and experience. Genetics counseling is a very specialized service and this medical provider is the only provider within the geographical area of the Medical Center.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:**
Harbinder Brar, M.D. has over 38 years of genetic counseling experience. He is board certified and specializes in Medical Genetics, Maternal and Fetal Medicine and Obstetrics and Gynecology. Dr. Brar is affiliated with the following hospitals: Sharp Memorial Hospital, John F Kennedy Memorial Hospital, San Antonio Regional Hospital, Victor Valley Global Medical Center, St. Joseph Health, St. Mary, Riverside Community Hospital, Kaiser Permanente Moreno Valley Community Hospital, Redlands Community Hospital, Hemet Valley Medical Center, Desert Valley Hospital, Corona Regional Medical Center, Parkview Community Hospital Medical Center, and Community Hospital of San Bernardino.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:**
Genetic counseling provides information and support to people who have, or may be at risk for, genetic disorders. A genetic counselor meets with the patient to discuss genetic risks when planning or expecting a baby. As Riverside University Health System-Medical Center's obstetrics and gynecology services continue to grow, the need for genetic counseling plays a large part in this service. Genetics counseling is a very specialized service and this vendor is the only provider within the area. Services will be provided on-site at the Medical Center and RUHS patients will not need to travel further.

7. **Period of Performance:** July 1, 2017 – June 30, 2020 (multi-year)

Is this an annually renewable contract? no
Is this a fixed-term agreement? yes, for three years

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

Description:	FY17/18	FY18/19	FY19/20	FY20/21	FY21/22	Total
Annual Costs	\$65,000	\$65,000	\$71,500			
CPI Increase (max)	N/A	10%	10%			
Total Costs	\$65,000	\$71,500	\$78,650			\$215,150

9. **Price Reasonableness:**

It is anticipated the weekly rate for this service is \$1,250. The first year's annual cost is capped at \$65,000. The weekly fee and annual maximum cost will increase by an amount equivalent to the percentage increase change in the Consumer Price Index at a maximum of ten percent.

10. **Projected Board of Supervisor Date (if applicable):**

February 27, 2018 or March 13, 2018

 Jennifer Cruikshank 2/23/18
Department Head Signature Print Name Date

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

Not to exceed: \$ As indicated One time

Annual Amount through 6/30/20
(Date)


Purchasing Agent

2/23/18
Date

18-144
Approval Number

(Reference on Purchasing Documents)

List Attachments: Contract Agreement

PROFESSIONAL SERVICE AGREEMENT

For

GENETIC COUNSELING SERVICES

between

COUNTY OF RIVERSIDE

And

HARBINDER S. BRAR, M.D., INC.



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This PROFESSIONAL SERVICE AGREEMENT FOR GENETIC COUNSELING SERVICES ("Agreement"), made and entered into this 1st day of July, 2017 ("Effective Date"), by and between **HARBINDER S. BRAR, M.D., INC.**, a California corporation, (herein referred to as "CONTRACTOR"), and the **COUNTY OF RIVERSIDE ON BEHALF OF AND SOLELY AS TO THE RIVERSIDE UNIVERSITY HEALTH SYSTEM ONLY** (herein referred to as "COUNTY"), a political subdivision of the State of California. The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide the "Services" (as that term is defined in Paragraph 1.0.A of Exhibit A, Scope of Services, consisting of one (1) page) at the prices stated in Paragraph 3, and adhere to Attachment I, HIPAA Business Associate Addendum to this Agreement, consisting of ten (10) pages.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform the Services and COUNTY relies upon this representation. CONTRACTOR shall perform the Services in accordance with the law and the medical community standards applicable to the Services.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement and COUNTY represents and warrants that all such work to be performed under this Agreement by CONTRACTOR is set forth in this Agreement. CONTRACTOR agrees it can properly perform this work at the prices stated in Paragraph 3. CONTRACTOR is not to perform Services outside of the Agreement.

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

2. Period of Performance

2.1 This Agreement shall be effective July 1, 2017 and continues in effect through June 30, 2020, unless terminated earlier pursuant to Paragraph 5. CONTRACTOR shall commence performance of the Services pursuant to this Agreement upon signature of this Agreement by both parties and COUNTY's compliance with Paragraph 3.0 of Exhibit A, Scope of Services.

3. Compensation

3.1 COUNTY shall pay the CONTRACTOR for Services performed at a rate of one thousand two hundred fifty and ⁰⁰/₁₀₀ dollars (\$1,250.00) per week. CONTRACTOR's right to receive compensation depends only on its provision of a licensed genetic counselor being present or available to provide services on a particular day – not on the volume of patients seen that day.

3.2 Maximum payments by COUNTY to CONTRACTOR during a fiscal twelve month period from July 1 through June 30 of the succeeding year shall not exceed sixty-five thousand and ⁰⁰/₁₀₀ dollars

(\$65,000.00), adjusted for inflation as set out in paragraph 3.3. COUNTY is not responsible for any fees or costs incurred above or beyond and shall have no obligation to purchase any specified amount of services or products; and COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.3 The rate specified in Paragraph 3.1 and the maximum payment set forth in Paragraph 3.2 will increase as of July 1, 2018, and again as of July 1, 2019, by an amount equivalent to the percentage increase change in the Consumer Price Index, All Items, 1982-84=100 for Urban Wage Earners and Clerical Workers (CPI-W) for Los Angeles-Riverside-Orange County, California ("CP Index") issued by the United States Department of Labor during the twelve months prior to those dates. If the CP Index as presently formulated subsequently is changed in any respect, including, without limitation, elimination of any item(s) or converted to a different standard reference base, then the determination of such increase shall be based upon any such reformulated CP Index. Further price increases, if any, must be stated in a written amendment to this Agreement.

3.4 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month (it being understood and agreed that the failure of CONTRACTOR to submit the invoice within said fifteen (15) day period may delay payment but shall not relieve COUNTY of its obligation under this Agreement to pay said invoice), COUNTY shall dispute any such invoice within seven (7) days of COUNTY's receipt thereof, and COUNTY shall pay the invoice within fifteen (15) working days from the date of receipt of the invoice. For this Agreement, send the original invoices to:

Riverside University Health System
Attn: Hospital Administration
26520 Cactus Avenue, Suite A-2060
Moreno Valley, CA 92555

- a) Each invoice shall contain the following information: invoice number and date; description of the Services (e.g., genetic counseling), the name of the "Counselor" (as that term is defined in Paragraph 1.0.C of Exhibit A, Scope of Services, consisting of one (1) page) who provided the Services amount(s) due and an invoice total.
- b) Invoices shall be rendered monthly in arrears.

3.5 CONTRACTOR will bill, collect, and remit on a monthly basis to COUNTY all revenues from the California Genetic Disease Screening Program ("GDSP") of the California Department of Health for the Services. Any GDSP Reimbursements remitted to COUNTY that subsequently are subject to recapture by GDSP shall be returned to CONTRACTOR in a timely manner for its return to GDSP.

CONTRACTOR will create appropriate documentation of services provided, submit such bills and requests for prior authorizations as required by GDSP rules. COUNTY shall have the right, upon written request, to review and audit the records relating to such billing, collection and remittances.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee are the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement; it being understood and agreed that any such alteration shall not be binding on CONTRACTOR absent CONTRACTOR's written consent thereto. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment may, upon mutual agreement of the parties, be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by CONTRACTOR for additional payment related to this Agreement shall be made in writing by CONTRACTOR within sixty (60) days of when CONTRACTOR has notice of any actual or claimed change in the work, which results in additional and unanticipated cost to CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, the COUNTY Purchasing Agent may authorize additional payment to CONTRACTOR pursuant to the claim. Nothing in this Paragraph 4.2 shall excuse CONTRACTOR from proceeding with performance of the Agreement.

5. Termination

5.1. CONTRACTOR may terminate this Agreement if it ceases to employ at least one (1) licensed genetic counselor, or, upon written notice and provision of an opportunity to cure, if COUNTY refuses or fails to comply with the terms of this Agreement.

5.2 COUNTY may terminate this Agreement, upon written notice and provision of an opportunity to cure, if CONTRACTOR refuses or fails to comply with the terms of this Agreement.

5.3 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement, and CONTRACTOR shall not be obligated to perform the Services after termination by the COUNTY. CONTRACTOR will continue to bill, collect and remit to the COUNTY all revenues from the California Genetic Disease Screening Program ("GDSP") of the California Department of Health for the Services performed up to the date of termination.

5.5 The rights and remedies of the COUNTY and the CONTRACTOR provided in this Paragraph 5 shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Ownership/Use of Contract Materials and Products

CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of COUNTY. The material, reports or products may be used by COUNTY for any purpose that COUNTY deems to be appropriate, including, but not limited to, duplication and/or distribution within COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of COUNTY, however CONTRACTOR shall have the right to retain copies of any records related to its billing to GDSP, including duplicate patient records.

7. Conduct of Contractor

7.1 CONTRACTOR covenants that, to the best of its knowledge, it presently has no interest, including, but not limited to, other projects or contracts, and shall not knowingly acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance of the Services and COUNTY is unaware of any such interests as of the effective date of this Agreement and covenants to inform CONTRACTOR of any such interests to which it becomes aware. CONTRACTOR further covenants that no person or subcontractor having any such interest shall knowingly be employed or retained by CONTRACTOR under this Agreement.

7.2 CONTRACTOR shall not, under circumstances which reasonably could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom CONTRACTOR is doing business or proposing to do business, in performing the Services.

7.3 CONTRACTOR, or its owners, directors, officers, employees, contractors, agents, and the like for and on behalf of CONTRACTOR, shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. INTENTIONALLY DELETED

9. Independent Contractor/Employment Eligibility

9.1 CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and the CONTRACTOR shall hold the COUNTY

harmless from any and all claims that may be made against the COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that the CONTRACTOR in the performance of this Agreement is subject to the control or direction of the COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

9.2 CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing the Services meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing the Services, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all such employees, for the period prescribed by the law.

9.3 "Ineligible Person" shall be any individual or entity who: Is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

9.4 CONTRACTOR shall screen prospective "Covered Individuals" (defined as the Counselor performing the Services) prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide the Services. CONTRACTOR shall screen all current Covered Individuals within sixty (60) days of execution of this Agreement to ensure that they have not become Ineligible Persons unless the CONTRACTOR has performed such screening on same Covered Individuals under a separate agreement with COUNTY within the past six (6) months. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual providing the Services becomes an Ineligible Person.

9.5 INTENTIONALLY DELETED

10. Subcontract for Work or Services

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

11. Disputes

The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, then within thirty (30) days after written notice by either party of such non-resolution and prior termination or to the filing of any legal action, the Chief Executive Officer of Riverside University Health System Medical Center and Harbinder S. Brar, M.D., shall attend a face to face meeting for the purpose of attempting in good faith a non-judicial resolution of the underlying dispute

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including, but not limited to, the provisions of Chapter 9 of Division 3 of the Business and Professions Code, applicable to performing the Services ("Licensing Requirements"). All Licensing Requirements shall be met at the execution of this Agreement by CONTRACTOR. CONTRACTOR warrants that it has all Licensing Requirements for performance of the Services, and shall maintain these throughout the term of this Agreement.

13. INTENTIONALLY DELETED

14. Non-Discrimination

CONTRACTOR shall not discriminate in the provision of the Services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of the Services; and, to the extent they shall be found to be applicable to the performance of the Services, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of CONTRACTOR's costs related to providing the Services. All such books, documents and records shall be maintained by CONTRACTOR for at least five (5) years following termination of this Agreement.

16. Confidentiality

16.1 Neither party shall use for personal gain or make other improper use of privileged or confidential information which is acquired by such party in connection with this Agreement. The term

"privileged or confidential information" includes, but is not limited to: (i) unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions of either COUNTY but only to the extent disclosed to CONTRACTOR after the Commencement Date or CONTRACTOR; (ii) COUNTY information or data which is not subject to public disclosure, unless such information or data has been publicly disclosed by no action of CONTRACTOR; (iii) COUNTY operational procedures but only to the extent disclosed to CONTRACTOR after the Commencement Date and otherwise not known to the public; and (iv) knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement but only to the extent disclosed to CONTRACTOR after the Commencement Date and otherwise not known to the public.

16.2 CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving the Services, except for general statistical information not identifying any person. CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. CONTRACTOR shall not disclose, except as otherwise specifically permitted by law or, to the extent not inconsistent therewith, this Agreement or authorized in advance in writing by COUNTY, any such information to anyone other than the COUNTY. For purposes of this Paragraph 16.2, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

16.3 CONTRACTOR is subject to and shall operate in compliance with all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, enacted August 21, 1996, and the related laws and regulations promulgated subsequent thereto. Please refer to Attachment 1 of this Agreement.

17. Administration/Contract Liaison

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

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid, or, at such time when sent by electronic mail (Email) or facsimile:

COUNTY OF RIVERSIDE

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

CONTRACTOR

Harbinder S. Brar, M.D., Inc.
3637 Arlington Avenue, Suite E202
Riverside, CA 92506
Attn: Harbinder S. Brar, M.D.
Email: herbbrar@gmail.com
Tel: 951.743.5979
Fax: 951.683.1148

19. Force Majeure

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

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department ("EDD"). CONTRACTOR agrees to furnish the required data and certifications as to any Covered Individual to COUNTY within ten (10) days of notification when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. CONTRACTOR's intentional failure to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 CONTRACTOR shall indemnify and hold harmless COUNTY, the respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives

(individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon or in any way relating to the Services performed under this Agreement, including, but not limited to, property damage, bodily injury, or death or any other element of any kind or nature, unless the same was caused, in whole or in part, by the act or omission of COUNTY. 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 (collectively, "Damages"), the Indemnitees in any such claim or action described in this Paragraph 21.1.

21.2 With respect to any action or claim subject to indemnification under Paragraph 21.1 by CONTRACTOR, CONTRACTOR shall, at its sole cost, have the right to use counsel of its own choice 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 Indemnitees as set forth in Paragraph 21.1.

21.3 CONTRACTOR'S obligation under Paragraph 21.1 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.

21.4 The specified insurance limits required in this Agreement shall in no way limit or circumscribe the CONTRACTOR'S obligations under Paragraph 21.1 to indemnify and hold harmless the Indemnitees from third party claims.

21.5 COUNTY shall indemnify, hold harmless and defend CONTRACTOR, and its officers, agents, and employees, from and against any Damages arising out of or resulting in any way from any action or claim against CONTRACTOR however relating to this Agreement based on the acts or omissions of COUNTY.

22. Insurance

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

A. Workers' Compensation:

If CONTRACTOR has employees as defined by the State of California, CONTRACTOR shall maintain statutory Workers' Compensation Insurance as prescribed by the laws of the State of California.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of the Services. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment is used in the performance of the Services, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

D. Professional Liability:

CONTRACTOR shall maintain Professional Liability Insurance providing coverage for the CONTRACTOR's performance of the Services, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

E. General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage in Paragraph 21.1.A-D shall be admitted to the State of California.

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

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish COUNTY copies of the Certificate(s) of Insurance including all endorsements and attachments thereto evidencing coverage's set forth in Paragraph 21.1.A-D and the insurance required in Paragraph 21.1.A-D is in full force and effect. CONTRACTOR shall not commence performing the Services until COUNTY has been furnished said copies.

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

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

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

7) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event giving rise to a claim arising from the performance of the Services.

23. General

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

23.2 Any waiver by either party of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of a party to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing such party from enforcement of the terms of this Agreement.

23.3 INTENTIONALLY DELETED

23.4 COUNTY shall cooperate with CONTRACTOR in CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel necessary and required for CONTRACTOR to perform the Services as contemplated under this Agreement, as set forth in Exhibit A.

23.5 INTENTIONALLY DELETED

23.6 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

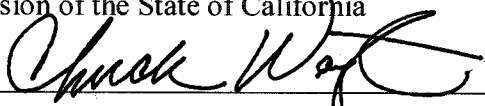
23.7 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations,

proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

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IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political
subdivision of the State of California


By: 

Name: CHUCK WASHINGTON

Title: CHAIRMAN, BOARD OF SUPERVISORS

Date: MAR 13 2018

HARBINDER S. BRAR, M.D., INC.

By: 

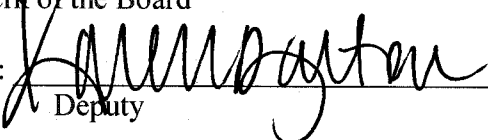
Name: H.S. BRAR MD

Title: PRESIDENT

Date: 1/17/18

ATTEST:

Kecia Harper-Ihem
Clerk of the Board

By: 
Deputy

APPROVED AS TO FORM:

Gregory P. Priamos
County Counsel

By: 

Name: Martha Ann Knutson

Title: Deputy County Counsel

**SCOPE OF SERVICE
HARBINDER S BRAR, M.D., INC.**

1.0 CONTRACTOR Responsibilities shall:

- A. Provide genetic counseling services ("Services") at Riverside University Health System—Medical Center (RUHS-MC), 26250 Cactus Avenue, Moreno Valley, CA 92553 on Wednesday each week, not to exceed eight (8) hours each week for up to seven (7) patients per week with option to overbook up to two (2) additional patients.
- B. CONTRACTOR's Counselor shall be available to perform the Services from 8:00 a.m. to 5:00 p.m. each day.
- C. CONTRACTOR shall: i) hold and maintain the necessary Federal and State licenses required for performing the Services and, in addition, to provide for medical direction of the Services; ii) designate a duly licensed qualified genetic counselor ("Counselor") to provide the Services; iii) designate a duly licensed qualified medical doctor to supervise Counselor; and iv) cause Counselor to perform the Services in accordance with the law and the medical community standards applicable to the Services.
- D. Subject to CONTRACTOR'S right under Paragraph 5.1(A), in the event CONTRACTOR's Counselor is unable to perform the Services due to termination, illness, continuing education responsibilities, leave or other justifiable cause, CONTRACTOR shall, at its sole option, either propose an alternative day for the Services or designate a qualified replacement genetic counselor employed by CONTRACTOR, who shall be bound by all of the terms of this Agreement.
- E. Nothing in this Agreement shall, or should, be construed in any way to require CONTRACTOR to refer patients to COUNTY or to restrict or attempt to restrict CONTRACTOR from performing services similar to the Services elsewhere, including, without limitation, at other COUNTY facilities.
- F. .

- 2.0 No Review & Approval Authority. No Supervision.** While COUNTY may seek CONTRACTOR comment, assessments, or recommendations, CONTRACTOR understands that it has no authority to direct the work of COUNTY employees or to make any decisions regarding employee status, assignments, or to perform any functions that would purport to exercise authority over COUNTY employees and/or COUNTY operations and management. CONTRACTOR shall work closely and directly with the Chief Medical Officer to implement any of the above components.

3.0 COUNTY Responsibilities:

COUNTY will provide CONTRACTOR with work space at its facilities, as appropriate, which, in the judgment of COUNTY, meets Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements, including, but not limited to, providing appropriate security and physical restrictions. CONTRACTOR will not remove Protected Health Information (PHI) from COUNTY premises in any form. COUNTY will provide reports and analysis needed by CONTRACTOR to complete its deliverables, however such reports and analyses will remain the property of COUNTY and be returned upon to it no later than the date of termination of this Agreement.

4.0 Violations of Law:

CONTRACTOR's primary role is to provide the Services described in this Agreement. It is expected that CONTRACTOR will take reasonable steps to act in accordance with all applicable laws and regulations and, therefore shall inform the Chief Medical Officer of any known violations of applicable laws and regulations that it believes may exist and which relate to the Services performed by CONTRACTOR or the supervisor of the Chief Medical Officer if the Chief Medical Officer is the subject of any such known violation."

5.0 Information Technology Network:

COUNTY will ensure CONTRACTOR has access to COUNTY network as required to perform necessary services under the engagement. CONTRACTOR will use such network only in accordance with COUNTY's policies and procedures and will complete its training in those responsibilities before beginning work under this Agreement.

**HIPAA Business Associate Agreement
Addendum to Contract
Between the County of Riverside and Harbinder S Brar, M.D., Inc.**

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Professional Service Agreement For Genetic Counseling Services (the "Underlying Agreement") between the County and Contractor and shall be effective as of the Commencement Date (referred to in this Addendum as 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, to the extent County discloses PHI and/or ePHI to Contractor or Contractor creates, receives, maintains, transmits, or has access to PHI and/or ePHI of County, Contractor 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 functions, services and activities on behalf of County, and appropriate limitations and conditions on such uses and disclosures; and

WHEREAS, undefined capitalized terms used in this Addendum have the meanings ascribed thereto in the Underlying Agreement, and the use of the term "Agreement" in the Underlying Agreement shall also mean and include this Addendum;

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

2. **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.

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 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 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 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 use its best efforts to 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 written 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 Paragraph 6.C.2 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 Paragraph 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. Ensure compliance with the Security Rule by Contractor's workforce;
 4. 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;
 5. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
 6. 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 limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under the Underlying Agreement.
- 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 Paragraph 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 Paragraph 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 Paragraph 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 Paragraph 8.A.2 does not apply to California Health & Safety Code §1280.15.

9. **INTENTIONALLY DELETED**

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 Paragraph 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. **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.
- D. **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.

E. 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.

F. 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 below by either registered or certified mail return receipt 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 Paragraph 12.F 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