



SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH
SYSTEM MEDICAL CENTER GOVERNING BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
17.5
(ID # 7923)

MEETING DATE:

Tuesday, October 16, 2018

FROM : RUHS-MEDICAL CENTER:

SUBJECT: RIVERSIDE UNIVERSITY HEALTH SYSTEM-MEDICAL CENTER: Ratification and Approval of the Agreement with Ellipsis Health, Inc., to Provide Care Management and Bi-directional HIPAA-Compliant Texting Services without Seeking Competitive Bids Effective July 1, 2017 through June 30, 2019, 2 years; All- Districts; [Total Cost \$550,000; up to \$55,000 in additional compensation]; Hospital Enterprise Fund.

RECOMMENDED MOTION: That the Governing Board:

1. Ratify and approve the Agreement with Ellipsis Health, Inc. to provide management and bi-directional HIPAA-compliant texting services without seeking competitive bids effective July 1, 2017 through June 30, 2019 for an amount not to exceed \$275,000 annually and, authorize the Chairman of the Board to sign the Agreement on behalf of the County.
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459 based on the availability of fiscal funding and as approved by County Counsel to: a) sign amendments that do not change the substantive terms of the agreement and b) sign amendments to the compensation provisions that do not exceed ten percent annually.


ACTION: Policy


Jennifer Crutshaw, Chief Executive Officer - Health System 10/3/2018

MINUTES OF THE GOVERNING BOARD

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

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: October 16, 2018
XC: RUHS-Medical Center, Purchasing
Page 1 of 4 ID# 7923

Kecia Harper-Ihem
Clerk of the Board
By: 

17.5

**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 275,000	\$ 275,000	\$ 550,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Hospital Enterprise Fund 40050			Budget Adjustment: No	
			For Fiscal Year: 17/18-18/19	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

Approval of this Care Management and Bi-Directional HIPAA-Compliant Texting Service Agreement allows Riverside University Health System clinic doctors to continually use this mechanism to connect with their patients which efficiently supports the management of chronic disease or behavioral health issues. It also adds additional features and further enhances the security of patient information.

The Ellipsis Solution is designed to provide care management and texting service and capabilities for the management of chronic disease and behavioral health patients, including those with substance abuse disorder, to achieve self-management goals. Self-management goals may include, but are not limited to preventive health guidance, lifestyle choices, recommended physical activity, nutrition guidelines, blood glucose self-monitoring and diabetes medication guidelines) via two-way messaging, web-based communication and other communication methods between County clinicians, health "coaches" and their patients on the Ellipsis Solution.

The Solution as provided to Riverside County include the following features:

- Bi-directional HIPAA-complaint text messaging to support patients with self-managements goals;
- Care team member access via web-based platform;
- Pathway for personalized text messages by care team members;
- Statistical summary reporting of individual and group self-management goals and clinical measures;
- Ability for care team end-user to pull lists of patients for targeted outreach and follow-up;
- Group texting function for events (e.g., diabetes classes, etc.);
- Texting platform that allows for entry of clinical data into patient profiles; and
- Ability to tailor features and additional modules for various care team members without incurring additional cost.

Impact on Citizens and Businesses

**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Efficient and cost-effective communication between doctors and patients is an essential tool when it comes to the management or prevention of chronic illnesses. Patients are expected to take responsibility for their own health by modifying behavior and following their doctor's recommendations.

SUPPLEMENTAL:

Additional Fiscal Information

Pricing is set at \$3.00 per month for each enrolled patient and is capped at a maximum of \$275,000 per year for two years. Continuing the use of Ellipsis solution is cost effective than the purchase and implementation of a replacement solution.

Contract History and Price Reasonableness

On July 12, 2016, Agenda Item 3.35 the Board approved a Professional Service Agreement with Ellipsis Health, Inc. to provide software services as it pertains to care management and texting services effective July 1, 2016 for \$275,000. The Ellipsis solution aids to improve clinical outcomes for patients requiring chronic disease management, including diabetes management. Additionally, this solution provide a mechanism fostering clinicians' increased understanding of the medical, behavioral, and socio-economic needs of patients. The Ellipsis solution has the potential to support the expansion of synchronizing all patient outreach in the future. These improvements are accomplished through text messaging promoting patient engagement and healthier behaviors: prompting a patient to schedule or confirm an appointment, providing test results, providing behavioral encouragement, and offering periodic information to improve self-efficacy. Improving a patient's clinical outcome can improve a patient's quality of life and reduce health risks like heart disease, stroke, or substance abuse recidivism which can result in lengthy and costly hospital utilization and added risk to a patient's physical and behavioral health.

Ellipsis Solutions increased the overall physician communication score from 73.3 to 92.8 for calendar year 2017. RUHS currently has over 2,000 patients enrolled using this solution thus far.

The original Agreement was only for one year therefore, this new Agreement will continue the service for two more years commencing July 1, 2017 through June 30, 2019. Due to change in leadership within RUHS Information Services Department, the Agreement was unfortunately overlooked therefore, not renewed during fiscal year 2017/2018. Continuing RUHS' use of Ellipsis is also more cost effective than the purchase and implementation of a replacement solution.

ATTACHMENTS:

SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Attachment A: **Professional Service Agreement for Care Management and Bi-
Directional HIPAA Compliant Texting Services**


Teresa Summers, Director of Purchasing 10/4/2018


Gregory P. Priaplos, Director County Counsel 10/5/2018



Date: August 23, 2018

From: Jennifer Cruikshank, CEO

To: Board of Supervisors/Purchasing Agent

Via: Naomi Santos, RUHS Contracts Administration

Subject: Sole or Single Source Procurement; Request for Software Services

The below information is provided in support of my Department requesting approval for a sole or single source. *(Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole or single source.)*

1. Supplier being requested: Ellipsis Health, Inc.

2. Vendor ID: 119311

3. ☒ Single Source ☐ Sole Source

4. Have you previously requested and received approval for a sole or single source request for this vendor for your department? *(If yes, please provide the approved sole or single source number).*

☒ Yes

☐ No

SSJ# 17-021

4a. Was the request approved for a different project?

☐ Yes

☒ No

5. Supply/Service being requested:

Software Services: bi-directional text messaging software that will allow health care team members (e.g., health coaches, nutritionists, nurses, providers, etc.) to communicate in a HIPAA-compliant manner with their patients in order to support patients with diabetes or behavioral health (or other chronic condition) related self-management goals and care coordination. Health care team members should be able to send and receive messages via a care continuum web-based platform, and patients should be able to send and receive messages via a personal cellular phone or smart phone.



6. Unique features of the supply/service being requested from this supplier.

The Ellipsis solution aids in the improvement of clinical outcomes for patients requiring chronic disease management, including diabetes management. Additionally, this solution provides a mechanism fostering clinicians' increased understanding of the medical, behavioral, and socio-economic needs of patients. The Ellipsis solution has the potential to support the expansion of synchronizing all patient outreach in the future.

- a) Bi-directional HIPAA-compliant text messaging to support diabetic or behavioral health patients with self-management goals
- b) Care team member access via we-based platform
- c) Pathway for personalized text messages by care team members
- d) Statistical summary reporting of individual and group self-management goals and clinical measures
- e) Ability for care team end-user to pull lists of patients for targeted outreach and follow-up
- f) Group texting function for events (e.g., diabetes classes, etc.)
- g) Texting platform that allows for entry of clinical data into patient profiles
- h) Demonstrated utilization on patient side of at least 50%
- i) Ability to tailor features and additional modules for various care team members without incurring additional cost
- j) Demonstrated improvement in patient clinical outcomes.

7. Reasons why my department requires these unique features from the vendor and what benefit will accrue to the county:

RUHS Community Health Clinic require these unique features in order to provide high quality care and improved population health for our ambulatory patients, as well as to maximize reimbursement dollars that are currently tied to clinical quality measures. Text messaging will allow our clinics to provide care that is more efficient, more patient-centric, and more cost-effective; and will also help position our health system to compete with other health systems that are rapidly incorporating technology to improve care and efficiently in the post-Affordable Care Act era of health care.

This text messaging program (utilizing the software) has led to improved patient satisfaction, improved staff satisfaction, and improved clinical outcomes (with demonstrated improvements in diabetes control) for patients engaged in text messaging.

8. Period of Performance: From: July 1, 2017 to June 30, 2019
(2 years)

Is this an annually renewable contract?

☒ No

☐ Yes

Is this a fixed-term agreement:

☐ No

☒ Yes

9. Identify all costs for this requested purchase. In addition, please include any single or sole source amounts previously approved and related to this project and vendor in the



section designated below for current and future fiscal years. You do not need to include previous fiscal year amounts. 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	Total
\$3.00 Per Enrolled Patient / Per Month	\$275,000	\$275,000	\$550,000
Total Costs	\$275,000	\$275,000	\$550,000

10. Price Reasonableness:

The rate for this service will remain at \$3.00 per enrolled patient per month. anticipated the average number of patients using this service is 7,000 active patients and will not exceed the \$275,000 per year. Continuing RUHS' use of Ellipsis is also more cost effective than the purchase and implementation of a replacement solution.

11. Projected Board of Supervisor Date (if applicable): September 25, 2018



Department Head Signature
(or designee)

Jennifer Crickshank

Print Name

9/6/18

Date

The section below is to be completed by the Purchasing Agent or designee.

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

Condition/s:

Not to exceed:

☐ One-time \$ _____

☐ Annual Amount \$ _____ / per fiscal year through _____ (date)

(If Annual Amount Varies each FY)

After-the-fact → FY 17/18: \$ 275,000

FY 18/19: \$ 275,000

FY _____: \$ _____

FY _____: \$ _____

FY _____: \$ _____

Purchasing Agent

9/21/18

Date

19-053

Approval Number

(Reference on Purchasing Documents)

PROFESSIONAL SERVICE AGREEMENT

for

SOFTWARE SERVICES

between

COUNTY OF RIVERSIDE,

a political subdivision of the State of California

and

ELLIPSIS HEALTH, INC.



TABLE OF CONTENTS

<u>SECTION HEADING</u>	<u>PAGE NUMBER</u>
1. Description of Services.....	3
2. Period of Performance.....	3
3. Compensation.....	3
4. Alteration or Changes to the Agreement.....	5
5. Termination.....	6
6. Ownership/Use of Contract Materials and Products.....	8
7. Conduct of Contractor.....	8
8. Inspection of Service: Quality Control/Assurance.....	9
9. Independent Contractor/Employment Eligibility.....	9
10. Subcontract for Work or Services.....	10
11. Disputes.....	10
12. Licensing and Permits.....	10
13. Use by Other Political Entities.....	10
14. Non-Discrimination.....	11
15. Records and Documents.....	11
16. Confidentiality.....	11
17. Administration/Contract Liaison.....	12
18. Notices.....	12
19. Force Majeure.....	12
20. EDD Reporting.....	12

Requirements.....	12
21. Hold Harmless/Indemnification	
.....	13
22. Insurance	
.....	13
23. Limitation of Liability	
.....	16
24. General	
.....	17
Exhibit A - Scope of Service	
.....	23
Exhibit B - Maintenance and Support Services	
.....	27
Exhibit B-1 - Maintenance and Support Services	
.....	32
Exhibit B-2 - Maintenance and Support Services	
.....	33
Exhibit C - Training Services	
.....	34
Exhibit D - HIPAA Business Associate Provisions	
.....	35

This Agreement, made and entered into this 1st day of July, 2017, by and between Ellipsis Health, Inc., a Delaware Corporation with its principal place of business at One Hallidie Plaza, Suite 828, San Francisco, CA 94102 (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, on behalf of Riverside University Health System (herein referred to as "COUNTY"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of four (4) pages, referred to herein as the "Ellipsis Solution".

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same or similar industry (digital health technology) in the State of California.

1.3 CONTRACTOR affirms that it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Section 3 of this Agreement. CONTRACTOR is not to perform services or provide products outside of the Agreement and COUNTY has no obligation to accept or pay for services or products not described in this Agreement.

1.4 Acceptance by the COUNTY of the 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

This Agreement shall be effective July 1, 2017, shall terminate on June 30, 2019. CONTRACTOR shall commence performance on July 1, 2017 and shall diligently and continuously perform thereafter.

3. Compensation

3.1 The COUNTY shall pay the CONTRACTOR for services performed at a rate of three dollars and no (0) cents (\$3.00) per month per each user that is enrolled in the Ellipsis Solution (as described in the Scope of Services in Exhibit A) software during that month. Except as described below, maximum payments by COUNTY to CONTRACTOR shall not exceed two hundred and seventy-five thousand dollars (\$275,000) per year for the services described in this paragraph. An "enrolled user" is defined as a patient or COUNTY health care provider actively utilizing the Ellipsis Solution within ninety (90) days of the last day of the applicable billing period. Patients or COUNTY providers who do not utilize the Ellipsis Solution within ninety (90) days will not be deemed an enrolled user for the month within which the 90th day occurs

and subsequently until and unless the patient or provider again accesses the Ellipsis Solution.

3.2 If COUNTY at any time enrolls any additional user(s) on the Ellipsis Solution such that payments from COUNTY to CONTRACTOR for the services described in 3.1 above are likely to exceed \$275,000 in payments from COUNTY TO CONTRACTOR in any year, CONTRACTOR shall notify COUNTY in writing of the excess user(s) within fifteen (15) days from the last day of the calendar month in which the excess user(s) is or are added. If COUNTY does not bring the total number of enrolled users down to a number sufficient to not exceed \$275,000 in annual payments for the Ellipsis Solution within thirty (30) days from the date of receipt of the notice, CONTRACTOR may amend the invoice for the relevant calendar month(s) and bill for any additional enrolled user(s) at a rate of three dollars and no (0) cents (\$3.00) per month, and COUNTY shall pay the invoiced amount, subject to the requirements of section 4.1 below.

3.3 Any request to modify the Ellipsis Solution (as described in the Scope of Services in Exhibit A) would be considered a customization request. Should CONTRACTOR decide to accept the customization request, COUNTY shall be charged custom programming fees at the rate of one hundred dollars (\$100) per hour for software development and one hundred dollars (\$100) per hour for consulting with COUNTY staff on related custom interface development. CONTRACTOR may increase the custom programming fees at any time upon receipt of a request by COUNTY for Customizations or a New Interface based on the Consumer Price Index for the Riverside County area.

3.4 Any improvements to the functionality of the Ellipsis Solution as part of regular product maintenance or support services (as described in Exhibit B) shall be made available to COUNTY at no additional charge.

3.5 The charge for after-hours support (as described in Exhibit B) shall be one hundred dollars (\$100) per hour. Also, a minimum one (1) hour charge will be incurred for each request.

3.6 The COUNTY agrees to pay an additional charge for any support required by COUNTY in order to fix Errors (as described in Exhibit B) caused by an act or omission of a third-party host.

3.7 The COUNTY agrees to pay the additional training fees as set forth in Exhibit C, which shall be payable on or before the due date specified in Section 3.12.

3.8 The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amounts described in 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9 above and shall have no obligation to purchase any specified amount of services or products in the future. COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement above or beyond the contracted amounts described in 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9.

3.9 No price increases will be permitted during the term of this Agreement. If CONTRACTOR offers lower prices to another county on the same products that lower price will automatically be extended to the COUNTY for any services occurring after that lower price is offered. No retroactive price adjustments will be considered.

3.10 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, and COUNTY shall pay the invoice within thirty (30) days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices

to:

Riverside University Health System
26520 Cactus Avenue
Moreno Valley, CA 92555
Attn: Ambulatory Care Department
Cc: Accounts Payable Department

Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to addresses of ordering department/division specified in this paragraph, the number of patients enrolled in the Ellipsis Solution during the preceding month, the per patient price agreed to above, any custom programming or training fees (if applicable), and an invoice total.

3.11 The COUNTY obligation for payment of this Agreement beyond the end of each fiscal year during the Period of Performance (as set forth in Section 2) is contingent upon and limited by the availability of COUNTY funding from which payment can be made, and invoices shall be rendered "monthly" in arrears. In the State of California, Government agencies are not allowed to pay excess interest and late charges, per Government Code, Section 926.10. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing and this Agreement shall be deemed terminated, have no further force, and effect.

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.

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 shall 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 the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. COUNTY may terminate any part or all of this Agreement without cause upon thirty (30) days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement, fails to perform in a manner that may endanger the goals and purposes of this Agreement, and does not cure such failure upon five (5) days written notice by COUNTY.

5.3 After receipt of notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY; and
- (c) Transfer to COUNTY a copy of all patient identifiable data contained at that time within CONTRACTOR's software and provide proof that such data has been removed from CONTRACTOR's software and rendered unusable, unreadable or indecipherable within the standards set forth by the Federal Office for Civil Rights; provided that, for the avoidance of doubt, the foregoing obligation shall not apply to de-identified patient identifiable data which has been de-identified in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and all other applicable law and which CONTRACTOR may use or disclose for any purpose.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance

up to the date of termination in accordance with this Agreement, and for any agreed upon transfer of data or other items performed pursuant to Section 5.3 above thereafter. The fee for transfer of this data will be eight (8) hours of developer time, which is equal to eight hundred dollars (\$800.00) as per developer rates specified in Exhibit B, Section 2.1.4.

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

5.6 CONTRACTOR represents and warrants that it is not debarred from the System for Award Management (SAM). CONTRACTOR must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (FedReg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

5.7 Ineligible Person shall mean any individual or entity who (a) is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; (b) or who 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. CONTRACTOR shall not hire, engage or retain any Ineligible Person to provide services directly related to this Agreement. CONTRACTOR shall screen prospective individuals and entities that may provide services under this Agreement (Covered Individuals and Entities) against the List of Excluded Individuals and Entities (LEIE) database maintained by the U.S. Department of Health and Human Services' Office of Inspector General (<http://oig.hhs.gov/exclusions/>) prior to hire or engagement. CONTRACTOR shall screen all current Covered Individuals and Entities within sixty (60) days of execution of this Agreement to ensure that they have not become Ineligible Persons unless CONTRACTOR has performed such screening on same Covered Individuals under a separate agreement with COUNTY within the past six (6) months. In addition, Contractor agrees to rescreen all Covered Individuals against the LEIE every six (6) months. Covered Individuals and Entities shall be required by CONTRACTOR to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes a

Covered Individual or Entity an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual or Entity providing services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an Ineligible Person. Such individual or entity shall be promptly removed from participating in any activity associated with this Agreement.

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

6. Ownership/Use of Data, Materials and Products

6.1 The CONTRACTOR agrees that all data, 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 the COUNTY. The foregoing provision does not apply to the software that constitutes the Ellipsis Solution, nor to any modifications thereto, nor to any voice recordings created or captured by the Ellipsis Solution and/or Ellipsis software, but does apply to any other data, materials, or reports generated from the software by CONTRACTOR under engagement with COUNTY. The software constituting the Ellipsis Solution is and shall remain the property of CONTRACTOR. Excluding voice recordings, the material, reports or products may be used by the COUNTY for any purpose that the COUNTY deems to be appropriate, including, but not limited to, duplication and/or distribution within the COUNTY. COUNTY shall have no right to, and shall not sell, license or otherwise use, any voice recordings created or captured by the Ellipsis Solution and/or Ellipsis software. Material, reports or products may not be shared with third parties without the express written consent of COUNTY's Riverside University Health System Chief Information Officer. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY's Riverside University Health System Chief Information Officer.

6.2 CONTRACTOR acknowledges that it may not use, reference or quote from or reveal the contents of any data, materials, reports or products of the COUNTY, including but not limited to results achieved by the COUNTY related to the use of CONTRACTOR's product without receiving prior permission in writing from the COUNTY for each such disclosure from the Riverside University Health System Chief Information Officer.

6.3 CONTRACTOR acknowledges and agrees that a breach of the promises in paragraphs 6.1, 6.2 above and 16.1, 16.2 and 16.3 below may cause COUNTY and/or its patients irreparable harm, the extent to which would be difficult to ascertain and for which money damages would be inadequate.

Accordingly, CONTRACTOR agrees that in the event of a breach of its obligations in each and every of the referenced paragraphs COUNTY shall be entitled to seek (1) injunctive or such other equitable relief as the court deems appropriate without the necessity of proving actual damages, (2) attorney fees and (3) any other remedies that it may have available.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which 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 the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuities, favors, hospitality and / or entertainment directly or indirectly to COUNTY employees.

8. Inspection of Service; Quality Control/Assurance

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

the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall provide an identified COUNTY representative or other regulatory official access to all reports and controls that provide for performance monitoring, assessment, and evaluation of the CONTRACTOR's performance under this Agreement at any time, upon reasonable notice to the CONTRACTOR.

9. Independent Contractor/Employment Eligibility

The 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 CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against 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 CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for currently anticipated and disclosed work by Amazon Web Services, Inc. (AWS). CONTRACTOR represents and warrants that its contract with AWS dated July 24, 2014 is presently in force and effect and that it will remain so throughout the term of this Agreement. CONTRACTOR agrees that any change to or cancellation of its agreement with AWS without prior notice to and agreement by the COUNTY in writing is a default of this Agreement that will result in immediate termination.

11. Disputes

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

Section.

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

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of the Business and Professions Code. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. Use By Other Political Entities

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

14. Non-Discrimination

CONTRACTOR shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, 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 the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY

reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 The CONTRACTOR shall not use for any purpose privileged or confidential information which is acquired in connection with this Agreement. The term “privileged or confidential information” includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement. CONTRACTOR acknowledges that the experiences of COUNTY in assisting in the development of CONTRACTOR’s products and services, COUNTY’s evaluations – formal and informal – of those products and services and the experiences of the COUNTY and its patients with the CONTRACTOR’S products and services are “privileged and confidential”. For the avoidance of doubt, the foregoing confidentiality obligations shall not apply to de-identified patient identifiable data which has been de-identified in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and all other applicable law and which CONTRACTOR may use or disclose for any purpose.

16.2 The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR’s obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third-party requests for disclosure of such information in compliance with applicable privacy laws and statutes. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY’s Riverside University Medical System Chief Information Officer, any such information to anyone other than the COUNTY.

16.3 The 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. Refer to Attachment 2 of this agreement.

17. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement. Actions and agreements made by other COUNTY employees may not be relied upon by CONTRACTOR unless ratified by the Purchasing Agent.

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 will be deemed effective two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

Attn: Purchasing Agent
Riverside University Health System
26520 Cactus Avenue
Moreno Valley, CA 92555

CONTRACTOR

Attn: Mainul Islam, CEO
Ellipsis Health, Inc.
One Hallidie Plaza, Suite 828
San Francisco, CA 94102

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, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR 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 the County of Riverside, its Agencies, Districts, Special Districts and Departments, their 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 any services of CONTRACTOR, its officers, employees, subcontractors, agents or

representatives arising out of any breach of this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature. 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, the Indemnitees in any claim or action based upon such alleged acts or omissions.

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

21.3 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.

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

22. Insurance

22.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the 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. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

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

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 its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. CYBER / Data Breach Liability:

CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, its agents, representatives, or employees. CONTRACTOR shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

CONTRACTOR shall in particular maintain the following Cyber Liability Insurance coverage, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

D. Professional Liability:

CONTRACTOR shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3)

demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

E. General Insurance Provisions - All lines:

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

2) The 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 the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with (a) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and (b)) if requested to do so orally or in writing by the County Risk Manager, original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

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

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

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

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

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

23. Limitation of Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING HEREUNDER (UNDER ANY THEORY INCLUDING BUT NOT LIMITED TO NEGLIGENCE, CONTRACT OR STRICT LIABILITY) INCLUDING WITHOUT LIMITATION TO LOSS OF ANTICIPATED PROFITS, BUSINESS GOODWILL, REPUTATION, LOST DATA OR ECONOMIC LOSS, WHETHER SUFFERED DIRECTLY OR INDIRECTLY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. IN NO CASE SHALL EITHER PARTY'S LIABILITY RELATED TO THIS AGREEMENT EXCEED THREE TIMES (3X) THE FEES ACTUALLY PAID BY COUNTY TO CONTRACTOR; PROVIDED THAT THE FOREGOING LIMITATION SHALL APPLY TO THE EXTENT SUCH THE CLAIM GIVING RISE TO SUCH LIABILITY IS COVERED BY INSURANCE. ALL CLAIMS THAT EITHER PARTY MAY HAVE UNDER THIS AGREEMENT WILL BE AGGREGATED TO SATISFY THE LIMIT AND MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT.

24. General

24.1 Other than by operation of a Change of Control (as defined below) 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 shall be deemed

void and of no force or effect. A "Change of Control" is defined as the sale of all or substantially all of the assets of CONTRACTOR; any merger, consolidation or acquisition of CONTRACTOR with, by or into another corporation, entity or person or any change in the ownership of more than fifty percent (50%) of the voting capital stock of CONTRACTOR in one or more related transactions. CONTRACTOR agrees to provide advance written notice to COUNTY of any Change of Control on or before the date it is effective.

24.2 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 either 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.

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

24.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

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

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

24.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

24.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

24.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and

health ordinances, statutes, or regulations, which apply to performance under this Agreement.

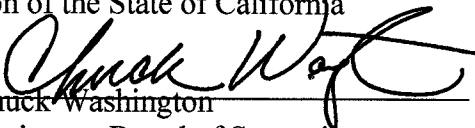
24.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

24.11 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.

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.

[Signature Page Follows]

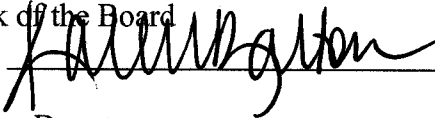
COUNTY OF RIVERSIDE, a political
subdivision of the State of California

By: 
Chuck Washington
Chairman, Board of Supervisors

Dated: OCT 16 2018

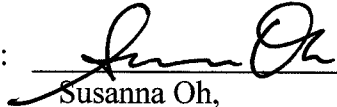
ATTEST:

Kecia Harper-Ihem
Clerk of the Board


By: 
Deputy

APPROVED AS TO

FORM: Gregory P. Priamos
County Counsel

By: 
Susanna Oh,
Deputy County Counsel

ELLIPSIS HEALTH, Inc.

By: 
Mainul Islam
CEO, Ellipsis Health, Inc.

Dated: SEPTEMBER 12, 2018

EXHIBIT A
SCOPE OF SERVICES
Ellipsis Health, Inc.

1. Scope of Services for The Ellipsis Solution software:

- 1.1 The Ellipsis Solution software is a bi-directional, smart care management software that allows COUNTY health care providers to coordinate care in a HIPAA-compliant manner with patients diagnosed with physical health chronic disease verticals and behavioral health conditions including those with substance abuse disorder.
- 1.2 Providers set and track self-management goals on the Solution with patients; the self-management goals may include, but are not limited to preventive health guidance, lifestyle choices, recommended physical or behavioral health activity, nutrition guidelines, blood glucose self-monitoring and medication guidelines. Patients initiate or respond to provider's outreach via web, personal cellular or smart phone. The Ellipsis Solution assesses patient health through whole person care health score evaluation tool.
- 1.3 The Ellipsis Solution provides a tool for asynchronous communication to all providers (e.g., physicians, nurses, nutritionists, dietitians, medical assistants, pharmacists, psychologists, psychiatrists, clinical social workers, lifestyle coaches, health coaches, etc.) and patients. The personalized, bidirectional secure messaging (through texting and patient portal) elicits patient feedback to track their self-management goals. This improved communication will potentially translate into improved achievement of patient self-management goals and clinical outcomes.

2. The Ellipsis Solution provides the following features:

- 2.1 The self-management goals setting and tracking for physical health and behavioral health conditions.
- 2.2 Physical health chronic disease verticals – diabetes, hypertension, pre diabetes, hyperlipidemia, chronic pain, etc.
- 2.3 Behavioral health integration – physical health conditions co-occurring with (1) mild to moderate mental health disorder or (2) severe and persistent mental health disorder or (3) substance abuse condition.

- 2.4 Physician-led care team web dashboard – providers monitor patient adherence to care plan through goal setting and tracking, set actionable tasks for both patients and care team members, administer group therapy and educational classes:
 - 2.4.1 Self-management goals progress.
 - 2.4.2 Automated reminders.
 - 2.4.3 Community events, case manager referral to social services.
 - 2.4.4 Groups – workshops, group therapy sessions, chronic disease educational classes.
 - 2.4.5 Memos – patient progress notes (SOAP), care team exclusive or shared with patient.
 - 2.4.6 Clinical metrics tracking.
 - 2.4.7 Personalized messaging – within care team, between care team and patient.
- 2.5 Patient web dashboard – patients set and monitor goals, receive reminders to carry out and report on assigned tasks, form motivational peer to peer groups, and RSVP to community events:
 - 2.5.1 Self-management goals progress.
 - 2.5.2 Automated reminders.
 - 2.5.3 Community events, access to social services.
 - 2.5.4 Groups – workshops, group therapy sessions, chronic disease educational classes, motivational peer-to-peer support.
 - 2.5.5 Memos.
 - 2.5.6 Clinical metrics tracking.
 - 2.5.7 Personalized messaging with care team.
- 2.6 HIPAA secure environment, end to end encrypted communication, audit trail.
- 2.7 Tagging and updating of validated clinical data from patient response.
- 2.8 Analytics – registry functions and clinical data visualization. Longitudinal summary reporting of individual and group self management goals and clinical measures.
- 2.9 Personalized population health – list of patients for targeted outreach and follow up based upon base-line statistics.
- 2.10 Pharmacy – personalized bi directional engagement about medication management goals setting and tracking, medication titration, and population management.
- 2.11 Scheduling – patients request appointments or ask scheduling related questions.
- 2.12 Whole person health assessment score tool.

3. Roles:

- 3.1 The Ellipsis Solution supports multiple roles, including, but not limited to super administrator, providers (e.g., physicians, nurses, nutritionists, dietitians, medical assistants, pharmacists, psychologists, psychiatrists, clinical social workers, lifestyle coaches, health coaches, etc.) physician, nurse, dietician, auditor, health coach, and patient. Each role has its own level of access and ability, and these ability levels can be adjusted to your health system specifications.
- 3.2 The administrator has the ability to perform all actions, including the creation of new health care provider accounts. This role will be granted to the system administrator and any lead provider the system designates. The administrators will also have the ability to unlock patient user accounts where a provider or patient has lost his or her password to own account., etc.
- 3.3 The ability to see records of health team members and patients (empaneled, in own clinic or in multiple clinics) by a Provider will be in accordance with the level of access to the Solution access designated to the Provider by the health system.
- 3.4 The patient portal allows Patients to log in and access their records, including messages, clinical data, and goal priorities pertaining to them, and if given access, specific notes documented on their health.
- 3.5 Roles can be revoked from an enrolled user without deleting that user from the system.

4. Security:

- 4.1 Ellipsis Health will maintain, within the database and codebase, the relationships between entities such as each patient and their data (patient touches, clinical data, patient goals and progress notes on each goal). All confidential parts of that data, such as the identity of a particular patient, or the contents of patient touches and notes on particular goals will be stored in a HIPAA-compliant data store. Data will be secured through virtual and physical methods, including encryption of data with rotating keys, with the keys stored in a database separate from the data, and HIPAA-compliant audit trails to track which user accesses which piece of information and when, etc.
- 4.2 To access the Ellipsis Health platform, a user will use HTTPS which encrypts the communication between the Ellipsis Health website and the user's computer. The user will log on with a private password which is encrypted before it is stored in Ellipsis Health's database, such that Ellipsis Health employees will not have access to user/patient passwords. User sessions time out after a period of inactivity, and accounts will be temporarily locked, with an

email-based recovery mechanism, if too many attempts are made to log in using the wrong password.

- 4.3 Upon successful login, an authentication token will be passed to and temporarily stored in that user's computer, enabling access to the private patient data stored in the Ellipsis Solution database. This token is not accessible by the user of the computer. Communication with Ellipsis Solution database is also done exclusively through encrypted HTTPS.

EXHIBIT B
Maintenance and Support Services

1. Definitions.

- 1.1 “After Hours Support” shall be defined as support requested after the close of any Business Day as defined below.
- 1.2 “Business Day” shall be defined as Monday through Friday, excluding holidays recognized by CONTRACTOR, during the hours of 8 a.m. and 5 p.m. PST. A list of the recognized CONTRACTOR holidays is attached hereto as Exhibit B-1 and incorporated by reference.
- 1.3 “Confidential Information” shall be defined as all of the proprietary, non-public information of either Party disclosed pursuant to or in furtherance of this Agreement, including but not limited to all specific proprietary information relating to Bugs, Errors, and Incidents with the Ellipsis Solution Software, since such information would be helpful to competitors of the Company in trying to design a competing software product; provided that, however, general information that Bugs, Errors, and Incidents arose with the Ellipsis Solution shall not constitute Confidential Information. Notwithstanding the foregoing, “Confidential Information” shall not include any information, which the recipient can demonstrate through competent evidence (i) was in its knowledge or possession prior to disclosure by the discloser, (ii) was in the public domain at the time of disclosure or subsequently entered the public domain through no fault of the recipient, (iii) was disclosed to the recipient by a third party with the right to make such a disclosure, or (iv) was developed independently by the recipient.
- 1.4 “Customization” shall be defined as modifications and/or enhancements to the Ellipsis Solution to incorporate COUNTY’s specifications.
- 1.5 “Error” shall be defined as an Incident as defined below reported by COUNTY to CONTRACTOR as a result of reproducible behavior that deviates from the Ellipsis Solution specifications.
- 1.6 “Incident” shall be defined as a single support question relating to the Ellipsis Solution that cannot be broken down into subordinate questions.
- 1.7 “Installation Date” shall be defined as the first date on which the Ellipsis Solution is installed, configured, and interfaced with COUNTY's production data. For the avoidance of doubt, this shall constitute “being in a production environment.”

- 1.8** “Off-Site Support” shall be defined as telephone and email portal inquiries from COUNTY concerning problems, questions, or assistance regarding the operation of the Ellipsis Solution, which is available during the Business Day as defined above. In addition, CONTRACTOR makes available to COUNTY a support desk portal through which COUNTY can make inquiries. The support desk portal is available twenty-four (24) hours a day, seven (7) days per week, three hundred sixty-five (365) days per year at no additional charge.
- 1.9** “Start Date” shall be the date ninety (90) days following the Installation Date.
- 1.10** “Update” shall be defined as a modification, correction, or addition to the Ellipsis Solution or documentation, including maintenance releases, and enhancements that CONTRACTOR makes available to its customers without additional charge. The definition of “Update” excludes Upgrades but includes new versions of the Ellipsis Solution and releases to address new government-required certifications supported by the CONTRACTOR.
- 1.11** “Upgrade” shall be defined as an enhancement or addition to the Ellipsis Solution other than the Update, which CONTRACTOR does not make available to all of its commercial Customers as part of the standard support services under a Ellipsis Solution support and maintenance agreement but is only made commercially available subject to a payment of a separate charge.
- 1.12** “Workaround” shall be defined as a series of instructions, procedural steps, or usage clarifications to avoid an Error or circumvent its effects. A Workaround does not involve issuance of new programming code.

2. Support Services.

- 2.1** CONTRACTOR will perform the following services on behalf of COUNTY:
- 2.1.1** Updates. CONTRACTOR will provide access to COUNTY one (1) copy of any Ellipsis Solution Updates in object code format and one (1) set of documentation Updates for the Ellipsis Solution when Company makes each Update available for general release. For the avoidance of doubt, any Updates shall be automatically treated as part of the Ellipsis Solution, and COUNTY shall be authorized to use the Updates in accordance with the terms and conditions set forth in the Professional Service Agreement.
- 2.1.2** Errors. CONTRACTOR will use reasonable commercial efforts to remedy programming errors that prevent the Ellipsis Solution from substantially conforming to the specifications and documentation.

- 2.1.3** Telephone and E-mail Support. CONTRACTOR will provide reasonable Off-Site Support during CONTRACTOR's Business Day as follows:
- 2.1.3.1** CONTRACTOR will provide assistance to COUNTY as set forth in Exhibit B-2 attached hereto and incorporated by reference, in order to determine if a problem COUNTY is encountering is attributable to an Error, and will address Errors in accordance with Section 2.1.2 above.
- 2.1.3.2** CONTRACTOR will provide reasonable assistance to resolve COUNTY problems that occur during the normal usage of the Ellipsis Solution.
- 2.1.3.3** After-Hours and Special Errors Support shall be available for an additional charge as set forth above in Section 3 of Professional Service Agreement.
- 2.1.4** Customizations. COUNTY may submit requests to CONTRACTOR for Customizations, which if agreed to, will be performed for additional custom programming fees at the rate of one hundred dollars (\$100) per hour for software development and one hundred dollars (\$100) per hour for consulting with COUNTY staff on related custom interface development. CONTRACTOR may increase the custom programming fees at any time upon receipt of a request by COUNTY for Customizations or a New Interface based on the Consumer Price Index for the Riverside County area.
- 2.1.5** Upgrades. CONTRACTOR will make Upgrades available for purchase by COUNTY upon release for an additional charge pursuant to a separate agreement. Pricing for Upgrades will be at CONTRACTOR's then standard Upgrade rates. For the avoidance of doubt, any Upgrades purchased by COUNTY shall be automatically treated as part of the Ellipsis Solution, and COUNTY shall be authorized to use the Upgrades in accordance with the terms and conditions set forth in the Professional Service Agreement.
- 2.2** CONTRACTOR'S obligation to provide support services is conditioned upon the following:
- 2.2.1** COUNTY materially complies with all of CONTRACTOR's maintenance instructions;
- 2.2.2** COUNTY makes reasonable efforts to correct the Error after consulting with CONTRACTOR;
- 2.2.3** COUNTY promptly installs all maintenance releases;
- 2.2.4** COUNTY procures, installs, and maintains all equipment, network connections, and other hardware necessary to operate the Ellipsis Solution Software;

2.2.5 If COUNTY hires a third-party host for the Ellipsis Solution software, then COUNTY ensures that such third-party host signs a third-party maintenance and support agreement with CONTRACTOR. CONTRACTOR's response goals are set forth in Exhibit B-2 attached hereto and incorporated by reference.

3 Exclusions from Support Services. Support Services in the following situations are considered outside the scope of support covered by compensation amounts as set forth in Section 3 above under Professional Service Agreement; provided, however, Company will provide support in these situations for an additional charge:

- 3.1** The Ellipsis Solution software has been changed, modified, or damaged (except under the direct supervision of CONTRACTOR or as otherwise agreed to by CONTRACTOR in writing), which includes any writing to the Ellipsis Solution's database or edits to the code in the Ellipsis Solution by a third party other than CONTRACTOR. For the purposes of this Agreement, writing to the Ellipsis Solution database includes modifying the database, its structure, or algorithms, but does not include uploading data through CONTRACTOR's standard interface;
- 3.2** The Error is caused by COUNTY's negligence, a hardware function not attributable to CONTRACTOR (including where the hardware function is not compliant with CONTRACTOR's operating environment), a problem with a third-party's software or data from interfacing, or other causes beyond the reasonable control of CONTRACTOR;
- 3.3** The Error is caused by hardware malfunction (including a malfunction resulting from COUNTY or a third-party host's negligence), provided that CONTRACTOR will not be responsible for repairs to any hardware;
- 3.4** The COUNTY has failed to comply with any of its expressly stated obligations under the Agreement pertaining to the use and operation of the Ellipsis Solution software;
- 3.5** The Ellipsis Solution has been used for a purpose other than the specific purpose for which it is designed;
- 3.6** The COUNTY has failed to incorporate any Updates previously provided by CONTRACTOR that corrected such Error;
- 3.7** The Ellipsis Solution software is being hosted by a third party who has not signed a third-party maintenance and support agreement with CONTRACTOR.

- 4 Incident Reporting and Obligations.** The COUNTY shall report all Incidents to CONTRACTOR. Information to be reported may include the following:
- 4.1** The name(s) and version of the Ellipsis Solution software, including all maintenance releases if applicable;
 - 4.2** The hardware system (including model and serial number);
 - 4.3** A general description of the operating environment in which the Ellipsis Solution software is being used;
 - 4.4** Where a reproducible test case that demonstrates the specific sequence of events that causes the Error to be reported;
 - 4.5** Exact wording of all related Error messages, if applicable;
 - 4.6** A full description of the Incident and expected results;
 - 4.7** Any special circumstances surrounding the discovery of the Incident for which COUNTY is seeking technical support;
 - 4.8** The Ellipsis Solution software logs, where applicable; and
 - 4.9** Configuration details, where applicable.
 - 4.10** Incident Reports should be submitted to the support desk portal at the following website: <https://riverside.ellipsishealth.com> or by telephone at (415) 328-7657.

EXHIBIT B-1

CONTRACTOR Holidays

The following are holidays recognized by the CONTRACTOR:

- New Year's
- Presidents' Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving
- Day after Thanksgiving
- Christmas Eve - half-day; close at noon (full-day Friday if Christmas on Saturday)
- Christmas - If Christmas falls on Saturday, the day before is a holiday; if Christmas falls on Sunday, the day after Christmas is a holiday

EXHIBIT B-2

CONTRACTOR Response Goals

CONTRACTOR's response goals are as follows:

Priority	Description	Response Time	Resolution Goal
P1 - Critical	A P1 support issue is described as critical -The Ellipsis Solution is inoperable. Support personnel will begin working on your problem immediately. P1 examples include all users unable to log into Ellipsis Solution, the system is down, or users are receiving a fatal error.	2 hours	Assuming that the issue is related directly to the Ellipsis Solution, then CONTRACTOR will assign support staff to triage and resolve the issue and provide Updates or Workarounds within forty-eight (48) business hours of receipt of notice of the issue.
P2 - Urgent	A P2 support issue is described as urgent – a problem causing an inconvenience, but the customer can still access the Ellipsis Solution. Support personnel will begin working on your problem within four hours. A P2 example includes interface errors or interface data issues.	4 hours	Assuming that the issue is related directly to the Ellipsis Solution, then CONTRACTOR will assign support staff to triage and identify the problem. CONTRACTOR will exercise commercially reasonable efforts to resolve the issue.
P3 – Non-urgent	A P3 support issue is described as non-urgent – an enhancement request or intermittent issue that may require research to resolve. Support personnel will log the call and the COUNTY can follow the progress online. P3 examples include general questions, password issues, training request.	3 business days	Assuming that the issue is related directly to the Ellipsis Solution, CONTRACTOR will address request and work to establish a mutually acceptable time frame for resolution. CONTRACTOR will use commercially reasonable efforts to resolve the issue in the next Update.

EXHIBIT C
Training Services

- 1 COUNTY may request up to five (5) days of training at no charge; provided, however, that (i) COUNTY must request and schedule any complimentary training days to occur on or before the nine (9) month anniversary of the Effective Date and (ii) COUNTY will be responsible for all reasonable travel expenses incurred in each training visit.

- 2 Additional Training Days. Additional training days can be purchased by COUNTY at any time; provided, however, that COUNTY must request and schedule the purchased training to take place on a date on or before the five-year anniversary of such purchase. The cost is one thousand five hundred dollars (\$1,500) per day plus reasonable travel expenses, which shall include airfare, mileage, hotel, airport parking, car rental or other ground transportation, and food. Training days are defined as on-site training at the COUNTY's facility. COUNTY must provide an appropriate training environment. COUNTY is purchasing in this Agreement zero (0) days additional days of training, which shall cost Zero Dollars (\$0) plus reasonable travel expenses.

- 3 Cancelled or Delayed Training Sessions. Once the implementation plan has been established and approved in writing by both parties, then all non-refundable expenses incurred prior to or as a result of any subsequent cancellation shall be reimbursed by the canceling party. Additionally, if the cancellation occurs within seven (7) days prior to the scheduled date, then:
 - 3.1 If COUNTY cancels, COUNTY shall incur a cancellation charge equal to one half of the day rate at the current training price for training services; and
 - 3.2 If CONTRACTOR cancels, CONTRACTOR owes a credit to COUNTY in the same amount. COUNTY should note that canceling or rescheduling training sessions may result in higher expenses due to a lack of discounts for airfare, car rental, and hotel availability.

Exhibit D

Attachment I

HIPAA Business Associate Agreement
Addendum to Contract
Between the County of Riverside and **Ellipsis Health, Inc.**

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the agreement for **Software Services** (the "Underlying Agreement") between the County of Riverside ("County") and **Ellipsis Health, Inc.** ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

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

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

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

WHEREAS, 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;

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

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.
 - A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted 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 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 and use that de-identified data for any legal purpose 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. For the avoidance of doubt, the foregoing obligation shall not apply to de-identified patient identifiable data which has been de-identified in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and all other applicable law and which CONTRACTOR may use or disclose for any purpose.
 - 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 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 or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

- C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.
- D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

- A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:
 - 1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
 - 2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.
 - 3) If termination of the Underlying Agreement is not feasible, the 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. For the avoidance of doubt, the foregoing obligation shall not apply to de-identified patient identifiable data which has been de-identified in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and all other applicable law and which Contractor may use or disclose for any purpose.
 - 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 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 Section shall be deemed given or made when received by County.

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