

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



ITEM  
3.33  
(ID # 6799)

MEETING DATE:

Tuesday, December 4, 2018

FROM : HUMAN RESOURCES:

SUBJECT: HUMAN RESOURCES: Ratification and Approval of the Professional Services Agreement with Ventiv Technology Inc. for Proprietary Automated Claims Administration Software Maintenance without Seeking Competitive Bids for Five Years, All Districts. [Total Cost - \$804,382; \$148,511 the first year and a 4% increase ongoing; up to \$80,438 in additional compensation [Source of Funds - 100% Workers' Compensation and General Liability Funds.]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify the Professional Services Agreement with Ventiv Technology Inc. for proprietary automated claims administration software (iVos) maintenance without seeking competitive bids for a maximum contract amount of \$804,382, for the extended term, commencing on July 1, 2018 and terminating on June 30, 2023, and authorize the Chairman of the Board to execute the Agreement on behalf of the County of Riverside; and
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: sign amendments that do not change the substantive terms of the Agreement; and sign amendments to the compensation provisions that do not exceed the sum total of ten (10) percent of the total annual cost of the contract.

ACTION: Policy

  
Branda Dieckmeyer, Assistant CEO / Human Resources Director 10/11/2018

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MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley  
Nays: None  
Absent: None  
Date: December 4, 2018  
xc: HR, Purchasing

Kecia Harper-Ihem  
Clerk of the Board

By:   
Deputy

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

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$148,511	\$154,451	\$804,382	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> Workers' Compensation and General Liability Funds			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 18/19 – 22/23	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

On January 30, 2008, County Purchasing issued an RFP for an automated web-based claims system for workers' compensation and risk management. The bid closed on March 6, 2008, with five bids received. The bid prices ranged from \$107,600 to \$1,584,766. Through the bid evaluation process and vendor product demonstrations, the evaluation committee determined that Valley Oak Systems, Inc. dba Aon eSolutions, now Ventiv Technology Inc. ("Contractor") and its iVos system would provide the best value for the County.

As a result of the best and final offer process, the pricing proposed by Contractor was \$826,752. The cost included implementation services, software license, custom development, and first year maintenance.

The County of Riverside accepted the proposal and subsequently entered into a ten year agreement with Contractor, leasing its proprietary software to manage workers' compensation and risk management claims. The agreement was approved by the Board of Supervisors on March 17, 2009, agenda item 3.34. The length of the agreements is to mitigate the costs associated with implementation, migration, testing and training.

The County's investment in iVos software has helped workers' compensation and risk management comply with state and federal mandated requirements for electronic filing, support receipt and retention of protected health information, integrate and streamline disability management and safety initiatives, and control litigation costs. Additional benefits include:

**Comprehensive and natively integrated compliance solutions**

iVos supports Electronic Data Interchange (EDI) for First Report of Injury (FROI) and Subsequent Report of Injury (SROI) to the State, all state-mandated letters, reports and forms; and full Centers for Medicare and Medicaid Services (CMS) reporting capabilities.

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
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iVos has the capability to allow the County to meet these requirements and allow complete reporting from the adjusters desktop, rather than requiring numerous manual steps.

**Dynamic workflow management**

Workflow management queues and more than 700 business rules automatically drive workflow and notifications in the form of emails, correspondence, tasks and reserve setting. Using workflow streamlines communication and helps with claims management, allowing the claims staff to spend more time helping claimants get the services they need.

**Robust self-service configuration and security tools**

As workers' compensation and risk management change, iVos is easily configured to meet the growing demand for information, security needs and requirements.

The parties now seek to amend the Agreement to extend the term for another five years. The software is proprietary, therefore, only Ventiv can perform the maintenance on the software. Sole Source approval was received based on this justification. A letter from the vendor stating the proprietary basis of the software is attached to the sole source.

**Impact on Residents and Businesses**

There is no impact on residents or businesses from this Agreement.

**Additional Fiscal Information**

This Agreement continues the yearly maintenance agreement with Ventiv Technology, Inc. for \$148,511 for the first year. This is a 1% discount from our current agreement. The yearly cost increases 4% each year thereafter.

**Contract History and Price Reasonableness**

The County of Los Angeles performed an exhaustive search for an automated web-based claims system. The RFP process took over a year and a half to complete. They reviewed all major vendors and selected Ventiv in December of 2017. The County of Los Angeles annual fees are much higher than those being paid by the County of Riverside. In some cases by a multiplier of more than 10x. The large discrepancy in fees are due to usage scope, 2017 vs 2009 rates and overall structure of the partnership.

The County has been using Ventiv's proprietary software (iVos) for almost 10 years, as per Board approval on March 17, 2009 (Item 3.34), and continues to provide satisfactory service to the County. The new Amendment would be a cost savings for the County and by staying with the same solution, the County can save on costly implementation fees. The extensive search conducted by the County of Los Angeles confirms the iVos is still one of the best products on the market. Extending the Agreement for an additional five years will

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STATE OF CALIFORNIA**

allow a savings of \$24,125 and allow workers' compensation and risk management divisions to continue services without any interruption.

**ATTACHMENTS:**

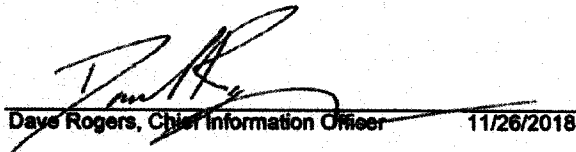
ATTACHMENT A. Five year Professional Services Agreement with Ventiv Technology, Inc.

ATTACHMENT B. Ventiv Approved H-11 Form 2018

ATTACHMENT C. Ventiv Sole Source Justification #19-064

  
Tina Grande, Assistant Purchasing Director 11/26/2018

  
Gregory T. Prietas, Director County Counsel 11/26/2018

  
Dave Rogers, Chief Information Officer 11/26/2018



# RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM

<b>RFI Number:</b>	PR2018-07091		
<b>Requested Purchase:</b>	Ventiv Ivos Maintenance and Support Agreement		
<b>Department/Agency:</b>	Human Resources		
<b>Primary Contact/Phone:</b>	Jennifer Fuller	<b>Alternate Contact/Phone:</b>	Keith Beecher/951-955-1632
<b>Purchase Request Type:</b>			
<b>Describe Requested Purchase:</b>	Renew of agreement with Ventiv Technology, Inc for maintenance and support of the Ivos Automated Claims Management Software System. This is a five year agreement which is targeted to go to the Board by the end of June.		
<b>Terms:</b>	Is this a Multi Year Contract?: True Length of Contract: 5 Start Date: 7/1/2018 End Date: 6/30/2023 12:00:00 AM Special Terms and Conditions:		
<b>Business Needs Addressed:</b>	The Ivos System is the claims processing system for both Workers' Compensation and General Liability. The system was purchased in 2008 after an RFP was conducted for a claiming system. This renewal is for the maintenance and support of the system.		
<b>Are there other county systems that provide the same functionality?</b>	No		
<b>Business Criticality:</b>	Run the Business, Grow the Business		
<b>Business Impact:</b>	Support Current Operations, Improve Customer Service, Improve Operational Efficiencies		

Current Cost Itemization (Include all the year 1 cost)							
Item Description	Purchase Type	Vendor	Quantity	Unit Cost	Sub Total	Item Tax	Total Cost
Ivos Maint and Support FY 18/19	Professional Services	Ventiv	1	\$148,511.00	\$148,511.00		\$148,511.00
Ivos Maint and Support FY 19/20	Professional Services	Ventiv	1	\$154,451.00	\$154,451.00		\$154,451.00
Ivos Maint and Support FY 20/21	Professional Services	Ventiv	1	\$160,629.00	\$160,629.00		\$160,629.00
Ivos Maint and Support FY 21/22	Professional Services	Ventiv	1	\$167,054.00	\$167,054.00		\$167,054.00
Ivos Maint and Support FY 22/23	Professional Services	Ventiv	1	\$173,737.00	\$173,737.00		\$173,737.00

Annual Costs				
Item Description	Payment Type	Terms (In Years)	Payment amount	Total Annual Payments
				<b>TOTAL \$ 804,382.00</b>

Accounting String						
To be completed for pass-thru purchases that will be processed by RCIT Only						
Facility	Accounts (6 digits)	Dept ID (6 -10 digits)	Program (5 digits)	Class (5 digits)	Grant (9 digits)	Customer Project Code (10 digits)

<b>Department Head or Authorized Designee Signature:</b> Jennifer Fuller <i>OK per Mike Bowers</i>	<b>Date:</b> 5/31/2018 2:18 PM <i>6/5/18 36</i>
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# RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM

RCIT Review (Standard purchases and renewals < \$25000) - Administrative Review Status		
Recommended:	By:	Date:
Denial Explanation:		

ACIO Review - ACIO Review Status		
Recommended:	BY:	Date:
Denial Explanation:		

CIO Review (Purchases and renewals >\$100K) CIO Review Status		
Recommended: <i>yes</i>	By: <i>per Jim Smith</i>	Date: <i>6/5/18 SG</i>
Denial Explanation:		

TSOC Review (Purchases and renewals >\$100K) TSOC Review Status		
Recommended: <i>yes</i>	By: <i>[Signature]</i>	Date: <i>6/6/18</i>
Denial Explanation:		

# RIVCO HR

putting people first

Date: October 9, 2018  
From: Sylvia Skibar 5-0857  
To: Board of Supervisors/Purchasing Agent  
Via: Jennifer Fuller 5-3557  
Subject: Single Source Procurement; Request for Ventiv's iVOS Risk Management System

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: Ventiv Technology Inc.**

2. **Vendor ID: 0000129959**

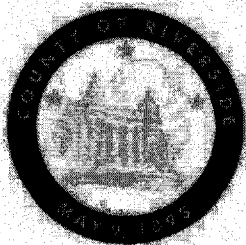
3.  **Single Source**                       **Sole Source**  
(Single Source - is a purchase of a commodity or service without obtaining competitive bids although more than one source is available)

(Sole Source - is a purchase of a commodity or service that is proprietary or no other vendor is qualified or willing to meet the county specified requirements)

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# \_\_\_\_\_

4a. **Was the request approved for a different project?**  
 **Yes**     **No**



**Brenda L. Diederichs**  
Assistant CEO/HR Director

Michael Bowers - Assistant HR Director  
Robin Downs - Assistant HR Director  
Brandi Huns - Assistant HR Director  
Jennifer Fuller - Deputy HR Director  
Diane Rundles - Deputy HR Director

# RIVCO HR

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5. **Supply/Service being requested:** *Web-based claims systems for workers' comp and risk management*  
Renew a five-year contract with Ventiv Technology Inc. to get a one percent savings on the existing contract. Ventiv Technology Inc. is the sole owner/distributor of IVOS. Please see the attached letter from the vendor.
6. **Unique features of the supply/service being requested from this supplier.**
- IVOS offers a fully integrated compliance team.
  - IVOS has hundreds of pre-developed business rules.
  - Fully integrated Occupational Disability Guidelines (ODG).
  - Ventiv has a sole agreement with IBM to integrate RMIS with IBM Watson Analytics for predictive and prescriptive analytics.
  - Robotic Process Automation (RPA) for claims administration and automated straight-through processing.
  - Chat Bots with continuous learning for better claims handling.
7. **Reasons why my department requires these unique features from the vendor and what benefit will accrue to the county:**
- The fully integrated compliance team helps the County keep staffing cost down. We rely on the compliance team that Ventiv Technology Inc. employs to keep up with constantly changing Workers' Compensation and General Liability State and Federal regulations.
  - The County relies on the hundreds of pre-developed business rules to keep claims on track. The business rules help automate processes, notify staff, and flag mandatory information for reporting to the State.
  - Fully integrated ODG helps us with our Return-to-Work and Utilization Review programs. The guidelines help us determine reasonable time off work for our injured workers.
  - Access to predictive analytics and data-discovery can help us manage risk and make data-driven decisions that generate optimal outcomes like reducing claim frequency and severity.
  - Robotic Process Automation and Chat Bots can help the County of Riverside keep staffing down while maintaining good customer service and support to injured workers.



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**8. Period of Performance:** From: 7/01/2018 to 6/30/2023  
(5 years)

Is this an annually renewable contract?  No  Yes  
Is this a fixed-term agreement:  No  Yes

*(A fixed-term agreement is set for a specific amount of time; it is not renewed annually. Ensure multi-year fixed-term agreements include a cancellation, non-appropriation of funds, or refund clause. If there is no clause(s) to that effect, then the agreement must be submitted to the Board for approval. No exemptions shall apply.)*

**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:	FY19	FY20	FY21	FY22	FY23	Total
One-time Costs:						
Maintenance Costs	148,511	154,451	160,629	167,054	173,737	804,382
Total Costs	148,511	154,451	160,629	167,054	173,737	804,382

*Note: Insert additional rows as needed*

**10. Price Reasonableness:** *(Explain why this price is reasonable or cost effective – were you provided government discounted pricing? Is this rate/fee comparable to industry standards?)*

The County has been using iVos for almost 10 years. The new contract is a cost savings to the existing contract and by staying with the same solution, the County can save on costly implementation fees. The County of Los Angeles just conducted a bid with all the leading vendors for Automated Claims Management Software and picked Ventiv's product as their solution, reassuring that Ventiv Technology's iVos is still the best solution on the market. Renewing a five-year contract will allow a small savings (\$24,125) and allow workers' compensation and risk management divisions to continue without any interruption.

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11. Projected Board of Supervisor Date (if applicable): 10/23/2018  
(Draft Form 11s, service agreement and or quotes must accompany the sole source request for Purchasing Agent approval.)

Brenda Diederichs Brenda Diederichs 10/11/18  
Department Head Signature Print Name Date  
(or designee)

# RIVCO HR

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

Purchasing Department Comments:

**Approve**

Approve with Condition/s

Disapprove

Condition/s:

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Not to exceed:

One-time \$ \_\_\_\_\_

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

(If Annual Amount Varies each FY)

FY 18/19 : \$ 148,511

FY 19/20 : \$ 154,457

FY 20/21 : \$ 160,629

FY 21/22 : \$ 167,054

FY 22/23 : \$ 173,727

  
Purchasing Agent

10/10/18  
Date

19-064  
Approval Number  
(Reference on Purchasing Documents)



May 7, 2018

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**RE: Ventiv Technology Inc. f/k/a Aon eSolutions, Inc. Sole Source of iVOS**

To Whom It May Concern:

Ventiv Technology Inc., as successor in interest to Aon eSolutions, Inc., is the sole owner/distributor of its proprietary software known as iVOS®, as well as all related software modules, user licenses and services provided for all of our software products. There are no other companies authorized to sell, distribute or provide services related to our products.

If you should have any questions or need further clarifications, please feel free to contact me directly.

Respectfully,

A handwritten signature in black ink, appearing to read "Doug Wilson".

Doug Wilson, Vice President, Global Administration & Operations  
Ventiv Technology Inc.

**PROFESSIONAL SERVICE AGREEMENT**

for

**AUTOMATED CLAIMS ADMINISTRATION SOFTWARE MAINTENANCE**

between

**COUNTY OF RIVERSIDE**

and

**VENTIV TECHNOLOGY, INC.**



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This Agreement, made and entered into this 4<sup>th</sup> day of December, 2018, by and between VENTIV TECHNOLOGY, INC, a California corporation (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (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, and Exhibit C, Software Maintenance and Support Agreement, at the prices stated in Exhibit B, Payment Provisions, and Attachment I, HIPAA Business Associate Attachment to the Agreement.

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 discipline in the State of California.

1.3 CONTRACTOR affirms this 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 Exhibit B. CONTRACTOR is not to perform services or provide products outside of the 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**

2.1 This Agreement for software maintenance shall be effective upon signature of this Agreement by both parties and continues in effect through June 30, 2023, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

**3. Compensation**

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed \$173,737 annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in

Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement (If applicable). All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed four percent (4%) and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 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) working 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:

County of Riverside Human Resources Department

Accounts Payable

P.O. Box 1569

Riverside, CA 92502

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number HRARC-20880-001-06/23; quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end 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 Codes, 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 is 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 this Agreement without cause upon 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 or fails to make progress that may endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

**5.3 After receipt of the notice of termination**

- (a) If a software license granted under this Agreement terminates, the COUNTY shall cease using the applicable software product, software documentation, and related confidential information of CONTRACTOR. CONTRACTOR shall stop all work under this Agreement on the date specified in the notice of termination and further available support, updates, and upgrades may no longer be assured; and

- (b) Should COUNTY desire to return to Maintenance and Support following a lapse, the parties shall enter into a new, mutually acceptable agreement subject to the Service Level Agreement in effect at that time. The rates charged for maintenance and support in the new agreement shall be no higher than CONTRACTOR's then current published or government rates, whichever is lower, for such maintenance and support together which would have been implemented had the lapse not occurred; and
- (c) CONTRACTOR shall 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.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

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 If the Agreement is federally or State funded, CONTRACTOR cannot be 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 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 Contract Materials and Products**

6.1 The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY. The material, reports or products may

be used by the COUNTY for any purpose that the COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

**6.2 Products.** As between the parties, and subject to the terms and conditions of this Agreement and any applicable Scope of Work, CONTRACTOR and its suppliers shall retain ownership of all intellectual property rights in all software provided to the COUNTY (Contractor Proprietary Technology"). COUNTY acquires no rights to Contractor Proprietary Technology except for the licensed interests granted under this Agreement or any Scope of Work.

**6.3 COUNTY.** The COUNTY is the sole and exclusive owner of all data and information provided to CONTRACTOR by or on behalf of the COUNTY for processing, and any and all updates or modifications thereto or derivatives thereof made by CONTRACTOR ("County Data"), and all intellectual property rights in the foregoing, whether or not provided to any other party under this Agreement. County Data will be the COUNTY'S confidential information under this Agreement. CONTRACTOR shall not use County Data for any purpose other than that of rendering the services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit County Data. CONTRACTOR shall not possess or assert any lien or other right against or to County Data.

**6.4 Trademarks.** Nothing in this Agreement shall grant any party any ownership interest, license, or other right to any other party's trade names, trademarks, or service marks.

**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, gratuity, favors, and 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 permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time, upon reasonable notice to the CONTRACTOR.

**9. Independent Contractor/Employment Eligibility**

9.1 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.

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

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

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

9.5 CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement.

9.6 CONTRACTOR shall notify COUNTY within five (5) business days if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be promptly removed from participating in any activity associated with this Agreement.

**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 parties named in the proposal and agreed to under this Agreement.

**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 decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

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 Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. 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 to each and every political entity, special district, and related non-profit entity in Riverside County. 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 be 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 personal gain or make other improper use of 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.

**16.2** The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. 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. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

16.3 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. Please refer to Attachment 1 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.

18. **Notices**

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

**COUNTY OF RIVERSIDE**

Purchasing and Fleet Services  
Attn: Purchasing Agent  
Accounting Dept. Mail Stop 12-15  
2980 Washington Street  
Riverside, CA 92504

**CONTRACTOR**

Ventiv Technology, Inc.  
3350 Riverwood Parkway  
Suite 2000, 20th Floor  
Atlanta, GA 30339

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](http://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 or in any way relating to 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 the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.

**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 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. Vehicle Liability:

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

**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 A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

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 either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such

effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. 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.

**F. Insurance Requirements for IT Contractor Services:** CONTRACTOR shall procure and maintain for the duration of the Agreement insurance against claims for injuries to person 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 Agreement 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.

**Cyber Liability Insurance**, 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

CONTACTOR in this Agreement and shall include, but not 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 the 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.

**23. General**

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

**23.2** Any waiver by COUNTY 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 COUNTY 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 COUNTY from enforcement of the terms of this Agreement.

**23.3** 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.

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

**23.5** 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.

**23.6** 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.

**23.7** 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.

**23.8** 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.

**23.9** CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

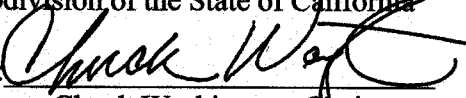
**23.10** CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

**23.11** 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.

23.12 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.

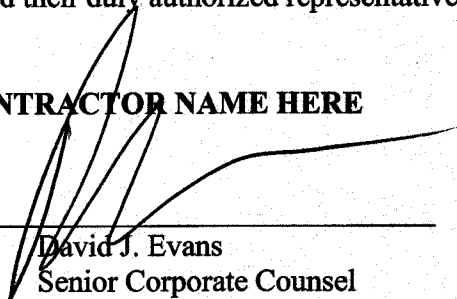
IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

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

By:   
Chuck Washington, Chairman  
Board of Supervisors

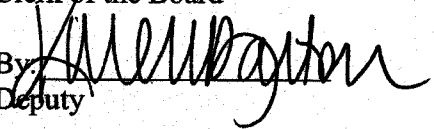
Dated: DEC 04 2018

CONTRACTOR NAME HERE

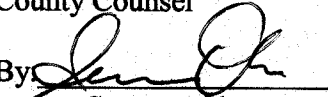
By:   
David J. Evans  
Senior Corporate Counsel

Dated: 11-21-18

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

**EXHIBIT A  
SCOPE OF SERVICES**

**Annual Software Maintenance**

During the term of Annual Software Maintenance, CONTRACTOR will:

1. Allow unlimited number of calls to the support center
2. Provide product updates and upgrades
3. Provide services included to implement product updates and upgrades

Maintenance and support services shall be as set forth in Exhibit C, "Software Maintenance and Support Agreement."

Licenses were purchased as part of the original contract.



**EXHIBIT B  
PAYMENT PROVISIONS**

**Annual Software Maintenance**

Year One	\$ 148,511
Year Two	\$ 154,451
Year Three	\$ 160,629
Year Four	\$ 167,054
Year Five	\$ 173,737

**EXHIBIT C  
SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT**

CONTRACTOR shall provide software to the County of Riverside (COUNTY) as listed in the Professional Services Agreement. This Software Maintenance and Support Agreement ("Agreement") states that Ventiv Technology will provide technical support to the undersigned COUNTY under the terms and conditions of this Agreement.

**1. Maintenance and Support Service**

- a. CONTRACTOR shall provide the technical support services necessary to remedy any operational difficulties attributable to the software product(s), and the software documentation set forth in this Professional Services Agreement.
- b. CONTRACTOR's Guidelines and Service Level Agreement, is attached hereto as Schedule 1 to this Exhibit C and is incorporated herein as fully set forth in this Agreement. Any modification to the Guidelines and Service Level Agreement shall require the written consent of COUNTY, which shall not be unreasonably withheld, and shall be mutually agreed upon by CONTRACTOR and COUNTY.

**2. Access to Data and Computer**

- a. COUNTY shall, at its own expense, provide remote access to iVOS; both the front end of the application through Internet Explorer and to the application/database servers, if needed, for CONTRACTOR's use in providing the maintenance services. CONTRACTOR shall at all times have reasonable access to provide the maintenance services. CONTRACTOR will perform the maintenance services in a manner that minimizes interruptions in the availability or functioning of the software product. If CONTRACTOR needs access to COUNTY's servers in order to perform maintenance or support, CONTRACTOR shall promptly notify COUNTY, and CONTRACTOR's response time obligations under this Agreement shall commence when COUNTY makes reasonably available to CONTRACTOR such remote access.

**3. Fees and Charges**

- a. The fee for the maintenance and support services shall be payable in advance of each one-year period. A refund equal to the prorated maintenance fee (i.e. maintenance fee/12 times the remaining months) shall be given if this Agreement is terminated pursuant to the terms and conditions of the Professional Services Agreement.

**4. Costs not Included in this Agreement**

- a. If it is necessary for CONTRACTOR to provide services to COUNTY outside the scope of services herein, COUNTY shall provide written consent in the form of an amendment in advance for CONTRACTOR to perform such services. COUNTY agrees to pay CONTRACTOR at the current standard rates for time and material and travel expenses.

**b. User License Fees:**

User License Fee Less User Volume Discount

(Based on 70 Concurrent Users)

1. 70 Full Access Users (fee paid during implementation)
2. If additional users are ever added, they will be added at the rate of \$5,000.
3. Unlimited Number of Concurrent Read Only Users
4. Unlimited Number of Concurrent Report Users
5. Unlimited Number of Concurrent Guestlink Users

CONTRACTOR per user pricing is on a concurrent user basis. For example, the COUNTY may have any number of users with access to the system but only up to the total number of user licenses may be on the system at any one time, regardless of being remote or local.

- c. Optional Modules Purchased during implementation
  - 1. Accounts Payable Interface
  - 2. Employee Interface
  - 3. ISO Claim Search (Index Bureau) Automated Interface
  - 4. Claim Intake Interface (Claim Only)
  - 5. Incident Reporting
  - 6. California Commutation Calculator
  - 7. Document Imaging
  - 8. VOS Express
    - a. E-mail Express Module
    - b. Correspondence Express Module
  - 9. PERI/PRDP Workers' Compensation Interface
  - 10. Reserve Analysis (ODG) Module
    - a. WLDI data needs to be licensed separately by the COUNTY
  - 11. Company Nurse Interface

Modifications to the interfaces/modules above, if required, will be billed on a time and expense basis.

**Schedule 1 to Exhibit C of the Software License & Support Agreement**

**Support Service Levels Schedule (IVOS Customer Hosted Model)**

**1. Definitions.**

- a. "Business Hours" means the hours of 8:00am to 9:00pm Eastern Time on all Business Days.
- b. Customer refers to the County of Riverside
- c. "Customer's Support Contacts" has the meaning set forth in Section 6 of this Schedule C.
  - d. "Error" means a material failure of the applicable Software to conform to the functional specifications described in its Documentation.
  - e. "Error Corrections" means any modification, workaround, or routine intended to correct the practical adverse effect of an Error.
- f. "Follow-up Frequency" means the frequency of time that a support consultant will update the customer (electronically or otherwise) on the progress of commercially reasonable efforts to resolve an issue.
- g. "Release" means a modification of the Software, normally denoted with a new number to the immediate right or left of the decimal, which contains new features and functionality. Release does not include new products or modules of the Software for which Ventiv generally charges its customers an additional license or subscription fee.
- h. "Response Time" means the amount of time from when the customer properly reports an issue until a support consultant acknowledges receipt (electronically or otherwise) and initiates troubleshooting to resolve.
- i. "Resolution Goal" means the amount of time that is set as a goal to resolve an incident. Commercially reasonable efforts will be used to meet this goal.
- j. "Severity Level" means the impact level assigned to an issue based on the level of service degradation or loss of functionality.
- k. "Patches" means a change to the Software that may include patches, fixes, minor updates and Error Corrections, which Ventiv generally provides to its customers who receive customer support services.

**2. Support Generally.**

- l. Ventiv will provide one or more reasonable means of communication to allow Customer's Support Contacts to contact Ventiv for assistance in resolving problems with the Software ("Help Desk") in accordance with and during the hours of operation more specifically set forth in this Schedule C. The Help Desk will allow communication in accordance with the table set forth in Section 7 below.
- m. Because Customer has no rights in the source code version of the Software, and may only use the object code version of the Software, Customer may only maintain the Software at the administrative level and then only in a manner that will not cause corruption of the code. Customer is prohibited from attempting to support the Software (either itself or through a third party) in any way that would require access to the source code of the Software or would require any reverse engineering, reverse assembly or disassembly of the Software. Ventiv currently is the only entity authorized to support the Software at the code level and does not provide any of its customers the right to access the source code in order to support the Software.
- n. Ventiv will provide Customer Support Services for the "current release" and "previous release" (major or minor). The "end-of-life" ("EOL") release will be eligible for emergency, external-driven interface changes with less than three (3) months' notice and defect resolution for issues of severity 1 - 3 to allow Customer to upgrade from the "EOL release" to either the "current release" or the "previous release."

**3. Support and Maintenance.**

- o. **Services.** Subject to the timely payment of the applicable Subscription Fees set forth in the Order Form, Ventiv will provide the level of support identified herein in accordance with the support descriptions set forth below. Ventiv will notify (electronically or otherwise) Customer of any changes to such support descriptions in each subsequent renewal, as applicable. No other maintenance or support for the Software is included in this Agreement.
- p. **Fees.** Subscription Fees will be due and payable in accordance with this Agreement. Subscription Fees are non-refundable, once paid to Ventiv.

**4. Error Corrections and Patches.**

- q. As a part of the Customer Support Services, Ventiv will use commercially reasonable efforts to provide Error Corrections for all verifiable and reproducible Errors in the Software in accordance with the Agreement and this Schedule C.
- r. As a part of the Customer Support Services, Ventiv will provide Patches to the Software that Ventiv makes generally available to its customers who receive support services.

**5. New Releases.**

- s. As a part of the Customer Support Services, Ventiv will provide to Customer new Releases of the Software as and when developed, except for new products or modules for which Ventiv generally charges a separate license or subscription fee. Ventiv is not obligated to develop new Releases of the Software.
- t. Ventiv will provide Customer, as part of the Customer Support Services, with new Releases created by Ventiv as a result of a change in law or new law that directly applies to existing functionality within the Software currently offered by Ventiv. As an accommodation and not as provision of legal advice, Ventiv will take commercially reasonable efforts to promptly notify Customer in writing upon becoming aware of any material changes to any applicable law or governmental regulations that may cause the current Release of the Software not to conform to such law or regulations. Notwithstanding the foregoing, in the event that the required modifications to the Software (i) would require a material re-architecture or other significant product re-design, (ii) would require Ventiv to obtain data which is either unavailable, or, which is only available at a material cost, or (iii) would otherwise require Ventiv to incur material expenditures (as measured against the fees charged under this Agreement), and Ventiv is not otherwise making such modifications for its other customers, then Ventiv may cease providing the affected Software in the affected jurisdiction. Customer is strongly encouraged to consult with its own attorneys and other advisors as to legal requirements in effect from time to time.
- u. In the event that Ventiv intends to withdraw any Software from general availability for any reason whatsoever, Ventiv will provide Customer at least six (6) months prior written notice of such withdrawal.

#### 6. Software Upgrades.

- v. Ventiv provides utilities, scripts and documentation to enable self-hosted Customers to upgrade their own test and production environments.

#### 7. Limitations.

- w. Ventiv is under no obligation to provide Customer Support Services with respect to: (a) Software that has been altered or modified by Customer or any third party; (b) Software used on a system that does not meet the minimum hardware, software, operating system, mobile device, and other system and configuration requirements set forth in the Documentation or provided by Ventiv; and (c) any software not both supplied by Ventiv and identified on an Order Form.
- x. Customer Support Services does not include researching Customer requests, researching and fixing anomalies caused by other vendors, making changes resulting from internal Customer business practices, enhancing system configuration and other similar tasks that are requested or required, but are outside of Ventiv's control. Causes or errors that are not attributable to Ventiv (and therefore would also be considered Additional Services) include, but are not limited to, the following: (i) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electric power, air conditioning or humidity control; excessive heating; fire and smoke damage; or causes other than ordinary use; (ii) use of the Software on equipment or rotation media other than the equipment for which such software was designed and licensed for use on; (iii) interconnection, interfacing or operation of the Software with other software products not supplied by Ventiv; (iv) operation of the Software with other media, hardware, software or telecommunication interfaces not meeting or not maintained in accordance with the manufacturer's or environmental or Ventiv's specifications; (v) improper installation by the Customer or use of the Software that deviates from any operating procedures established by Ventiv in the applicable Documentation or in environmental or manufacturer specifications, for example, virtual machine configuration; (vi) modification, customization, alteration or addition or attempted modification, customization, alteration or addition of the Software undertaken by the customer or its agents, assigns, contractors, employees or other's under the customer's control (vii) software programs made by Customer or other parties unless specifically covered in a Statement of Work between the Customer and Ventiv; (viii) Customer's failure to implement current versions of the Software that are issued under this Agreement; (ix) introduction of data into any database used by the Software by any means other than the use of the Software; (x) failure by Customer to respond to any action plans provided by Ventiv pursuant to a support call by Customer; (xi) improper or incomplete J2EE application server administration; or (xii) improper or incomplete database administration.
- y. If Ventiv has created a third party interface ("Third Party Interface") to one of Customer's third party products provided by another vendor ("Third Party Product") and such vendor modifies the Third Party Product causing the Third Party Interface to stop functioning properly, then the services required to modify the Third Party Interface as a result of the changes to the Third Party Product are considered outside the scope of Customer Support Services and would incur additional fees in accordance with Section 5.4 below. Services required to resolve any Customer-Created Error are outside the scope of Customer Support Services and would incur additional fees in accordance with Section 5.4 below.
- z. If a problem reported is outside the scope of this Agreement as indicated in Sections 5.1 through 5.3 above, Ventiv will notify Customer to that effect and reserves the right to charge Customer at Ventiv's then current standard hourly rates, for which Customer agrees to pay Ventiv promptly upon receiving an invoice. Certain requests, such as building custom modules, database objects, reports, utilities or other complex projects ("Additional Services") may also incur additional fees beyond those associated with Customer Support Services and will be detailed in a new Order Form and Statement of Work agreed between the parties and subject to the terms and conditions of this Agreement. The following are examples of Additional Support Services that are available from Ventiv: (i) add-on data conversions; (ii) implementation for any optional software modules; (iii) supplemental training; (iv) custom reports – defining, creating, testing or troubleshooting (Ventiv will help with "how do I add a table, column, field, etc." in Report Designer, but Ventiv will require a Statement of Work to help troubleshoot or clean up a modified or custom report (unless the custom report is specifically under maintenance; for example: "I tried to add to or modify my custom report and now my outstanding indemnity figures are incorrect")); (v) iVOS upgrades during non-business hours; (vi) security configuration consulting or setup; (vii) data conversion issues once transitioned from implementation to support; (viii) Ventiv

database changes, such as organization changes, combining insureds, reference table changes, etc.; (ix) corrections to Customer's data, including, but not limited to, data modification for purposes of exporting/importing to/from the Ventiv database; (x) database administration services (iVOS self-hosted only); (xi) J2EE application administration (iVOS self-hosted only); (xii) backup and recovery consulting (iVOS self-hosted only); (xiii) performance troubleshooting outside of the application; (xiv) any hardware or software problems beyond the control of Ventiv; (xv) network changes and network performance problems (xvi) support and maintenance of custom modules that are not covered under the Customer Support Services; (xvii) custom enhancements, for example: new check printing functionality or custom-stored procedures (e.g., p\_examiner); and (xix) for iVOS interfaces: (a) installation and configuration of any interface Software on hardware external to the Software server; (b) training on interfaces; (c) Customer-initiated changes to the interface specification (note that Ventiv reserves the right to modify the interface specification for future enhancements); (d) Customer changes to systems external to Ventiv that result in any failures or performance problems with the interface; or (e) bugs in a Customer's computer software and hardware that result in interface operational failure.

- aa. The following types of requests will incur additional fees: (i) password resets; (ii) performance troubleshooting outside of the application; (iii) any hardware or software problems beyond the control of Ventiv; (iv) Customer network changes and network performance problems; (v) training questions; and (vi) documentation requests for documents available on the portal or online help.
- bb. Support is delivered in English only, unless Customer is in a location where Ventiv has made localized support available.

8. **Customer Obligations.** Customer will be responsible for the following: (a) reporting errors promptly; (b) providing sufficient information for Ventiv to duplicate the circumstances of a reported Software defect or duplicate the error, as described in the Specifications, so Ventiv can duplicate the error, assess the situation, and/or undertake any needed or appropriate maintenance action hereunder; (c) designating two (2) members of its technical staff trained on the iVOS product to serve as Customer's sole representatives to contact Ventiv with maintenance issues ("Customer's Support Contacts"); and (d) carrying out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures (or revisions, upgrades, enhancements, etc.) have been received from Ventiv.

9. **Helpdesk.** Ventiv provides services through its Helpdesk as set forth in the table below.

Support Type	Support Description	Expectation	Exclusions
Toll Free Live Phone Support	Hours available for live phone support	Monday - Friday 8:00am - 9:00 pm EST (US)	Ventiv Holidays
Emergency after-hours Support	Emergency after normal Business Hours on-call support (24 hours a day, 7 days a week - Severity 1 issues only)	24x7x365	
Self-Service Portal	Online access to ticketing system to report an incident.	Response will be end of next Business Day	Use live or emergency for Severity 1

P1 = 24 x 7 through Ventiv support toll free telephone number: 1-800-980-9460
P2 = 24 hours per day during the five (5) business days (Monday through Friday), excluding Ventiv holidays.
P3 = During standard business hours (8:00 am to 9:00 pm) during the five (5) business days (Monday through Friday), excluding Ventiv holidays.
P4 = Monday through Friday by region (North America, APAC and EMEA) during standard business hours (8:00 am to 9:00 pm), excluding Ventiv holidays.

10. **Proactive Support.** Ventiv provides the following proactive support set forth in the table below.

Support Type	Description	Quarterly	Monthly	Weekly
Self-Service Portal	Online access to ticketing system to monitor status of outstanding tickets	✓	✓	✓
System Health Check	Regular scheduled health check of environment	✓	✓	✓

Account Review	Regular meeting with Account Management Team to review overall status including outstanding tickets and usage reports.	✓		
KPI Performance Report	System Key Performance Indicator report.		✓	

11. **Incident Response for Functionality of the Software.** The Software is designed and configured to meet minimal functionality standards as described in the Documentation and the Statement of Work. The following table illustrates the response level and resolution goal for loss of functionality of the Software.

Classification	Severity Description	Initial Response Time	Follow-up Frequency	Resolution Goal
<b>P1 - Critical</b>	<ul style="list-style-type: none"> <li>Ventiv Software is completely inaccessible or the majority of its critical functionality is unusable and no work around exists.</li> </ul>	30 minutes during Business Hours	Every 60 minutes during Business Hours. After hours, update frequency will be mutually agreed upon.	8 Business Hours
<b>P2 - Major</b>	<ul style="list-style-type: none"> <li>One or more key features of Ventiv Software is unusable and no work around exists.</li> </ul>	60 minutes during Business Hours	One Daily Update sent during Business Hours.	5 Business Days or by next scheduled maintenance window; whichever is less
<b>P3 - Minor</b>	<ul style="list-style-type: none"> <li>Non-critical functionality is down or impaired</li> <li>Does not have significant current production impact</li> <li>Performance is degraded</li> </ul>	1 Business Day	As Agreed	As Agreed
<b>P4 - General Request</b>	<ul style="list-style-type: none"> <li>How to, training items, requests for general information</li> <li>Enhancement requests</li> </ul>	5 Business Days	As Agreed	As Agreed

12. **Customer Obligations.** Customer must make at least one of its two Customer Support Contacts available to work with the assigned Ventiv support resource(s) for all P1 and P2 issues. If Customer's Support Contacts are unavailable to work with Ventiv, then the issue will be lowered to a P3 issue. If an issue is considered P1, customer must call the Helpdesk
13. **Defect Resolution.** Should Ventiv, in its sole judgment, determine that there is a defect in the Software, it will, at its sole discretion, repair such defect in the version of the Software that Customer is currently using or instruct Customer to install a newer version of the Software with such defect repaired. Ventiv reserves the right to provide Customer with a work around in lieu of fixing a defect should it, in its sole judgment, determine that it is more effective to do so.
14. **Escalation Levels.**

Escalation Level	Escalation Contact
State 1	Front-Line Support Manager
State 2	Global Support Services Director
State 3	VP Customer Management / Managing Director

Priority	Support State Levels	Maximum allowable resolution time
P1 - Critical	State 1	1 Business Hour
	State 2	2 Business Hours
	State 3	8 Business Hours
P2 - Major	State 1	4 Business Hours
	State 2	8 Business Hours
	State 3	12 Business Hours
P3 - Minor	State 1	When agreed resolution time is not met.
P4 - General Request	All	N/A

15. **Account Management Services.**

- a. **Description.** Customer may purchase Account Management Hours at then-current rates for the provision of Account Management Services as detailed herein. "Account Management Services" are services provided to Customer through an Account Manager at a higher level than Customer Support Services and provides overall consultancy for training, understanding the Customer's business process and how any change may impact other areas of the System. The Account Manager also act as Customer's advocate in product enhancements and providing periodic updates to the client via open items calls, account status reports and stewardship meetings conducted via Webex. Account Managers provide customers with the additional support as customers become familiar with the System. The Account Manager provides training and support through the implementation as new modules or users are added to the System. The Helpdesk is used for questions about the System operation, problems and enhancement requests.
- b. **How Account Management Hours are Eroded.** Ventiv enters all Customer Support Services and Account Management Services into an online CRM and those services are coded as billable or non-billable. Only billable time erodes Account Management Hours. Any Customer Support Services provided to Customers to resolve errors in the Software that are not Customer-Created Errors, will not result in depletion of any Account Management Hours purchased by Customer. Hours used for the purpose of gaining new business are considered non-billable (unless the Account Manager is providing consulting support to Customer for how their processes should work). During the implementation, the Account Manager is introduced to Customer and participates in project management calls to learn Customer's business requirements. This time is considered billable. Once the implementation has been completed (and/or Customer requests changes to existing functionality that had previously been agreed), Account Management Hours are eroded for changes to the System, such as adding or removing fields, adding rules, adding validations, etc. When the requested changes are for the purpose of adding a new module or a full business process, the Account Manager will identify that the suggested work is new scope and will be completed via an amendment to the Agreement at additional time and expense.
- c. **Tracking Account Management Hours.** Ventiv will maintain a database of Account Management Hours used by Customer and will update this database within two weeks following the end of each calendar month. Once the appropriate time entries have been made, Ventiv will make this information available to Customer. Customer will have 30 days from the time this information is made available to dispute the validity of the entries. Should this occur Customer should state in writing to their Ventiv account manager, that the hours utilized are being contested and the reason for the dispute. At that time, Customer and its services manager will negotiate a reasonable resolution. Should the annually budgeted amount of hours be exceeded, Ventiv will provide an invoice for the amount of excess hours used at the hourly rate listed in Section VII.G. (Additional Fees) of Schedule B along with supporting documentation, on a quarterly basis.



## Attachment I

### HIPAA Business Associate Agreement Addendum to Contract

Between the County of Riverside and Ventiv Technology, Inc  
This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Underlying Agreement between the County of Riverside ("County") and Contractor and shall be effective as of the date the Underlying Agreement 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 and/or ePHI.**

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

3. **Prohibited Uses and Disclosures.**

- A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §17935 and §17936. Contractor agrees:
  - 1) Not to use or disclose PHI for fundraising, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45 CFR §164.508;
  - 2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.508(a)(3);
  - 3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
  - 4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted by the Underlying Agreement and in compliance with the requirements of a valid authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

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

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

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.

- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
  - C. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
  - D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
  - E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410.
  - F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create, receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
  - G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
  - H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
  - I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
  - J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
  - K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
  - L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
  - M. Comply with the requirements of the Privacy Rule that apply to the County to the extent Contractor is to carry out County's obligations under the Privacy Rule.
  - N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of which Contractor becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Contractor, and if such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if feasible.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.

- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
- 1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
  - 2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
  - 3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
7. **Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create, receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:
- A. 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;
  - B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
  - C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
  - D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
  - E. Ensure compliance with the Security Rule by Contractor's workforce;
  - F. 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;
  - G. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
  - H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.

- 1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
- 2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
  - a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
  - b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
  - c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
  - d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
  - e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
  - f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, 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.
  - 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: HIPAA Privacy Manager

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

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