



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



ITEM: 15.1
(ID # 15216)

MEETING DATE:
Tuesday, May 25, 2021

FROM: RUHS-MEDICAL CENTER:

SUBJECT: RIVERSIDE UNIVERSITY HEALTH SYSTEM-MEDICAL CENTER: Approve a Professional Service Agreement with Specialty Care Cardiovascular Resources, LLC for Cardiac Perfusion Equipment and Related Services Effective June 1, 2021 through June 30, 2026, All Districts. [Total Cost \$915,000 for Five Years; Annual Cost \$180,000; up to \$18,000 in Additional Compensation Annually, 100% Hospital Enterprise Fund 40050]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve a Professional Service Agreement with Specialty Care Cardiovascular Resources, LLC for Cardiac Perfusion Equipment and Related Services effective June 1, 2021 through June 30, 2024 with the option to renew for two additional years through June 30, 2026 not to exceed an annual amount of \$180,000 and authorize the Chair of the Board to sign the Agreement on behalf of the County.
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459 and based on the availability of funding and as approved by County Counsel, to sign amendments including modifications of the statement of work that stay within the intent of the Agreement and to sign amendments to the compensation provisions that do not exceed the total sum of ten percent (10%) of the contract amount.

ACTION:


 Jennifer Crutcher, Chief Executive Officer - Health System 5/6/2021

MINUTES OF THE GOVERNING BOARD

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

Ayes: Jeffries, Spiegel, Washington, Perez, and Hewitt
 Nays: None
 Absent: None
 Date: May 25, 2021
 xc: RUHS-MC

Kecia R. Harper
Clerk of the Board

By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 15,000	\$ 180,000	\$ 915,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: 100% Hospital Enterprise Fund - 40050			Budget Adjustment: No	
			For Fiscal Year: 21/22-25/26	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This board action seeks approval of a Professional Service Agreement with Specialty Care Cardiovascular Resources, LLC (Specialty Care) for Cardiac Perfusion Equipment and Related Services, for five years, effective June 1, 2021 through June 30, 2024 with the option to renew for two additional years through June 30, 2026 for \$180,000 annually. The approval of this Agreement will support Riverside University Health System – Medical Center (RUHS-MC) with obtaining certification by the County Emergency Medical Services (EMS) as a Level 1 Trauma Center. The hospital is required to comply with Title 22 of the California Code of Regulations which requires a specialized cardiac perfusionist to be available on call twenty-four seven (24/7) at the Medical Center. A perfusionist is a healthcare professional who is highly trained to operate a heart-lung machine during cardiac surgery. The machine serves as an artificial blood pump which surgeons rely on the perfusionist to operate and monitor the physiological and metabolic needs of the patients.

Providing cardiac perfusion equipment and related services would complement the cardiac thoracic services on-site. RUHS-MC will have a trained professional to manage and monitor the equipment while partnering with the physician for cardiac thoracic services.

Specialty Care is the largest provider of perfusion services in the United States, servicing more than 350 hospitals and attending 134,000 procedures in 2020. Specialty Care will work with the operating room team to increase efficiency, reduce costs, and improve patient outcomes.

Impact on Residents and Businesses

This Agreement will help RUHS-MC achieve Level 1 Trauma Center status for the community and to improve patient outcomes during surgery.

Additional Fiscal Information

FY20/21 w/effective date	FY21/22	FY22/23	FY23/24	FY24/25	FY25/26	TOTAL

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

of 6/1/2021						
\$15,000	\$180,000	\$180,000	\$180,000	\$180,000	\$180,000	\$915,000

Contract History and Price Reasonableness

This is the County's first Agreement with Specialty Care Cardiovascular Resources, LLC. The proposed Agreement and services fall under the Patient Care Resolution 2019-147 which allows for the procurement of professional services relating to the treatment of patients under the care of a physician or surgeon without obtaining competitive bids. Although the resolution provides for the exemption of competitive bids, a cost comparison amongst four (4) qualified providers, including Specialty Care Cardiovascular Resources, LLC was conducted to insure best value for the County.

Upon close review, the medical team determined that Specialty Care met the needs of the Medical Center based on their experience, their technical capability, availability of providing an on-call perfusionist with equipment and their overall cost. Specialty Care offered a monthly retainer for providing the equipment at \$13,884 per month and perfusion professional services at \$200 per hour. Miscellaneous disposable supplies will be provided at manufacturer's price with a 15% discount. With an effective date of June 1, 2021, the total compensation for FY20/21 will be \$15,000 and \$180,000 annually through June 30, 2026.

Board approval is required for Specialty Care because the first thirty-six (36) months of the Agreement are non-cancellable. This Agreement also includes a termination without cause provision upon sixty (60) days advance written notice for years four (4) and five (5).

ATTACHMENTS:

Attachment A: Professional Medical Service Agreement with Specialty Care Cardiovascular Resource, LLC (Cardiac Perfusion Equipment and Related Services)


Suzanna Hackley, Assistant Director of Purchasing and Fleet Service

5/6/2021


Gregory F. Priamos, Director County Counsel

5/10/2021

PROFESSIONAL SERVICES AGREEMENT

For

CARDIAC PERFUSION EQUIPMENT AND RELATED SERVICES

between

COUNTY OF RIVERSIDE

And

SPECIALTY CARE CARDIOVASCULAR RESOURCES, LLC



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This Professional Services Agreement for Cardiac Perfusion and Related Services (“Agreement”), is made and entered into this 1st day of June, 2021, by and between **SpecialtyCare Cardiovascular Resources, LLC**, a Delaware limited liability company, (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE (herein referred to as “COUNTY”), a political subdivision of the State of California on behalf of Riverside University Health System, (herein referred to as "RUHS"), sometimes collectively referred to as the “Parties” or individually referred to as a “Party”, for services provided at Riverside University Health System Medical Center. The Parties agree as follows:

1. Description of Services

1.1 COUNTY hereby retains CONTRACTOR to be the a provider of the perfusion and related services set forth on Exhibit A “Scope of Services”, attached and incorporated into this Agreement for all purposes, which shall include providing the services supplies (“Supplies”), instruments and equipment (“Equipment”) (collectively, the “Services” or “services”) and Training also set forth on Exhibit A; and CONTRACTOR shall receive the compensation for those Services, as set forth on Exhibit B “Payment Provisions.

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 shall be effective upon signature by both Parties (the “Effective Date”) and shall remain in effect for a period of sixty (60) months not to exceed June 30, 2025, unless earlier terminated as provided in this 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 one hundred eighty thousand dollars (\$180,000) annually.

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). 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 the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas 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:

Riverside University Health System

Attn: Hospital Administration

Email Invoices to: Accounts Payable at ap@ruhealth.org

26520 Cactus Avenue, Suite A-2060

Moreno Valley, CA 92555

- a) Each invoice shall contain a minimum of the following information: invoice number and date; description of services, amount due and any reimbursable expenses, 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, which will be signed by both parties.

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. Following and after the first thirty-six (36) months of the effective date of the Agreement, either party may terminate this Agreement without cause upon sixty (60) days advance written notice served upon the other party stating the extent and effective date of termination.

5.2 COUNTY may, upon ten (10) 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. If either party materially defaults in the performance of its obligations hereunder and fails to cure such default, or implement a plan to cure such default that is reasonably acceptable to the non-defaulting party, within twenty (20) days immediately following receipt of written notice from the non-defaulting party specifying the default in reasonable detail.

5.3 After receipt of a notice of termination from COUNTY pursuant to Section 5.1 above, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and

- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

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 CONTRACTOR is not debarred from the System for Award Management (SAM). If the Agreement is federally or State funded, 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 In addition to the above termination rights, either party may immediately terminate the Agreement upon delivery of written notice by either party in the event of the occurrence of any of the following events: (i) (i) The either party's loss of permits or other authorizations required for the provision Services; (ii) any Exclusion/Adverse Action relating to the other party; or (iii) either party enters into or files (or has filed or commenced against it, unless dismissed within sixty (60) days) a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy or similar laws of the United States dissolves, or transfers all or substantially all of its assets to another person or entity in an effort to avoid its obligations to creditors; or in the event of a change in existing Laws or Standards that materially and adversely affects either party's ability to comply with such Laws or Standards or to perform any material term of this Agreement then the parties shall engage in good faith negotiations to amend this Agreement to comply with such Laws or Standards; provided, however, that the amendment needed to comply with such Laws or Standards does not materially change either party's rights or responsibilities. If the parties are unable to resolve the matter within thirty (30) days, either party may terminate this Agreement.

5.8 The rights and remedies of the parties provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement. CONTRACTOR shall have no obligation to provide Services after the effective date of the termination of the Agreement.

6. Ownership/Use of Contract Materials and Products

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.

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 require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement. The COUNTY may also terminate this Agreement for default pursuant to the terms of Section 5.2 above.

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. 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

Intentionally omitted.

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

In accordance with 42 C.F.R. § 420.302, CONTRACTOR shall make available, upon written request by the Secretary of the Department of Health and Human Services or the Comptroller General or any of their duly authorized representatives, 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. The parties hereto shall hold in confidence the information contained in this Agreement for a period of two (2) years after expiration or termination of the Agreement, and each of them hereby acknowledges and agrees that all information related to this Agreement, not otherwise known to the public, is confidential and proprietary and is not to be disclosed to third persons without the prior written consent of each of the parties except (i) to the extent necessary to comply with any law, rule or regulation, or the valid order of any governmental agency or any court of competent jurisdiction; (ii) to its auditors and its attorneys as part of its normal reporting or review procedure; (iii) to its insurance agent to the extent necessary to obtain appropriate insurance; (iv) or as necessary to enforce its rights and perform its agreements and obligations under this Agreement. CONTRACTOR acknowledges that COUNTY is subject to the obligations of the California Public Records Act.

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. The parties acknowledge that they have certain obligations under the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"),

including without limitation the HIPAA Privacy and Security Rules promulgated at 45 C.F.R. Parts 160 and 164, and agree to comply therewith. The parties understand and acknowledge that CONTRACTOR is a "Health Care Provider" as defined by HIPAA. To the extent that in the performance of the Services, CONTRACTOR meets the definition of a "business associate" (as defined at 45 C.F.R. § 160.103) of COUNTY, as to the specific obligations that qualify CONTRACTOR as a business associate, CONTRACTOR agrees to Attachment I Business Associate Agreement, as attached hereto and incorporated herein by this reference.

16.4 Right to Use Materials. Intentionally omitted.

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

Riverside University Health System
26520 Cactus Avenue
Moreno Valley, CA 92555

CONTRACTOR

SpecialtyCare Cardiovascular Resources, LLC
3 Maryland Farms, Suite 200
Brentwood, Tennessee 37027
Attention: General Counsel

19. Force Majeure

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

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or

certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification/Limitation of Liability

21.1 Services. Each party shall indemnify, defend, and hold the other party harmless from and against any and all losses, claims, suits, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees) asserted, demanded or filed by a third party against a party seeking indemnification under the section of any nature or kind whatsoever arising out of or attributable to the performance or non-performance of their respective obligations under this Agreement.

21.2 With respect to any action or claim subject to indemnification herein, the parties 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 the other party; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes the other party's indemnification to Indemnitees as set forth herein. Said indemnity is in addition to any other rights the indemnified party may have against the indemnifying party.

21.3 A party's obligation hereunder shall be satisfied when the other party has provided the appropriate form of dismissal relieving the other party from any liability for the action or claim involved.

22. Insurance

22.1 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 \$3,000,000 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.

9) COUNTY Required Insurance. COUNTY shall maintain general liability insurance and other necessary insurance (including professional liability, workers' compensation and umbrella liability) to insure against risks incident to this Agreement. Such insurance will be written by reliable insurance companies or through a self-funded insurance program and will have limits of liability as are reasonable and customary for the healthcare industry, notwithstanding, professional liability shall not be an amount less than One Million Dollars (\$1,000,000) per incident and Three Million Dollars (\$3,000,000) aggregate in any policy year. Upon request, COUNTY shall provide a certificate or other proof of insurance to the CONTRACTOR.

23. General

23.1 Neither party shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party, however, that the obligations of such party under this Agreement shall not be extinguished or otherwise affected by any such assignment. Any attempt to delegate or assign any interest outside of the rights of this Section 23.1 shall be deemed void and of no force or effect.

23.2 Any waiver by either party of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of either party to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing a party 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 Exhibit B, 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. Should COUNTY dispute the accuracy of an invoice, or any portion thereof, COUNTY shall immediately notify CONTRACTOR in writing

and state the basis for the dispute. Upon CONTRACTOR'S receipt of COUNTY'S notification, and within thirty (30) days thereafter, (i) COUNTY AND CONTRACTOR shall jointly conduct a review to determine the validity of the dispute.

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 from CONTRACTOR per mutual Agreement of the Parties memorialized in a written amendment to this Agreement signed by both parties.

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 Each party represents that it is in compliance, and agrees that it will remain in compliance during the term of the Agreement, with those Laws and Standards relating to the operation of its businesses and the performance of its obligations pursuant to the Agreement, including the requirements of third-party payors (including governmental payors). The parties intend to comply with all applicable federal or state law provisions governing fraud and abuse and/or self-referrals under governmental healthcare programs, as such provisions may be amended from time to time (collectively, "Fraud and Abuse Laws"), and the requirements of any federal health care program as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal Health Care Programs"). The parties further intend that this Agreement comply with any applicable safe harbors or exceptions under any applicable Fraud and Abuse Law. The parties shall be responsible for complying with their respective obligations under any applicable safe harbors or exceptions. The compensation is intended to be at fair market value.

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.

23.13 Restrictive Covenants. Beginning on the date of last signature of this Agreement, through the term of the Agreement, and for a period of twelve (12) months following the termination or expiration of this Agreement for any reason, COUNTY shall not, without the prior written consent of CONTRACTOR, directly or indirectly solicit or induce, or attempt to solicit or induce any employee of CONTRACTOR and its affiliates, or any person employed by CONTRACTOR and its affiliates at any time within the twelve (12) month period immediately preceding the termination or expiration of this Agreement, to terminate his or her employment or engagement with CONTRACTOR or to enter into an employment or contractor relationship with COUNTY.

23.14 Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each party to this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The parties further agree that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it

to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

[Signature Page Follows]

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: Karen S. Spiegel

Name: Karen Spiegel

Title: Chair, Board of Supervisors

Date: 05.25.2021

SpecialtyCare Cardiovascular Resources, LLC, a Delaware limited liability company

By: Matt Gray

Name: Matt Gray

Title: President Perfusion Services

Date: May 4, 2021

ATTEST:

Kecia R. Harper
Clerk of the Board

By: Priscilla Rasso
Deputy

APPROVED AS TO FORM:

Gregory P. Priamos
County Counsel

By: MAK

Name: Martha Ann Knutson

Title: Deputy County Counsel

Date: May 5, 2021

SCOPE OF SERVICES

CONTRACTOR shall provide SERVICES and training as follows:

1.0 CONTRACTOR Responsibilities:**A. CONTRACTOR shall:**

- 1) Provide professional services by California board certified perfusionists on an on-call basis, twenty-four hours per day, seven days per week (24/7), three hundred sixty-five (365) days per year. On-site presence to begin providing services within sixty (60) minutes of notification is guaranteed.
- 2) Provide equipment setup and monitoring services if called in from on-call status
- 3) Provide Quality Indicator Tracking for monitored cases
- 4) Provide over-sight services, as outlined below.
 - Working closely with the Cardiac Surgeon(s) and Intensivist Team
 - Orienting, mentoring staff and measuring core competencies
 - Develop schedules, logistics and trouble-shooting where necessary
 - Maintenance of equipment
 - Management and delivery of disposables
- 5) Provide the required equipment and disposable supplies on site used by the professional, as outlined in Exhibit B.
- 6) CONTRACTOR is certified by The Joint Commission. As such, required provisions have been added to Exhibit C of this Agreement.

B. CONTRACTOR will maintain and, upon request, provide a copy of the following for each perfusionist providing services under this Agreement:

- 1) Copy of relevant certifications, including DEA registrations, professional licenses, and picture identification
- 2) Health Certificate
- 3) Results of annual competency assessment
- 4) Infection Control, Universal Precautions, and OSHA Standards for Blood Borne Pathogens In-service Certification as appropriate to services provided
- 5) PPD results annually
- 6) Annual Performance Evaluations
- 7) Criminal Background Check
- 8) Drug/Alcohol Screen
- 9) Job Description with signature
- 10) Documentation of orientation to RUHS MC policies
- 11) Application for and approval of RUHS Medical Staff practice privileges

- C. CONTRACTOR perfusionist will administer drugs provided by COUNTY as generally administered in connection with SERVICES and as supervised and directed by the physician in charge.
- D. CONTRACTOR perfusionist will document all care provided by them to a particular patient in a format agreed to by the parties prior to leaving the Medical Center.

2.0 COUNTY Responsibilities

- A. COUNTY, together with CONTRACTOR, will develop and implement a process for scheduling delivery of the SERVICES, coordinating call coverage, training and managing response times.
- B. Ensure that (i) a physician's order, is issued for Services prior to the time the Services are provided, (ii) the patient or patient's representative has consented to the provision of SERVICES, (iii) all verbal orders related to Services, whether given during the course of treatment or otherwise, are documented and signed by the physician or other authorized health care provider and (iv) all required pre-authorizations are obtained.
- C. COUNTY will provide the following to CONTRACTOR employees (at COUNTY'S expense unless noted otherwise below): (i) authorized access to COUNTY (Medical Center's) clinical and patient records, including electronic records, (ii) except as specifically set forth in this Agreement, all syringes, needles, fluids, surgical instruments, protective wear (PPE), scrubs, radiation dosimetry badges, and miscellaneous items used in the administration of Services; (iii) lockable space, to store Instruments, Supplies and Equipment used in the provision of Services, as applicable;; and (iv) parking shall be made available to CONTRACTOR'S employees on the same basis as COUNTY provides such items to its similarly-situated employees.
- D. COUNTY will provide CONTRACTOR reasonable advance notice of scheduled cases involving the provision of Services. For emergency or unscheduled cases, COUNTY will provide CONTRACTOR not less than forty-five (45) minutes advance notice of unscheduled or emergency cases involving the provision of SERVICES.
- E. Direct Purchases. Instruments and Supplies provided on a direct basis "Direct", will be ordered by COUNTY and purchased directly from CONTRACTOR (each a "Direct Purchase"), with orders subject to acknowledgement and acceptance by CONTRACTOR and payment of freight charges by COUNTY. CONTRACTOR will not provide inventory control or management for Direct Purchases.
- F. Disposable Supplies. Except as otherwise specifically provided in Exhibit B, the selection of the manufacturer(s) and model(s) for disposable supplies shall be solely within CONTRACTOR's discretion.
- G. CONTRACTOR Equipment. CONTRACTOR shall provide and COUNTY shall lease from CONTRACTOR such Equipment that CONTRACTOR, in agreement with COUNTY and pursuant to Exhibit B, determines is appropriate for its use in providing the Services. CONTRACTOR shall retain all right, title, and interest in such Equipment notwithstanding that any Equipment or any part thereof may be in any manner affixed or otherwise connected to any property or premises belonging to or under the control of COUNTY or any other person or entity. Such Equipment shall be for CONTRACTOR's exclusive use and shall not be used by

COUNTY or its employees, agents or other contractors without CONTRACTOR's prior consent. To the extent such Equipment remains on the COUNTY's premises, CONTRACTOR shall have the right to enter the premises where the Equipment is located upon reasonable notice for the purpose of inspecting, using, servicing, removing and replacing the Equipment. CONTRACTOR warrants that the equipment provided will be maintained, calibrated, serviced, repaired and cleaned by CONTRACTOR according to all manufacturer standards and applicable infection control practices. CONTRACTOR shall provide COUNTY with documentation of such preventive maintenance, repairs or calibration or other information relevant to or affecting the operation and performance of CONTRACTOR-owned equipment.

- H. COUNTY Equipment. Except as otherwise specifically provided in Exhibit B, COUNTY shall, at its expense, perform preventive maintenance, service, repairs and calibration on all COUNTY-owned equipment. COUNTY shall provide CONTRACTOR with documentation of such preventive maintenance, repairs or calibration or other information relevant to or affecting the operation and performance of COUNTY-owned equipment.
- I. Disclaimer of Warranties. Since CONTRACTOR is not the manufacturer of any supplies or equipment, it cannot offer any warranties on its own behalf. CONTRACTOR does, however, represent and warrant that it has the right to provide the Supplies and Equipment in conjunction with the Services, that the Supplies and Equipment are provided to COUNTY in the same condition as delivered to CONTRACTOR by the manufacturer and CONTRACTOR hereby assigns to COUNTY all manufacturers' warranties applicable to the Supplies and Equipment, to the extent such warranties are assignable.
- J. COUNTY is and shall remain solely responsible for i) diagnosing and treating patients including directing CONTRACTOR employees providing Services under the supervision of physicians or COUNTY personnel, and (ii) implementing and enforcing COUNTY'S policies and procedures.

3.0 Services:

I. Perfusion and ECMO Professional Services

Clinical Requirements.

If CONTRACTOR provides point-of-care laboratory services hereunder pursuant to the requirements of the Clinical Laboratory Improvement Act, Final Rule on January 24, 2003 revision, Regulation 493.1405 and 1406 and/or the College of American Pathologists Point of Care Checklist, Revision 03/31/04, Standard POC.06600, as applicable, and/or as otherwise required by state or federal law or regulation, COUNTY will provide one or more laboratory directors for the point-of-care laboratory services. The laboratory director(s) shall be responsible for reviewing, approving, and signing of CONTRACTOR'S clinical policies, procedures, and quality processes related to the point-of-care laboratory services.

PAYMENT PROVISIONS

- 1.0** This Exhibit B outlines the fees and expenses as outlined in the foregoing Professional Service Agreement.
- 2.0** Compliance with Discount Safe Harbor. The Parties intend that this Agreement comply with as many as reasonably practicable of the conditions for meeting the discount safe harbor under the Fraud and Abuse Laws. COUNTY shall be solely responsible for complying with its obligations under the discount safe harbor, including determining whether any savings or discounts it receives from CONTRACTOR must be reported and passed on to the Federal Health Care Programs.
- 3.0** CONTRACTOR acknowledges that it will look solely to the COUNTY for payments related to any and all services provided to patients under this Agreement and will not bill or collect from any other sources for these services, including the patients receiving the service.
- 4.0** CONTRACTOR shall be paid as follows:

FEE SCHEDULE

SpecialtyCare Component Pricing

- | | |
|--|---|
| <p>1. Monthly Retainer for Equipment listed and Perfusion Professional Services</p> <ul style="list-style-type: none"> • Includes the first eight (8) hours of Perfusion Professional Service • As listed below in this Exhibit "B" | <p>\$13,884 per month¹</p> |
| <p>2. Perfusion Professional Services</p> <ul style="list-style-type: none"> • Applies after the initial eight (8) hours of Perfusion Professional Services | <p>\$200 per hour³</p> |
| <p>3. Open-Heart (OH) Disposable Supplies</p> <ul style="list-style-type: none"> • As listed below in this Exhibit "B" | <p>\$656 each set</p> |
| <p>4. Miscellaneous Disposable Supplies⁴</p> | <p>Manufacturer List Price minus 15%</p> |

¹ This monthly fee will be invoiced on the first day of each calendar month and prorated for any portion thereof, as applicable.

² This fee will be invoiced for the full unit of time listed for any full or fraction of time during which Services were provided.

³ Selection of the manufacturer(s) and appropriate model(s) for Disposable Supplies shall be solely within Vendor's judgement.

DISPOSABLE SUPPLY SCHEDULE

<u>Description</u>	<u>Quantity</u>
Open-Heart Disposable Supplies	
• Prebypass Filter	1 Each
• Vacuum Relief Connector	3 Each
• Venous Sat / Hct Connector	1 Each
• Connectors for Table	3 Each
• Oxygen Filter	1 Each
• Oxygenator with Hard-shell Venous Reservoir and Integrated Arterial Filter	1 Each
• Misc. tubing and connectors, recirculation line4, air pressure separator lines, Stopcocks, pigtail, purge lines etc. to compose circuit	

EQUIPMENT SCHEDULE

<u>Description</u>	<u>Quantity</u>
Open-Heart Capital Equipment	
• Heart-Lung Machine System	1 Each
• SCP / SCPC	1 Each
• Blender	1 Each
• O2 Analyzer	1 Each
• Hypo/Hyperthermia Unit	1 Each

5.0 Maximum Annual Amount:

Maximum payments by COUNTY to CONTRACTOR shall not exceed one hundred eighty thousand dollars (\$180,000) annually.

EXHIBIT C

Joint Commission Compliance Provisions

The Joint Commission ("TJC") awarded SpecialtyCare a Certificate of Distinction for exceeding national consensus based industry standards in a voluntary, unannounced on-site survey, which included the successful evaluation of key processes such as credentials and competencies of its health care staff. SpecialtyCare was awarded the Certificate of Distinction as a symbol of quality for its dedication to providing safe and effective patient care, as well as its ongoing commitment to sound management practices that are consistent with the very best industry practices.

CONTRACTOR remains dedicated to demonstrating continuous compliance with TJC standards applicable to the operation of its business and the Services provided. To that end, and to maintain CONTRACTOR's certification, the COUNTY's accreditation, or both, the following required provisions are added to the Agreement:

1. CONTRACTOR will provide appropriate staffing for the Services through individuals who are employees or are subcontractors or independent contractors of CONTRACTOR or its affiliate entity.
2. COUNTY shall report to CONTRACTOR's Risk Management Department any unexpected incidents, errors, and sentinel events involving CONTRACTOR Staff.
3. COUNTY shall provide CONTRACTOR Staff with orientation to COUNTY's policies, procedures, rules and guidelines applicable to Services. COUNTY shall provide a written copy of all such policies, procedures, rules and guidelines to CONTRACTOR prior to the Effective Date.
4. COUNTY shall report to CONTRACTOR's Human Resources Department occupational injuries, or events involving CONTRACTOR Staff in the scope of providing Services.
5. COUNTY and CONTRACTOR agree that CONTRACTOR is solely responsible for all decisions regarding the staffing for Services, including without limitation, hiring, compensation, retention, scheduling, using floaters and competencies but that all CONTRACTOR staff must apply for and have appropriate practice privileges issued by COUNTY before providing services
6. COUNTY and CONTRACTOR agree that, as required, CONTRACTOR Staff (including any floaters) providing Services will (i) be licensed, certified, qualified or approved to provide Services pursuant to this Agreement, (ii) receive annual clinical competency assessments administered by CONTRACTOR commensurate with their authorized scope of practice and responsibilities in providing Services, and (iii) be assigned or reassigned by CONTRACTOR to provide Services in accordance with their clinical competencies.

**HIPAA Business Associate Agreement
Addendum to Contract
Between the County of Riverside and SpecialtyCare Cardiovascular Resources, LLC**

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Perfusion and Related Services and Training Agreement (the "Underlying Agreement") between the County of Riverside ("County") and **SpecialtyCare Cardiovascular Resources, LLC** ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

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

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

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

WHEREAS, COUNTY and CONTRACTOR are both Health Care Providers and Covered Entities, as defined under HIPAA (defined below) and will generally be acting in such capacities; however, in an abundance of caution, COUNTY and CONTRACTOR desire to enter into this Business Associate Agreement in the unanticipated event that CONTRACTOR performs services for or on behalf of COUNTY, which are not part of CONTRACTOR's "Covered Function" (as defined at 45 C.F.R. § 164.103), such that CONTRACTOR meets the definition of a "Business Associate" (as defined at 45 C.F.R. § 160.103) in the performance of such services.

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:

3.0 Definitions. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.

- A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.

- (1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following four factors:
 - (a) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - (b) The unauthorized person who used the PHI or to whom the disclosure was made;
 - (c) Whether the PHI was actually acquired or viewed; and
 - (d) The extent to which the risk to the PHI has been mitigated.
- (2) Breach excludes:
 - (a) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.
 - (b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
 - (c) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- B. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf of the business associate.
- C. "Data aggregation" has the meaning given such term in 45 CFR §164.501.
- D. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
- E. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- F. "Electronic health record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- G. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- H. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- I. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- J. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.

- K. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- L. "Required by law" has the meaning given such term in 45 CFR §164.103.
- M. "Secretary" means the Secretary of the U.S. Department of Health and Human Services ("HHS").
- N. "Security incident" as defined in 45 CFR §164.304 means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- O. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- P. "Subcontractor" as defined in 45 CFR §160.103 means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.
- Q. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2).

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

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

3. **Prohibited Uses and Disclosures.**

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

4. **Obligations of County.**

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

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

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

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

6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:

- A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.

- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
- 1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
 - 2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
 - 3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
7. **Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create, receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:
1. Comply with the applicable requirements of the Security Rule, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;
 2. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
 3. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
 4. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
 5. Ensure compliance with the Security Rule by Contractor's workforce;
 6. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same restrictions and requirements contained in this Addendum and comply with the applicable requirements of the Security Rule;
 7. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
 8. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.

8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
- 1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
 - 2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
 - a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
 - b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
 - c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
 - d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
 - f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.
- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be

construed to 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
County HIPAA Privacy Fax:	(951) 486-4475