

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



**ITEM: 3.32
(ID # 17425)**

MEETING DATE:
Tuesday, October 26, 2021

FROM : SHERIFF-CORONER-PA:

SUBJECT: SHERIFF-CORONER-PA: Ratify and Approve the Locum Tenens Agreement and Client Placement Order with Barton & Associates, Inc. for Forensic Pathologist Services without seeking competitive bids for the Sheriff's Coroner Department for 4 (Four) years. [All Districts]; [\$270,000- Annual]; [\$1,080,000 four Year Total; up to \$108,000 in additional compensation]; 100% Sheriff's Budget.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify and Approve the Locum Tenens Agreement with Barton & Associates, Inc., which will do business in California as Barton Medical, Inc., (Barton Associates) for Forensic Pathologist Services without seeking competitive bids for the total aggregate amount of \$1,188,000, and the attached Client Placement Order with Barton Associates, both for 4 (Four) years through June 30, 2025, and authorize the Chair of the Board to sign the agreement and placement order on behalf of the County; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved as to form by County Counsel to sign client placement orders and amendments that exercise the options of the Agreement that stay within the intent of the Agreement, including modification of the statement of work and to placement orders, and sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) of the total cost of the Agreement.

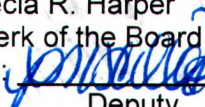
ACTION:Policy


Robert Gunzel, Assistant Sheriff 10/14/2021

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington and Perez
Nays: None
Absent: Hewitt
Date: October 26, 2021
xc: Sheriff

Kecia R. Harper
Clerk of the Board
By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 270,000	\$ 270,000	\$ 1,188,000	\$ 0
NET COUNTY COST	\$ 270,000	\$ 270,000	\$ 1,188,000	\$ 0
SOURCE OF FUNDS 100% Sheriff's Budget			Budget Adjustment:	No
			For Fiscal Year:	21/22- 24/25

C.E.O. RECOMMENDATION: Approve

BR 22-035

BACKGROUND:

Summary

The Coroner's Bureau currently has one chief forensic pathologist and three full-time forensic pathologists on staff with two vacancies as of November 4, 2020. Filling a vacancy for a forensic pathologist position has proven difficult in the past. A recent recruitment for this position was vacant for approximately two years before an applicant successfully filled the position. The Coroner's Bureau is short-staff due to attrition and the workload has increased for the remaining forensic pathologists.

In 2019, there were 1,526 autopsies and 1,121 external autopsies performed by the forensic pathologists. Due to the number of autopsies and external examinations that the Coroner's Bureau performs annually, it must retain qualified physicians on contract to meet the demand. The National Association of Medical Examiners limits a single doctor to three autopsies per day. Counting two external examinations as one autopsy, the bureau performs eight autopsies per day in a 260-day work year. The 260-day work year accounts for holidays, but not for vacations or sick leave.

Further, each full-time forensic pathologist is required to have 40 hours a year of certified medical examiner training. This results in the bureau working with one less forensic pathologist for six weeks each year. Each forensic pathologist takes one day per week to complete autopsy protocols and at least one is testifying in court nearly every weekday. One forensic pathologist reports to the Coroner's Bureau in Indio regardless of the number of autopsies there. Therefore, there is ample evidence the Coroner's Bureau needs to augment its staff.

Forensic pathologists willing to take contract case work is optimal for both scheduling and cost. Due to the number of autopsies and external examinations that the Coroner's Bureau performs annually, it must retain qualified physicians on contract to meet the demand.

Contract History and Price Reasonableness

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

Each year the population in Riverside County is growing and deaths per year are increasing, creating a potential increase of case load for the county's forensic pathologists. The annual pay range for a Forensic Pathologist IV position is \$154,262 to \$249,445, not including benefits.

The cost per autopsy is \$1,500 which is on par with the fees of the current contracted forensic pathologists that perform autopsies.

Barton & Associates, Inc. is a locum tenens staffing firm that has forensic pathologists registered with the company who are willing to travel to location. Barton & Associates, Inc. offers immediate, short-term and long-term cover coverage which will help alleviate staffing shortages the Coroner's Bureau is experiencing.

Impact on Citizens and Businesses

The Sheriff-Coroner's Bureau requires the service of board-certified forensic pathologists who will work on a case-by-case basis to augment its full-time pathologist staff. This helps prevent delays in release of remains to families and autopsy findings on criminal cases.

Attachments

Three (3) copies of the Locum Tenens Agreement with Barton & Associates, Inc.

Three (3) copies of the Client Placement Order

SSJ 21-060


Tina Grande, Director of Purchasing and Fleet Services 10/14/2021


Rebecca S. Cortez, Principal Management Analyst 10/18/2021


Rania Odenbaugh, Deputy Director of Administration 10/20/2021


Juan C. Perez, Chief Operating Officer 10/21/2021


Gregory T. Priamos, Director County Counsel 10/13/2021

Barton Associates

Locum Tenens Agreement

This Locum Tenens Agreement (“**Agreement**”), by and between Barton & Associates, Inc., which will do business in California as Barton Medical, Inc., a Delaware corporation having a location at 300 Jubilee Drive, Peabody, MA 01960 (“**Barton**”), and the County of Riverside, on behalf of its Sheriff’s Department, a political subdivision of the State of California, having a location at 800 South Redlands Ave, Perris, CA, 92570 (“**Client**”), is effective as of May 31, 2021 (the “**Effective Date**”).

Section 1 | Scope of Services

This Agreement sets forth the terms and conditions under which Barton shall coordinate the temporary placement (also colloquially referred to as an “**assignment**”) of contract locum tenens provider(s) (each, a “**Provider**”) according to Client’s needs. Each assignment will be subject to the terms and conditions of this Agreement and the placement-specific confirmation(s) (each, a “**Placement Order**”) issued to Client setting forth the fees, expenses, dates, and other commercial terms of the placement.

Section 2 | Pre-Placement Activities

(a) In response to Client’s requests, Barton agrees:

1. to use its best efforts to present information to Client regarding one or more available Providers for Client’s consideration for placement;
2. if Client accepts a Provider for placement, to coordinate the placement and to memorialize its terms in a Placement Order; and
3. once the terms of an assignment are agreed upon, to use its best efforts to support Client’s pre-assignment processes by helping Client obtain any required documents or other materials, including documentation to support Client’s determination that Provider’s qualifications meet Client’s requirements that each Provider:
 - (A) is duly licensed to practice medicine in the State of California and is in good standing with the Medical Board of California;
 - (B) has not been subject to any disciplinary action or investigation by any licensing authority, medical staff, or other professional medical organization;
 - (C) has not been convicted of a criminal offense related to health care;
 - (D) has not been subject to any civil governmental action related to health care; and
 - (E) has not been excluded from or is not otherwise ineligible for participation in any federal or state funded health care program.

If Barton becomes aware that a Provider on assignment with Client no longer meets Client’s requirements set forth above, Barton shall provide prompt notice to Client. Client accepts sole responsibility for credentialing, privileging, and approving the qualifications, clinical competence, experience, and background of each Provider and reserves the right to reject any Provider that does not meet its requirements.

(b) Client’s acceptance of a Provider is valid and binding only upon a written Placement Order signed by the authorized representatives of the parties.

(c) Prior to any assignment, Client agrees to review the Provider information submitted by Barton and to notify Barton in writing within two business days if any submitted Provider was already known to Client. If Client fails to so notify Barton, Barton will be deemed to have introduced Client to the submitted Provider.

Section 3 | Insurance

(a) Barton agrees to maintain, at its sole cost and expense, a professional liability (medical malpractice) insurance policy with limits of not less than \$1,000,000 per claim and \$3,000,000 in the annual aggregate covering itself and eligible Providers duly assigned under this Agreement. The malpractice coverage available under that insurance policy is subject to the policy's terms, conditions, and limitations.

(b) Client agrees to inform Barton of any incident that may result in a malpractice claim or other legal action against any Provider arising out of services rendered under this Agreement. This Section 3(b) survives termination of this Agreement.

Section 4 | Financial Terms

(a) On a weekly basis or as services are otherwise provided, Barton will invoice Client. Each invoice will be based on services provided and/or on the commercial terms contained in each Placement Order or, if applicable, any separate agreements between the parties. Client shall have no obligation to purchase any specified amount of services. Unless otherwise agreed, the rates included on each Placement Order are inclusive of Provider's services and Barton's services. Client shall not be responsible for payment of any expenses unless agreed to in a Placement Order.

(b) Client will remit full payment to Barton of all invoiced amounts within 15 days of Barton's issuing an invoice. Invoices shall be sent to:

Riverside County Sheriff Department
4095 Lemon Street
Riverside, CA 92501

(c) Client's obligation for payment under this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of Client funding from which payment can be made. In the event such funds are not forthcoming for any reason, Client shall immediately notify Barton in writing and this Agreement shall be deemed terminated.

(d) Maximum payments by Client to Barton shall not exceed two hundred and seventy-thousand dollars (\$270,000.00) per fiscal year including all expenses, unless otherwise agreed in a writing signed by both parties.

Section 5 | Term & Termination; Continuation & Cancellation

Term & Termination of Agreement.

(a) This Agreement is effective on the Effective Date and continues in effect through June 30, 2025, unless it is terminated earlier under Section 5(b).

(b) Either party may terminate this Agreement, for any reason or no reason, upon 30 days' written notice to the other party. Either party may terminate this Agreement if any term or condition is materially breached by the other party, provided the breaching party fails to cure the breach within 15 days of receiving notice from the non-breaching party.

1. After Barton's receipt of Client's written notice of termination, Barton shall stop all work under this Agreement on the date specified in such notice of termination.

2. Termination of this Agreement automatically cancels all assignments and their Placement Orders according to the terms of Section 5(d) through Section 5(f).

Continuation & Cancellation of Assignments.

(c) Any assignment that will continue past its originally anticipated end date must be agreed upon by the parties in the form of a written amendment or Placement Order.

(d) Client may cancel any assignment: (i) for any reason by giving Barton at least 30 days' written notice that, (A) if the assignment has commenced, shall not be effective until 30 days from the date Barton receives such notice, or (B) if the assignment has not yet commenced, shall not be effective until 30 days from the date on which the assignment commences; or (ii) immediately upon notice to Barton if Client determines, in its discretion, that the Provider cannot conform or has failed to conform to prevailing standards of professional or clinical conduct.

1. If Client does not provide the notice required under Section 5(d), Client shall be responsible for promptly paying to Barton all fees and expenses that would reasonably have been payable to Barton had Client provided such notice. The parties agree that such payment is reasonable and constitutes compensation, not a penalty, and that Barton's right to such payment is Barton's exclusive remedy for Client's failure to comply with its notice obligations in Section 5(d).

(e) Barton may cancel any assignment: (i) for any reason upon 30 days' written notice to Client; or (ii) immediately if (A) Client fails to comply with any term or condition in Section 4 or (B) any Provider cancels or is unwilling or unable to perform such assignment. If Client requests, following any cancellation Barton will use its best efforts to present alternative available Providers to Client for Client's consideration of a new or continued assignment.

(f) Neither termination of this Agreement nor cancellation of any assignment shall release either party from any liability that has already accrued, comes into effect because of such termination or cancellation, or otherwise expressly or impliedly survives such termination or cancellation.

Section 6 | Confidentiality

Each party who receives Confidential Information (defined below) agrees to maintain all Confidential Information in confidence. The receiving party will also maintain reasonable safeguards to ensure the confidentiality of all Confidential Information and will not use any Confidential Information other than strictly as necessary to perform its obligations under this Agreement. The receiving party will not disclose any Confidential Information except: (a) with the prior written consent of the disclosing party; (b) if disclosure is made only to its directors, officers, employees, agents, or advisors who have a need to know the Confidential Information in order to fulfill the receiving party's obligations or to enforce the receiving party's rights under this Agreement; or (c) as required to comply with its legal obligations. "Confidential Information" includes the terms of this Agreement and each Placement Order, the identities of and other information relating to Providers, and all other non-public or proprietary business information or data owned or licensed by the disclosing party or any of its affiliates. The parties acknowledge that public records are subject to inspection pursuant to the California Public Records Act unless otherwise exempt therein (Gov. Code § 6250 et seq.).

Section 7 | Conversion

(a) Before Client or any Client Affiliate (defined below) may engage or attempt to engage, other than under this Agreement, any Provider introduced to Client by Barton, one of the following

conditions must be met. Client must either:

1. wait at least 24 months from the end of the Provider's most recent assignment, or, if only a submittal of the Provider's information and no assignment had been made, 12 months from the last submittal date; or
2. wait at least 12 months after the date the Provider first rendered services to Client and pay to Barton an amount equal to \$45,000.00 (the "Conversion Fee"); or
3. promptly pay to Barton an amount equal to three times the Conversion Fee, minus \$5,000.00 for each month in which the Provider renders services pursuant to this Agreement.

(b) The parties agree that the payment described in Section 7(a)-3 above is reasonable and constitutes compensation, not a penalty. Barton's right to such payment is Barton's exclusive remedy for any failure by Client to comply with Section 7(a)-1 or Section 7(a)-2. This Section 7 survives termination of this Agreement.

Section 8 | Acknowledgements

The parties agree that, despite anything that may be stated or implied differently:

(a) Neither Barton nor any of its directors, officers, employees, representatives, or agents is licensed to practice medicine or to provide medical services. Each Provider, for all purposes, is an independent contractor, not an employee, agent, representative, or partner, of Barton. Barton does not and will not control, direct, or attempt to control or direct any Provider's services or compliance with professional or legal obligations. All medical, clinical, and other decisions and actions, including when, where, and how to render services, are solely those of each respective Provider;

(b) Barton shall inform the Provider(s) of Client's requirement to comply with any and all federal, state, and local laws and regulations applicable to the provision of, or payment for contracted services, including, but without limitation, laws relating to regulation and licensing of physicians for the services provided hereunder, as well as standards and requirements of the California Medical Board, California Medical Association, and such other regulatory organizations that have standards applicable to the provision of contracted services;

(c) Barton's services with respect to screening or prescreening any Provider shall be limited to the assistance described in Section 2(a)-3 above. Client shall have the sole and complete authority and responsibility for reviewing, processing, credentialing, and approving each Provider according to applicable law and Client's internal policies and bylaws;

(d) Client's obligation to make payments is independent and is not conditioned upon or subject to anything, including Client's satisfaction with any Provider's performance;

(e) If Barton provides its services to any affiliate of Client, including any facility, entity, or organization controlling, controlled by, or under common control with Client through a group, hospital system, or contractual or other arrangement (each, a "Client Affiliate"), that signs or is identified on a Placement Order, such Client Affiliate, together with Client jointly and severally, shall be responsible for all of Client's obligations under this Agreement; and

(f) Because Barton does not create, receive, maintain, transmit, use, or disclose "protected health information," as defined in the Health Insurance Portability and Accountability Act of 1996 (as amended, and including its regulations, "HIPAA"), for or on behalf of Client, Barton is not Client's "business associate" under HIPAA.

Section 9 | Miscellaneous

(a) This Agreement, together with any Placement Order(s), is the sole and entire agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, statements, understandings, and representations (whether oral or written) regarding its subject matter. This Agreement and all Placement Orders shall control over any different or additional terms in any purchase order or non-Barton ordering document, and no terms included in any such purchase order or other document shall apply to or be binding on the parties.

(b) Neither this Agreement nor any Placement Order may be amended or modified except by a written amendment signed by authorized representatives of both parties. However, the dates set forth in the Placement Order(s) may be modified via email in accordance with the approval of Sheriff Purchasing and/or the assigned Coroner Department Lieutenant. Handwritten changes made to any term or condition of this Agreement or any Placement Order are void and are not binding on either party. Nothing in any Placement Order shall modify or be construed to modify any term, condition, or provision of this Agreement, unless it is explicitly identified as a modification to this Agreement.

(c) No waiver of any right under this Agreement is effective unless in writing signed by the waiving party. Either party's failure to exercise its contractual rights shall not be deemed to be a waiver of the same. If any term of this Agreement is held invalid or void, the court may modify this Agreement as necessary to cure the invalidity and to effect the original intentions of the parties.

(d) With the exception of Barton's rights to compensation under Section 5(d)-1 and Section 7(a)-3, the rights and remedies provided in this Agreement are cumulative, not exclusive.

(e) *Neither party will be liable or responsible under any circumstances for any consequential, incidental, special, exemplary, punitive, or indirect damages of any kind, regardless of whether they arise in breach of contract, tort, or otherwise, or whether their possibility was advised. In addition, Barton shall not be responsible or liable to Client or any third party in connection with any act, omission, or occurrence that is beyond Barton's control, which includes the acts and omissions of Providers. This Section 9(e) survives termination of this Agreement.*

(f) 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 of 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, and shall be reasonably relied upon by the parties.

[Signature Page Follows.]

This Agreement is effective as of the Effective Date and may be executed in counterparts.

Barton & Associates, Inc.

**Client: The County of Riverside on behalf
of its Sheriff's Department**

Signature: DocuSigned by:
Anne Marie Zukowski
US01880137874DA...

Name: Anne Marie Zukowski
Title: Vice President, .COM Division

Signature: Karen S. Spiegel

Name: Karen Spiegel
Title: Chair, Board of Supervisors

ATTEST:

Signature: Kecia R. Harper

Name: Kecia R. Harper
Title: Clerk of the Board

APPROVED AS TO FORM:

Signature: Lisa Sanchez

Name: Lisa Sanchez
Title: Deputy County Counsel

Barton Associates

S# 266786

To: The County of Riverside on behalf of Riverside County Sheriff's Department ("you")

From: Barton & Associates, Inc. which will do business in California as Barton Medical, Inc. ("**Barton**")

Re: Client Placement Order

Ladies & Gentlemen,

Barton appreciates your acceptance of Ray Fernandez ("**Provider**") for placement at the location(s) listed below, effective upon signature of the parties and continuing in effect through June 30, 2025, unless terminated earlier per the terms in the Locum Tenens Agreement (the "**Coverage Period**"). By your signing below or using Barton's or Provider's services, this placement and your use of such services is governed by that certain Locum Tenens Agreement by and between Barton and the County of Riverside, effective on or about May 31, 2021 (the "Agreement").

Location(s). **800 South Redlands Avenue, Perris, CA, 92570.**

During the Coverage Period, Provider's expected schedule is: **Provider is available to begin rendering autopsy services once licensed in California. Contract for Dr. Fernandez remains intact for 1 year from start date. Expected schedule will be negotiated and agreed upon by Provider and Client.**

Rates. The following rate(s) apply: **\$1,800.00/Autopsy**, with **/hour** for any services in excess of **hours/**. All rates in this Placement Order are increased by 50% on federally recognized holidays.

Expenses. All expense categories agreed to below include customary fees and costs (e.g., gas, wear and tear, baggage fees, etc.).

Rental Car Airfare Mileage (IRS Rate) Lodging Other:

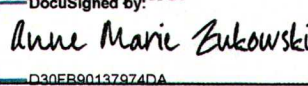
Special Provisions.

1. Barton agrees that the Business Associate Agreement, attached hereto and incorporated herein as Attachment 1, will be signed by Provider and submitted to the County of Riverside before services begin. Provider 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.

By signature below, you confirm your agreement with the terms of this Placement Order.

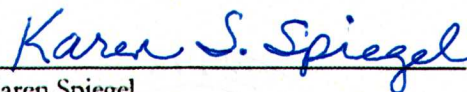
Sincerely,

Barton & Associates, Inc.

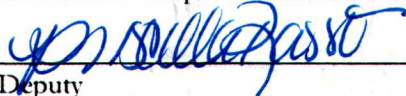
By: 
Anne Marie Zukowski
Vice President, .COM Division

Barton AM: Giovanni Trilleras

**Client: The County of Riverside on behalf of
Riverside County Sheriff's Department**

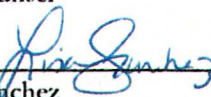
By: 
Karen Spiegel,
Chair, Board of Supervisors

Attest: Kecia R. Harper – Clerk of the Board

By: 
Deputy

APPROVED AS TO FORM:

Gregory P. Priamos
County Counsel

By: 
Lisa Sanchez
Deputy County Counsel

1 HIPAA Business Associate Agreement

2 Addendum to Contract

3 Between the County of Riverside and Barton & Associates Inc.

4
5 This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the
6 _____ (the "Underlying Agreement") between the County of Riverside
7 ("County") and Barton & Assoc Inc. ("Contractor") and shall be effective as of the date the
8 Underlying Agreement is approved by both Parties (the "Effective Date").

9 RECITALS

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

15 WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996
16 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for
17 Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of
18 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated
19 subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or
20 disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

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

22 WHEREAS, to the extent County discloses PHI and/or ePHI to Contractor or Contractor creates,
23 receives, maintains, transmits, or has access to PHI and/or ePHI of County, Contractor is a business
24 associate, as defined in the Privacy Rule; and,

25 WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule
26 and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to
27 the covered entity, the additional security and privacy requirements of HITECH are applicable to
28 business associates and must be incorporated into the business associate agreement, and a business
29 associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy
30 provisions; and,

31 WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in
32 compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

33 WHEREAS, the parties intend to enter into this Addendum to address the requirements and
34 obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to
35 Contractor as a business associate of County, including the establishment of permitted and required uses
36 and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing
37 functions, services and activities on behalf of County, and appropriate limitations and conditions on such
38 uses and disclosures;

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

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

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

9 (1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or
10 disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to
11 be a breach unless Contractor demonstrates that there is a low probability that the PHI has
12 been compromised based on a risk assessment of at least the following four factors:
13

- 14 (a) The nature and extent of the PHI involved, including the types of identifiers and the
15 likelihood of re-identification;
- 16 (b) The unauthorized person who used the PHI or to whom the disclosure was made;
- 17 (c) Whether the PHI was actually acquired or viewed; and
- 18 (d) The extent to which the risk to the PHI has been mitigated.

19 (2) Breach excludes:
20

- 21 (a) Any unintentional acquisition, access or use of PHI by a workforce member or person
22 acting under the authority of a covered entity or business associate, if such acquisition,
23 access or use was made in good faith and within the scope of authority and does not
24 result in further use or disclosure in a manner not permitted under subpart E of the
25 Privacy Rule.
- 26 (b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered
27 entity or business associate to another person authorized to access PHI at the same
28 covered entity, business associate, or organized health care arrangement in which
29 County participates, and the information received as a result of such disclosure is not
30 further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
- 31 (c) A disclosure of PHI where a covered entity or business associate has a good faith belief
32 that an unauthorized person to whom the disclosure was made would not reasonably
33 have been able to retain such information.

34 B. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not
35 limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf
36 of the business associate.

37 C. "Data aggregation" has the meaning given such term in 45 CFR §164.501.
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39

1	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.
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7	E. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
8	
9	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).
10	
11	
12	G. "Health care operations" has the meaning given such term in 45 CFR §164.501.
13	H. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
14	
15	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.
16	
17	J. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
18	
19	K. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
20	
21	L. "Required by law" has the meaning given such term in 45 CFR §164.103.
22	M. "Secretary" means the Secretary of the U.S. Department of Health and Human Services ("HHS").
23	
24	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.
25	
26	
27	O. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
28	
29	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.
30	
31	
32	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).
33	
34	
35	

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

2 A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI
3 and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying
4 Agreement or to perform functions, activities or services for, or on behalf of, County as specified
5 in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule
6 and/or Security Rule.

7 B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or
8 authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2),
9 Contractor may:

10 (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration
11 and to carry out its legal responsibilities; and,

12 (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and
13 administration or to carry out its legal responsibilities, only if:

14 (a) The disclosure is required by law; or,

15 (b) Contractor obtains reasonable assurances, in writing, from the person to whom
16 Contractor will disclose such PHI and/or ePHI that the person will:

17 (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the
18 purpose for which Contractor disclosed it to the person, or as required by law; and,

19 (ii) Notify Contractor of any instances of which it becomes aware in which the
20 confidentiality of the information has been breached; and,

21 (3) Use PHI to provide data aggregation services relating to the health care operations of County
22 pursuant to the Underlying Agreement or as requested by County; and,

23 (4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum
24 provided that the de-identification conforms to the requirements of the Privacy Rule and/or
25 Security Rule and does not preclude timely payment and/or claims processing and receipt.

26 C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or
27 regulations are more stringent in their requirements than the provisions of HIPAA, including,
28 but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the
29 applicable state and/or federal laws and/or regulations shall control the disclosure of records.

30 **3. Prohibited Uses and Disclosures.**

31 A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by
32 the Underlying Agreement or this Addendum without patient authorization or de-identification
33 of the PHI and/or ePHI and as authorized in writing from County.

34 B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or
35 from another business associate of County, except as permitted or required by this Addendum, or
36 as required by law.

1 C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be
2 prohibited from making.

3 D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security
4 Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §17935 and §17936.
5 Contractor agrees:

6 (1) Not to use or disclose PHI for fundraising , unless pursuant to the Underlying Agreement and
7 only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45
8 CFR §164.508;

9 (2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to
10 the Underlying Agreement and only if permitted by and in compliance with the requirements
11 of 45 CFR §164.50 8(a)(3);

12 (3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of
13 carrying out payment or health care operations, if the individual has requested this restriction
14 pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for
15 the health care item or service to which the PHI solely relates; and,

16 (4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act
17 that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted
18 by the Underlying Agreement and in compliance with the requirements of a valid
19 authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by
20 County to Contractor for services provided pursuant to the Underlying Agreement.

21 **4. Obligations of County.**

22 A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions
23 on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's
24 ability to perform its obligations under the Underlying Agreement, or this Addendum.

25 B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in,
26 or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such
27 changes or revocation may affect Contractor's ability to perform its obligations under the
28 Underlying Agreement, or this Addendum.

29 C. County agrees to make its best efforts to promptly notify Contractor in writing of any known
30 limitation(s) in its notice of privacy practices to the extent that such limitation may affect
31 Contractor's use or disclosure of PHI and/or ePHI.

32 D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that
33 would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.

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

- 1 **5. Obligations of Contractor.** In connection with the use or disclosure of PHI and/or ePHI,
 2 Contractor agrees to:
- 3 A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of
 4 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that
 5 are applicable to covered entities in HITECH, as may be amended from time to time.
 - 6 B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this
 7 Addendum or as required by law. Contractor shall promptly notify County if Contractor is
 8 required by law to disclose PHI and/or ePHI.
 - 9 C. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to
 10 ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this
 11 Addendum.
 - 12 D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or
 13 disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
 - 14 E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum
 15 or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which
 16 Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR
 17 §164.410.
 - 18 F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create,
 19 receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to
 20 the same restrictions and conditions that apply to Contractor with respect to such PHI and/or
 21 ePHI, including the restrictions and conditions pursuant to this Addendum.
 - 22 G. Make available to County or the Secretary, in the time and manner designated by County or
 23 Secretary, Contractor's internal practices, books and records relating to the use, disclosure and
 24 privacy protection of PHI received from County, or created or received by Contractor on behalf
 25 of County, for purposes of determining, investigating or auditing Contractor's and/or County's
 26 compliance with the Privacy Rule.
 - 27 H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended
 28 purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR
 29 §164.502(b)(1).
 - 30 I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice
 31 or qualified protective order in response to a third party's subpoena, discovery request, or other
 32 lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon
 33 Contractor's receipt of such request from a third party.
 - 34 J. Not require an individual to provide patient authorization for use or disclosure of PHI as a
 35 condition for treatment, payment, enrollment in any health plan (including the health plan
 36 administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR
 37 §164.508(b)(4) and authorized in writing by County.
 - 38 K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use,
 39 disclosure, or access of PHI and/or ePHI.

- 1 L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and
2 HITECH, as may be amended from time to time.
- 3 M. Comply with the requirements of the Privacy Rule that apply to the County to the extent
4 Contractor is to carry out County's obligations under the Privacy Rule.
- 5 N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of
6 which Contractor becomes aware that constitute a material breach or violation of the
7 subcontractor's obligations under the business associate contract with Contractor, and if such
8 steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if
9 feasible.

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

- 11 A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained
12 electronically, in a designated record set to County or an individual as directed by County, within
13 five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.
- 14 B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI
15 in a designated record set County directs or agrees to at the request of an individual, within
16 fifteen (15) days of receiving a written request from County, in accordance with 45 CFR
17 §164.526.
- 18 C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its
19 obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where
20 applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains
21 electronic health records. Contractor shall:
 - 22 (1) Document such disclosures of PHI and/or electronic health records, and information related
23 to such disclosures, as would be required for County to respond to a request by an individual
24 for an accounting of disclosures of PHI and/or electronic health record in accordance with 45
25 CFR §164.528.
 - 26 (2) Within fifteen (15) days of receiving a written request from County, provide to County or
27 any individual as directed by County information collected in accordance with this section to
28 permit County to respond to a request by an individual for an accounting of disclosures of
29 PHI and/or electronic health record.
 - 30 (3) Make available for County information required by this Section 6.C for six (6) years
31 preceding the individual's request for accounting of disclosures of PHI, and for three (3)
32 years preceding the individual's request for accounting of disclosures of electronic health
33 record.

34 **7. Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create,
35 receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and
36 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:

- 37 A. Comply with the applicable requirements of the Security Rule, and implement administrative,
38 physical, and technical safeguards that reasonably and appropriately protect the confidentiality,
39 integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on
40 behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;

- 1 B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of
2 policies, procedures and documentation requirements with respect to ePHI;
- 3 C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
- 4 D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or
5 required under the Privacy Rule;
- 6 E. Ensure compliance with the Security Rule by Contractor's workforce;
- 7 F. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive,
8 maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same
9 restrictions and requirements contained in this Addendum and comply with the applicable
10 requirements of the Security Rule;
- 11 G. Report to County any security incident of which Contractor becomes aware, including breaches
12 of unsecured PHI as required by 45 CFR §164.410; and,
- 13 H. Comply with any additional security requirements that are applicable to covered entities in Title
14 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time,
15 including but not limited to HITECH.
- 16 8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with
17 the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not
18 limited to 45 CFR §164.410.
- 19 A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor
20 shall notify County in writing of such breach without unreasonable delay and in no case later
21 than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
- 22 (1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the
23 first day on which such breach is known to Contractor or, by exercising reasonable diligence,
24 would have been known to Contractor, which includes any person, other than the person
25 committing the breach, who is an employee, officer, or other agent of Contractor (determined
26 in accordance with the federal common law of agency).
- 27 (2) **Content of notification.** The written notification to County relating to breach of unsecured
28 PHI shall include, to the extent possible, the following information if known (or can be
29 reasonably obtained) by Contractor:
- 30 (a) The identification of each individual whose unsecured PHI has been, or is reasonably
31 believed by Contractor to have been accessed, acquired, used or disclosed during the
32 breach;
- 33 (b) A brief description of what happened, including the date of the breach and the date of the
34 discovery of the breach, if known;
- 35 (c) A description of the types of unsecured PHI involved in the breach, such as whether full
36 name, social security number, date of birth, home address, account number, diagnosis,
37 disability code, or other types of information were involved;

1 (d) Any steps individuals should take to protect themselves from potential harm resulting
2 from the breach;

3 (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm
4 to individuals, and to protect against any further breaches; and,

5 (f) Contact procedures for individuals to ask questions or learn additional information, which
6 shall include a toll-free telephone number, an e-mail address, web site, or postal address.

7 **B. Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor
8 shall cooperate with County and shall provide County with any information requested by County
9 to enable County to fulfill in a timely manner its own reporting and notification obligations,
10 including but not limited to providing notice to individuals, prominent media outlets and the
11 Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.

12 **C. Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals,
13 Contractor shall maintain a log or other documentation of such breaches and provide such log or
14 other documentation on an annual basis to County not later than fifteen (15) days after the end of
15 each calendar year for submission to the Secretary.

16 **D. Delay of notification authorized by law enforcement.** If Contractor delays notification of
17 breach of unsecured PHI pursuant to a law enforcement official's statement that required
18 notification, notice or posting would impede a criminal investigation or cause damage to national
19 security, Contractor shall maintain documentation sufficient to demonstrate its compliance with
20 the requirements of 45 CFR §164.412.

21 **E. Payment of costs.** With respect to any breach of unsecured PHI caused solely by the
22 Contractor's failure to comply with one or more of its obligations under this Addendum and/or
23 the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to
24 pay any and all costs associated with providing all legally required notifications to individuals,
25 media outlets, and the Secretary. This provision shall not be construed to limit or diminish
26 Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this
27 Addendum.

28 **F. Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of
29 PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to
30 demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164,
31 Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's
32 completed risk assessment and investigation documentation.

33 **G. Additional State Reporting Requirements.** The parties agree that this Section 8.G applies only
34 if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or
35 hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical
36 information under the more stringent requirements of California Health & Safety Code §1280.15.
37 For purposes of this Section 8.G, "unauthorized" has the meaning given such term in California
38 Health & Safety Code §1280.15(j)(2).

39 (1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and
40 to the California Department of Public Health ("CDPH") in a timely manner under the
41 California Health & Safety Code §1280.15.

1 (2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure
2 of patient's medical information without unreasonable delay and no later than two (2)
3 business days after Contractor detects such incident. Contractor further agrees such report
4 shall be made in writing, and shall include substantially the same types of information listed
5 above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or
6 unauthorized access, use, or disclosure as defined above in this section, understanding and
7 acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California
8 Health & Safety Code §1280.15.

9 **9. Hold Harmless/Indemnification.**

10 A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special
11 Districts and Departments of County, their respective directors, officers, Board of Supervisors,
12 elected and appointed officials, employees, agents and representatives from any liability
13 whatsoever, based or asserted upon any services of Contractor, its officers, employees,
14 subcontractors, agents or representatives arising out of or in any way relating to this Addendum,
15 including but not limited to property damage, bodily injury, death, or any other element of any
16 kind or nature whatsoever arising from the performance of Contractor, its officers, agents,
17 employees, subcontractors, agents or representatives from this Addendum. Contractor shall
18 defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of
19 investigation, defense and settlements or awards, of County, all Agencies, Districts, Special
20 Districts and Departments of County, their respective directors, officers, Board of Supervisors,
21 elected and appointed officials, employees, agents or representatives in any claim or action based
22 upon such alleged acts or omissions.

23 B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor
24 shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of
25 County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or
26 compromise any such action or claim without the prior consent of County; provided, however,
27 that any such adjustment, settlement or compromise in no manner whatsoever limits or
28 circumscribes Contractor's indemnification to County as set forth herein. Contractor's
29 obligation to defend, indemnify and hold harmless County shall be subject to County having
30 given Contractor written notice within a reasonable period of time of the claim or of the
31 commencement of the related action, as the case may be, and information and reasonable
32 assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation
33 hereunder shall be satisfied when Contractor has provided to County the appropriate form of
34 dismissal relieving County from any liability for the action or claim involved.

35 C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in
36 no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County
37 herein from third party claims arising from issues of this Addendum.

38 D. In the event there is conflict between this clause and California Civil Code §2782, this clause
39 shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the
40 Contractor from indemnifying County to the fullest extent allowed by law.

41 E. In the event there is a conflict between this indemnification clause and an indemnification clause
42 contained in the Underlying Agreement of this Addendum, this indemnification shall only apply
43 to the subject issues included within this Addendum.

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

5 **11. Termination.**

6 **A. Termination for Breach of Contract.** A breach of any provision of this Addendum by either
7 party shall constitute a material breach of the Underlying Agreement and will provide grounds
8 for terminating this Addendum and the Underlying Agreement with or without an opportunity to
9 cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary.
10 Either party, upon written notice to the other party describing the breach, may take any of the
11 following actions:

12 (1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other
13 party breaches a material provision of this Addendum.

14 (2) Provide the other party with an opportunity to cure the alleged material breach and in the
15 event the other party fails to cure the breach to the satisfaction of the non-breaching party in
16 a timely manner, the non-breaching party has the right to immediately terminate the
17 Underlying Agreement and this Addendum.

18 (3) If termination of the Underlying Agreement is not feasible, the breaching party, upon the
19 request of the non-breaching party, shall implement, at its own expense, a plan to cure the
20 breach and report regularly on its compliance with such plan to the non-breaching party.

21 **B. Effect of Termination.**

22 (1) Upon termination of this Addendum, for any reason, Contractor shall return or, if agreed to in
23 writing by County, destroy all PHI and/or ePHI received from County, or created or received
24 by the Contractor on behalf of County, and, in the event of destruction, Contractor shall
25 certify such destruction, in writing, to County. This provision shall apply to all PHI and/or
26 ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall
27 retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this
28 section.

29 (2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is
30 not feasible, Contractor shall provide written notification to County of the conditions that
31 make such return or destruction not feasible. Upon determination by Contractor that return
32 or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of
33 this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI
34 and/or ePHI to those purposes which make the return or destruction not feasible, for so long
35 as Contractor maintains such PHI and/or ePHI.

36 **12. General Provisions.**

37 **A. Retention Period.** Whenever Contractor is required to document or maintain documentation
38 pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years
39 from the date of its creation or as otherwise prescribed by law, whichever is later.

1 B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum
2 from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security
3 Rule, and HIPAA generally.

4 C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this
5 Addendum shall survive the termination or expiration of this Addendum.

6 D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH,
7 HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.

8 E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying
9 Agreement that conflict or appear inconsistent with any provision in this Addendum.

10 F. **Interpretation of Addendum.**

11 (1) This Addendum shall be construed to be part of the Underlying Agreement as one document.
12 The purpose is to supplement the Underlying Agreement to include the requirements of the
13 Privacy Rule, Security Rule, HIPAA and HITECH.

14 (2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to
15 permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH
16 generally.

17 G. **Notices to County.** All notifications required to be given by Contractor to County pursuant to
18 the terms of this Addendum shall be made in writing and delivered to the County both by fax and
19 to both of the addresses listed below by either registered or certified mail return receipt requested
20 or guaranteed overnight mail with tracing capability, or at such other address as County may
21 hereafter designate. All notices to County provided by Contractor pursuant to this Section shall
22 be deemed given or made when received by County.

23 County HIPAA Privacy Officer: Privacy Officer
24 County HIPAA Privacy Officer Address: 26520 Cactus Ave.
25 Moreno Valley, CA 92555
26 County HIPAA Privacy Officer Phone Number: (951) 486-6471

27 ----- **TO BE COMPLETED BY COUNTY PERSONNEL ONLY** -----

28 County Departmental Officer: Maria G. Jazardo, M.D.
29 County Departmental Officer Title: Chief Forensic Pathologist
30 County Department Address: 800 S. Redlands, Perris, CA 92570
31 County Department Fax Number: 951-443-2303