

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



ITEM: 3.29  
(ID # 20475)

**MEETING DATE:**

Tuesday, November 29, 2022

**FROM :** HUMAN RESOURCES:

**SUBJECT:** HUMAN RESOURCES: Approve the Lucent Health Solutions, LLC, The Dental Plan Administration Service Agreement For The County Of Riverside. All Districts. [\$0]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Dental Plan Administration Service Agreement (Attachment A), effective January 1, 2020 through December 31, 2022;
2. Authorize the Chairman of the Board to sign three (3) copies each of Attachment A on behalf of the County; and
3. Direct the Clerk of the Board to retain one (1) copy of the signed documents and return two (2) copies of the signed documents to Human Resources for distribution.

**ACTION:**

*Michael Bowers*

Michael Bowers, Assistant HR Director 11/9/2022

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**MINUTES OF THE BOARD OF SUPERVISORS**

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

Ayes: Jeffries, Spiegel, Washington, Hewitt, and Perez  
Nays: None  
Absent: None  
Date: November 29, 2022  
xc: HR

Kecia R. Harper  
Clerk of the Board

By *Cindy Farady*  
Deputy

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

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b>			<b>Budget Adjustment:</b>	No
			<b>For Fiscal Year:</b>	19/20 – 22/23

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

**BACKGROUND:**

**Summary**

On May 21, 2019, Item 3.19, the Board of Supervisors approved the, Assignment of The Dental Plan Administration Agreement between the County and Lucent Health Solutions, LLC as the Dental Plan Administer for the County's self-funded dental plans (Local Advantage Plus and Blythe plans).

As part of a lengthy contract negotiation process the terms and conditions were recently completed. Attached is the new Dental Plan Administration Service Agreement for the County of Riverside, effective January 1, 2020 through December 31, 2022.

Prev. Agn. Ref.: 05/21/19, Item 3.19 District: All

**Impact on Residents and Businesses**

There is no direct impact to residents or businesses.

**Contract History and Price Reasonableness**

Lucent Health is a technology-driven health care risk management company, maximizing the value of data to deliver the most affordable health plans for employers. Lucent Health delivers service to over 200,000 members nationwide, offering self-funded health plans that reduce costs while improving the member experience.

**ATTACHMENTS:**

Attachment A: Dental Plan Service Administration Agreement For The County Of Riverside, Effective January 1, 2020 through December 31, 2022

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

*Meghan Hahn*  
Meghan Hahn, Principal Management Analyst 11/16/2022



**Lucent Health**

**DENTAL PLAN ADMINISTRATION  
SERVICE AGREEMENT  
FOR  
THE COUNTY OF RIVERSIDE**

Effective JANUARY 1, 2020 through DECEMBER 31, 2022



## DENTAL PLAN ADMINISTRATION SERVICE AGREEMENT

**THIS DENTAL PLAN ADMINISTRATION SERVICE AGREEMENT** (“Agreement”), is entered into effective the 1st day of January, 2020, by and between **LUCENT HEALTH SOLUTIONS, LLC**, a limited liability company organized under the laws of the State of Delaware (hereinafter called the “**Administrative Manager**”), and the **COUNTY OF RIVERSIDE**, a political subdivision of the State of California, (hereinafter called the “**County**”).

### WITNESSETH:

WHEREAS, the County is the sponsor of an employee benefit dental plan (the “**Plan**”) designed to provide dental benefits to eligible County employees and their eligible dependents; and

WHEREAS, Administrative Manager offers a variety of administrative services, as an independent contractor, related to the operation of certain dental benefit plans established, funded, and operated by other parties; and

WHEREAS, the County desires to contract with the Administrative Manager for services to be rendered in connection with the Plan.

NOW THEREFORE, In consideration of the mutual covenants herein contained, it is understood and agreed by and between the parties as follows:

**Section 1 - Functions of the Administrative Manager.** In performing services for the County’s Plan, the Administrative Manager shall:

- a. Perform administrative functions during normal working hours Monday through Friday.
- b. Provide and maintain a properly trained staff to perform the administrative functions and answer the inquiries of participants in the Plan with respect to administrative requirements and procedures of the Plan.
- c. Maintain records provided by County pertaining to eligibility of Plan participants.
- d. In accordance with the Plan provisions, the business processes of Administrative Manager, and advice received from the County, determine the amount due and payable on all claims presented.
- e. Facilitate, prepare and/or implement applicable method of payments, including but not limited to, checks, electronic transfers, and/or virtual credit card services provided by Administrative Manager or third party for County to pay claims to the participant, provider, or to such other person legally entitled thereto.

- f. Maintain records for claim loss on a monthly basis.
- g. If agreed by Administrative Manager in writing, assist the County and Plan in preparing reports, returns or forms required by applicable law and/or government agencies. Fees charged by the Administrative Manager for assisting in preparation of reports will be quoted in advance and are subject to written approval by the County. Although the Administrative Manager will offer assistance, County remains solely responsible for completing and timely filing any and all applicable reports, returns and/or forms, and in no circumstance shall Administrative Manager be responsible for any penalties, taxes, interest or other charge for failure to file.
- h. Administer coordination of benefit provisions of the Plan.
- i. Recommend to the County, and for the Plan, additional services provided by Administrative Manager or a third party which, upon approval of the County, may provide for the review of dental, medical or hospital treatment to determine necessity or appropriateness (utilization reviews), the procurement of discounts or a reduction of dental, medical or hospitalization charges as are allowed under the Plan, administration of subrogation and reimbursement provisions, administration of reference-based pricing provisions, and such other services, as from time to time, are made available. The County will be responsible for any charges, fees and/or costs imposed or charged by third parties, unless otherwise agreed to in writing by Administrative Manager. County acknowledges and understands that it may be required to sign a contract with a third party for services and shall be executed concurrently with the execution of this Agreement).
- j. The Administrative Manager shall take appropriate steps as it would for its own business under similar circumstances to collect claim payments that should not have been made under the terms of the Plan (referred to as "Claim Recovery"). The Administrative Manager shall not be required to initiate court proceedings to recover a Claim Recovery. For any Claim Recovery identified by the Administrative Manager, the Administrative Manager will first attempt to pursue recovery itself.

- k. If requested by County at least ninety (90) days in advance of the delivery date, Administrative Manager shall prepare for County a draft of a combined plan document and Summary Plan Description (“SPD”). County shall be responsible for promptly reviewing the draft with its own legal counsel and advisors, and retains any and all legal responsibilities for the Plan. Two proof cycles are included in the SPD administration set up fee, as set forth in Section 5. Additional proof cycles requested by County will be charged at the prevailing vendor rate set forth in Section 5. County acknowledges that it has the sole responsibility, as Plan Sponsor, to approve and accept, including compliance with applicable laws, any Plan document submitted by Administrative Manager, and acknowledges Administrative Manager is not providing legal or accounting advice. Upon finalization of the documents, County shall provide Administrative Manager the duly authorized and executed Plan document.
  
- l. In the event the County uses a preferred provider network (“Network”) in the processing of claims, Administrative Manager relies on pricing it receives from the Network. Administrative Manager does not have access to Network discounts or contractual language. Administrative Manager, however, will not be held responsible for any financial implications occurring due to any Network repricing error.

It shall be the Plan Administrator’s decision to utilize Network pricing. If Network pricing conflicts with the terms of the applicable Plan, Administrative Manager shall not be responsible for any repercussions, including but not limited to, the reduction or denial of stop-loss reimbursement or loss of any applicable Network discount. In the event Network pricing conflicts with the terms of the Plan, Administrative Manager will apply the Plan’s terms to a benefit payment, unless County directs otherwise in writing.

Administrative Manager shall not be liable for the loss of any Network discount because of any payment deemed untimely under the Network agreement, individual arrangement or state law, or any gap in coverage between the Plan, the Network and/or stop-loss policy.

## **Section 2 - County Duties and Obligations**

- a. County shall provide Administrative Manager a copy of its duly adopted Plan and Summary Plan Description. County shall provide Administrative Manager any amendments to the Plan at least thirty (30) days prior to the effective date.
  
- b. County shall be solely responsible for providing the Summary Plan Description to Plan Participants and beneficiaries, and the initial COBRA notice.

- c. County shall be solely responsible for providing the Summary of Benefits and Coverages (SBC), the uniform glossary of terms and any updated SBCs (reflecting any material modification thereof) to the required parties in compliance with applicable law.
- d. The County agrees to provide funds sufficient to pay claims that are processed by Administrative Manager for payment and to pay for expenses reasonably necessary to the operation of the Plan, including, but not limited to, any taxes properly assessed against the Plan or against Administrative Manager on behalf of the Plan or in connection with its performance of this Agreement. The County shall also reimburse Administrative Manager for amounts Administrative Manager reasonably pays or advances for or on behalf of the Plan.
- e. The County shall initially and throughout the term of this Agreement make timely identification to Administrative Manager of all individuals eligible to receive benefits under the Plan and all individuals who cease to be eligible to receive benefits under the Plan. Administrative Manager is authorized to rely on the County's compliance with this Section to administer the Plan in accordance with its terms. It shall be the County's responsibility to maintain original documentation of each Participant's eligibility for participation in the Plan, such as applications for coverage and changes of coverage including such documentation required by the applicable stop-loss contract. County shall notify, by electronic means, Administrative Manager within seven (7) days of any change in eligibility. Retroactive terminations of coverage are limited to sixty (60) days from initial billing, however, that Administrative Manager shall not be responsible or liable for any claims that may have been paid during such period or the effect on stop-loss coverage.
- f. The County shall be responsible for compliance with the requirements of federal, state and municipal laws and regulations affecting the Plan. The County further acknowledges that it is responsible for obtaining its own legal and/or tax advice, and acknowledges and agrees that Administrative Manager cannot provide legal or tax advice of counsel on behalf of the Plan.
- g. County shall be solely responsible for filing and paying, if applicable, any and all forms and reports including, but not limited to, Patient Centered Outcome Research Institute (PCORI), transitional reinsurance fee, and reporting under sections 6055 and/or 6056 of the Affordable Care Act.

- h. County shall have the sole and absolute authority with respect to the control, management, investment, disposition and utilization of Plan assets, and Administrative Manager shall neither have nor be deemed to exercise any discretion, control or authority with respect to the disposition of Plan assets, or discretionary authority over the administration of the Plan.
- i. County shall not hold Administrative Manager liable for the payment of claims for benefits under the Plan, or for the Plan expenses. County shall not hold Administrative Manager to be a payer of dental claims or medical claims nor an insurer or underwriter of any liability for the Plan as a result of any services provided by Administrative Manager, whether or not outlined herein.
- j. Although Administrative Manager may provide assistance, County, as plan administrator, acknowledges and agrees that it is solely responsible for complying with all requirements of the HIPAA Privacy and Security Rules, including conducting the risk assessment and the preparation and adoption of policies and procedures (except to the extent Administrative Manager is required to comply as business associate in accordance with the business associate agreement).
- k. County, by executing this Agreement, certifies that it has reviewed, read and understands the terms of this Agreement and any other agreement signed or accessed by the County, including, but not limited to, stop-loss contracts, Network agreement, prescription benefit manager agreement and business associate agreement.

**Section 3 - Medicare Secondary Liability.** If CMS obtains the recovery of any claim payment for a covered participant under the Medicare Secondary Payor liability provision, the Plan will have full liability for payment of such claim and any related expenses. The Administrative Manager will have full right of recovery from the Plan if the CMS recovery is made from the Administrative Manager rather than the Plan.

**Section 4 - Independent Contractor.** The Administrative Manager 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 Administrative Manager (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which County employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and the Administrative Manager 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 the Administrative Manager 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.

**Section 5 - Service Fees.** The monthly fees, costs, pass-through fees and expenses, and charges due the Administrative Manager from the County for the performance of services by the Administrative Manager shall be set forth in Addendum A, attached hereto and made a part hereof.

Monthly invoices are payable in full within thirty (30) days after the invoice is made available to County via the FTP site, unless otherwise agreed by the parties. County agrees to initiate payment for the total invoice amount on the 30<sup>th</sup> day after making invoice available to County or the next banking if the 30<sup>th</sup> is a weekend or holiday.

County acknowledges and agrees the Administrative Manager will receive commissions, rebates, compensation or other remuneration from third parties that provide services or products to the Plan or Administrative Manager, in addition to interest float from various bank accounts. This compensation and/or interest allows Administrative Manager to reduce costs and the above fees, and to provide for a profit. County, as plan administrator, agrees that such fees are reasonable for the services provided, including those set forth in Addendum A.

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 the Administrative Manager in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

The provisions of the Government Claims Act (Government Code section 900 et seq.) must be followed first for any disputes arising under this Agreement.

**Section 6 - Costs and Expenses.** The County shall provide for payment by the Plan of all claims under the Plan and the costs identified in Addendum A. The County will, also, pay fees and charges under the Agreement, and the expenses or fees of securing dental or medical records, utilization reviews, discounts, subrogation, hospital audits and for other third-party services.

Upon termination of this Agreement for any reason, any indebtedness of the County and/or Plan to the Administrative Manager shall become immediately due and payable. On and after the date of termination of this Agreement, the Administrative Manager shall not be obligated to perform any of the services specified.



**Section 7 - Records.** The Administrative Manager agrees to maintain records pertaining to the Plan in accordance with all applicable state and federal laws and regulations relating to the maintenance and storage of such file information. The Administrative Manager shall permit and facilitate the examination of all records pertaining to the Plan at any reasonable time by any duly authorized representative of the County either on the Administrative Manager's premises or at the County's offices. The records shall be presumed to be the property of the County and any destruction of the records shall only be done upon the County's written approval. At the termination of this Agreement, the records will be provided to the County in accordance with its instructions.

**Section 8 - Hold Harmless.**

- a. The Administrative Manager shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon any services of The Administrative Manager, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature. The Administrative Manager shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.
- b. With respect to any action or claim subject to indemnification herein by the Administrative Manager, the Administrative Manager shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes the Administrative Manager indemnification to Indemnitees as set forth herein.
- c. The Administrative Manager's obligation hereunder shall be satisfied when the Administrative Manager has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- d. The specified insurance limits required in this Agreement shall in no way limit or circumscribe The Administrative Manager's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.
- e. The Administrative Manager may rely on all information furnished to it by the County, and shall have no duty to verify any such information independently. The Administrative Manager shall have no liability for the erroneous payment of claims.

The County and/or the Plan agree to indemnify, hold harmless and defend the Administrative Manager for any acts or omissions of the Administrative Manager not caused by gross negligence or willful misconduct. In the event of any litigation relating to the Administrative Manager's services under this Agreement, the Administrative Manager will be entitled to recover from the County and/or Plan all reasonable attorney's fees and other reasonable costs incurred. The County will indemnify and hold harmless the Administrative Manager, its officers, directors, representatives, agents and successors or assigns from any and all actions, causes of action, claims demands, liabilities, damages, costs and expenses, including reasonable attorney fees, which be in existence at any time, including those which may arise after termination and that arise out of the payment or declination of claims or processing of claims.

**Section 9 - Breach.** In the event a party should breach or default in any of the obligations arising out of this Agreement, the other party may give written notice, by certified mail, return receipt requested, specifying the breach or default and if a monetary default or breach is not cured within five (5) business days or a non-monetary default or breach is not cured within thirty (30) days from the receipt of notice of such default or breach, this Agreement may be terminated by the party claiming the breach or default.

**Section 10- Reopener.** Should federal or state law impose duties or obligations on the County, Plan or Administrative Manager during the term of this Agreement which are over and above those in effect, the Administrative Manager may reopen the Agreement to negotiate changes in the fees, charges, or costs being charged commensurate with the new duties or obligations.

In the event the Administrative Manager reopens the Agreement, and the parties do not reach agreement upon changes in the fees, charges or costs, the Administrative Manager may give written notice to the County of termination, and this Agreement shall terminate upon receipt of the notice.

**Section 11 - Term & Termination; Run-Out Period.**

- a. **Term.** The term of this Agreement shall become effective January 1, 2020, and shall continue in full force through December 31, 2022, unless terminated as provided for herein.
- b. **Automatic Renewal.** The Agreement shall automatically renew from year to year thereafter, unless terminated by written notice by either party to the other not less than sixty (60) days prior to any anniversary thereof.
- c. **Termination for Material Cause.** Either party, as appropriate, may terminate this Agreement for material cause as set forth herein, upon written notice of termination stating the actions of the other party constituting material cause for termination and the effective date of termination.

- d. Termination Without Cause. Either party may terminate this Agreement without cause. Administrative Manager must provide written notice of termination without cause to the County at least ninety (90) calendar days before termination. The County reserves the right to terminate this Agreement, in whole or in part, without cause upon thirty (30) calendar days written notice to Administrative Manager.
- e. Breach. If County fails to pay Administrative Manager when payment is due under this Agreement, and such failure continues for five (5) days after notice by Administrative Manager to County, or if either party breaches this Agreement and such breach continues for thirty (30) days after written notice by the non-breaching party to the breaching party, the non-breaching party may terminate this Agreement effective immediately upon written notice of the effective date of termination.
- f. Effects of Termination. Upon termination of this Agreement as provided for herein, neither party shall have any further obligations under this Agreement, except for: (1) obligations accruing prior to the date of termination; and (2) rights and obligations under Sections 8 and 12 which shall survive the termination of this Agreement. County shall be solely liable for the processing and payment of all benefit claims incurred before or as of the date of termination, including claims incurred but not reported and claims reported and not processed as of such date. Administrative Manager shall have no responsibility to process any claims in its possession as of the termination date. If the parties mutually agree in writing, Administrative Manager will provide services with respect to the run-out of claims for six (6) months after termination of this Agreement. Unless otherwise agreed in writing, Administrative Manager's fees for such service (including network fees) shall be paid in advance and shall equal 6 times the average monthly administrative fees and, if applicable, any commissions earned by Administrative Manager over the previous 12 months (or the term of the agreement if shorter).
- g. Run-Out Period. All claims processed during the run-out period will be processed at the full benefit level based on the Plan design in effect at termination. Any claims remaining unprocessed at the end of the run out will be shipped directly to County (at the County's expense) or arrangements may be made with Administrative Manager to process any outstanding claims for a service fee equal to six dollars (\$6.00) per claim processed during the agreed upon extended run-out period.

Upon termination of the Agreement and, if applicable, the run-out period, a one-time service fee will be assessed at \$.50/EE (for a minimum of \$450 and a maximum of \$1,500) to cover the cost of data extracts for claim accumulators, claim history, utilization data and the boxing and shipping of outstanding claims. To the extent there is revenue sharing between County and Administrative Manager, upon termination, any revenue received by Administrative Manager subsequent to the termination date shall accrue to Administrative Manager unless otherwise agreed in writing.

During the run-out period, all provisions in the base document pertaining to confidentiality, indemnification, claims account and County obligations apply.

**Section 12 - Confidentiality.**

- a. The Administrative Manager 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.
- b. The Administrative Manager 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 Administrative Manager shall not use such information for any purpose other than carrying out the Administrative Manager's obligations under this Agreement. The Administrative Manager shall promptly transmit to the County all third party requests for disclosure of such information. The Administrative Manager 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.

Both during the term of this Agreement and after termination of this Agreement, County will not, without the prior written consent of Administrative Manager, disclose to any third party or use for County's own benefit, any information or know-how concerning Administrative Manager's business and affairs developed or obtained by County in the course of this Agreement.

County shall hold in strict confidence all confidential matters and exercise its best efforts to prevent any of its employees, officers, or agents, from disclosing any confidential matter, including member personal information, except to the extent that such disclosure is necessary to enable any of the above to perform their obligations under this Agreement, including but not limited to sharing information with dental or medical providers, or as may be otherwise required by law.

**Section 13 – HIPAA Privacy Compliance.** The Administrative Manager 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. The parties agree to the terms and conditions of the HIPAA Business Associate Agreement (“BAA”) attached hereto as Exhibit “B.” The terms of the HIPAA BAA, as amended from time to time, shall control in the event of a conflict with any other term of the Agreement.

**Section 14 - Notices.** All correspondence and notices required or contemplated hereunder shall be delivered to the respective parties at the addresses set forth below, or at such other addresses as each party may notify the other in writing, and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

ADMINISTRATIVE  
MANAGER:

LUCENT HEALTH  
10951 White Rock Road, Suite 100  
Rancho Cordova, CA 95670

COUNTY:

COUNTY OF RIVERSIDE  
Attn: Johanne Michel, Human Resources Benefits  
Division Manager  
4080 Lemon Street  
Riverside, CA 92502

**Section 15 – Assignment.** Administrative Manager shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of County. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**Section 16 – Conflict of Interest.**

- a. The Administrative Manager 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 Administrative Manager’s performance under this Agreement. The Administrative Manager further covenants that no person or subcontractor having any such interest shall be employed or retained by Administrative Manager under this Agreement. The Administrative Manager agrees to inform the County of all the Administrative Manager's interests, if any, which are or may be perceived as incompatible with the County’s interests.
- b. The Administrative Manager 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 Administrative Manager is doing business or proposing to do business, in accomplishing the work under this Agreement.
- c. The Administrative Manager or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to County employees.

**Section 17 - General.**

- a. Any waiver by County of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of County to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing County from enforcement of the terms of this Agreement.
- b. In the event the Contractor receives payment under this Agreement, which is later disallowed by County for nonconformance with the terms of the Agreement, the Contractor shall promptly refund the disallowed amount to the County on request; or at its option the County may offset the amount disallowed from any payment due to the Contractor.
- c. Contractor shall comply with all applicable Federal, State and local laws and regulations. Contractor will comply with all applicable County policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the Contractor shall comply with the more restrictive law or regulation.



- d. 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.
  
- e. This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

“ADMINISTRATIVE MANAGER”

LUCENT HEALTH SOLUTIONS, LLC

BY: Brett Rodewald

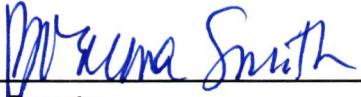
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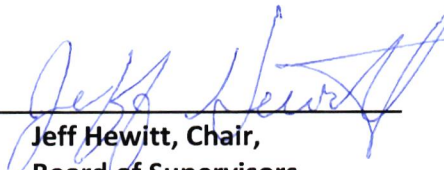
Title: President

Date: 10/18/22

ATTEST:  
Clerk of the Board  
Kecia Harper

COUNTY OF RIVERSIDE

By:   
Deputy

By:   
Jeff Hewitt, Chair,  
Board of Supervisors

Date: 11/29/22

Date: 11/29/22

Approved as to form:

County Counsel

By:   
Deputy County Counsel

**ADDENDUM A**

<b><u>SERVICE</u></b>	<b><u>FEES (through 12/31/2022)</u></b>
1. Plan Document Restatement	\$1,500
2. Plan Document Amendments (per plan)	\$500/Amendment
3. <b><u>MONTHLY ADMINISTRATION FEES</u></b>	
Lucent Health Dental Administration Fee	\$3.15 PEPM
First Dental Health Network Fee	\$1.80 PEPM
4. Custom Reporting (Pre-Approved)	\$150/hr.
5. Contingency Audit	At Negotiated Rate

## ADDENDUM B

### PERFORMANCE GUARANTEES

**Financial Dollar Accuracy** - Lucent Health Solutions, LLC, (Lucent Health) will achieve a quarterly 98.5% level of financial accuracy on claims paid. This will be determined by the total amount of claim dollars paid incorrectly divided by the total dollar amount of claims processed and will be expressed as a percentage. This ratio may be determined using a statistically- valid stratified random sample. Accuracy percentage is determined by subtracting the error ratio from 100%.

If Client determines, based on appropriate report or audit, that Lucent Health did not achieve said financial accuracy, Client shall be entitled to a penalty of a percentage of the monthly administrative fee for the audit period in which the errors occurred. The schedule shall be as follows:

<u>Financial Errors Ratio</u>	<u>Penalty of Admin Fee</u>
1.5% or less	0%
Greater than 1.5% and Less Than 2.5%	1%
Greater than 2.5% and Less Than 3%	2%
Greater than 3% and Less Than 3.5%	3%
Over 3.5%	4%

**Claims Procedural Accuracy** – Lucent Health will achieve a quarterly 97.5% level of claims procedural accuracy. This will be determined by the total number of claims processed containing payment errors divided by the total number of claims processed. Again, this ratio may be determined with the use of a statistically-valid stratified random sample.

If Client determines, based on appropriate report or audit, that Lucent Health did not achieve the procedural accuracy performance objectives, Client shall be entitled to a penalty of a percentage of the monthly administration fees for the audit period in which the errors occurred. The schedule shall be as follows:

<u>Procedural Accuracy Error Ratio</u>	<u>Penalty of Admin Fee</u>
2.5% or Less	0%
Greater than 2.5% and Less Than 4.5%	1%
Greater than 4.5% and Less Than 5%	2%
Greater than 5% and Less Than 5.5%	3%
Over 5.5%	4%

**Timeliness of Claims Processing** – Lucent Health will process 95% of all clean claims within ten (10) business days of receipt (processing involves either paying, denying or requesting additional data from the Participant or Provider). During any period of Force Majeure, timing requirements shall be waived. Timeliness may be determined with the use of stratified random samples.

If Client, based on appropriate reports, determines 95% of all clean claims have not been processed within ten (10) business days after receipt of such claims, Client shall be entitled to a penalty payment. Such penalty payment shall be based upon a percentage of the administration fees for the audit period in which the errors occurred. This schedule shall be as follows:

<u>Timeliness of Processing (Business Days)</u>	<u>Penalty of Admin Fee</u>
10 Days	0%
Over 10 Days But Less Than 15 Days	3%
Over 15 Days But Less Than 20 Days	5%
Over 20 Days	10%

**Definition of a Clean Claim:** A clean claim is a claim that can be processed without any additional details. Examples of a non-clean claim are: claims that are missing pertinent billing information (Coding); claims requiring member inquiries such as coordination of benefits, accident details, etc; claims suspended for negotiations or stop loss.

**Call Waiting Time** – The percentage of calls answered within 30 seconds will be calculated by dividing the total number of calls answered within 30 seconds by the total number of calls received. Time spent on hold is included in wait time.

<u>Guarantee</u>	<u>Penalty of Admin Fee</u>
Average speed to answer within 30 seconds	0%
Average speed to answer within 45 seconds	1%
Average speed to answer greater than 45 seconds	2%

**Abandoned Calls** – The percentage of abandoned calls will be calculated by dividing the number of calls abandoned by the total number of calls placed in the queue. An abandoned call will be any call placed in the queue in which the caller hangs up before the call is answered by a customer service representative.

<u>Guarantee</u>	<u>Penalty of Admin Fee</u>
5% or less abandoned	0%
Over 5% but less than 7% abandoned	1%
More than 7% abandoned	2%

### **IMPLEMENTATION PERFORMANCE GUARANTEES**

**Eligibility** – Eligibility will be loaded within 7 business days of receipt if received electronically and within 10 business days of receipt if received manually.

**ID Card Production** – ID Cards will be produced within 10 business days of the Eligibility Load finalization and mailed within 2 business days thereafter.

**SPD Preparation** – The initial draft of the SPD will be completed and submitted to the client for review within 30 business days of receipt of all information necessary to complete said SPD. Final draft will be completed and submitted to the client within 10 business days of receipt of all final revisions and clarifications from client.

**Penalty** – Failure to meet any of the above Implementation Performance Guarantees will result in a penalty of 10% of the stated Implementation Fee.

### **REPORTING PERFORMANCE GUARANTEE**

**Reporting** - Monthly reports to be produced to client and/or client’s designated representative in acceptable format by the 20th of the following month. Should the 20th fall on a weekend or holiday the deadline will be extended to the following Monday.

<u>Guarantee</u>	Penalty of Admin Fee
Produced to Client by the 20 <sup>th</sup> of the Following month	0%
Produced to Client after the 20 <sup>th</sup> of the Following month	1%

### **ACCOUNT MANAGEMENT RESPONSE TIME PERFORMANCE GUARANTEE**

**Response Timing** – The Account Management Team will respond within the time frames listed below. All hours are based on business days.

<u>Guarantee</u>	Penalty of Admin Fee
Day-to-Day issues including claim or billing issues will be addressed within 72 hours.	1%
Urgent Issues including access to treatment will be addressed within 24 hours.	1%

All of the above Performance Guarantees are subject to an overall aggregate maximum of 5% of the annual administrative fee. All Performance Guarantees are based upon averaged quarterly results. Payments are due the month following the end of the quarter in which the penalty occurred and must be in the form of reduction of billed administrative fees.



# **Exhibit B**

## HIPAA Business Associate Agreement

## HIPAA Business Associate Agreement

Between the County of Riverside and Lucent Health Solutions, LLC

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Underlying Agreement between the County of Riverside ("County") and Lucent Health Solutions, LLC ("Contractor") and shall be effective as of the date the Underlying Agreement approved by both Parties (the "Effective Date").

### RECITALS

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

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

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

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

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

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

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

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

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.
  - A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.
    - (1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following four factors:

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

(2) Breach excludes:

(a) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.

(b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.

(c) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

- B. “Business associate” has the meaning given such term in 45 CFR §164.501, including but not limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf of the business associate.
- C. “Data aggregation” has the meaning given such term in 45 CFR §164.501.
- D. “Designated record set” as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
- E. “Electronic protected health information” (“ePHI”) as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- F. “Electronic health record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- G. “Health care operations” has the meaning given such term in 45 CFR §164.501.
- H. “Individual” as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- I. “Person” as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- J. “Privacy Rule” means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- K. “Protected health information” (“PHI”) has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- L. “Required by law” has the meaning given such term in 45 CFR §164.103.
- M. “Secretary” means the Secretary of the U.S. Department of Health and Human Services (“HHS”).

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

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

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

3. **Prohibited Uses and Disclosures.**

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

- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §17935 and §17936. Contractor agrees:
  - 1) Not to use or disclose PHI for fundraising , unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45 CFR §164.508;
  - 2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.508(a)(3);
  - 3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
  - 4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted by the Underlying Agreement and in compliance with the requirements of a valid authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

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

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

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.
- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
- C. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.

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

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

- A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.
- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:



- 1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
- 2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
- 3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.

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

- A. Comply with the applicable requirements of the Security Rule, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;
- B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
- C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
- D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
- E. Ensure compliance with the Security Rule by Contractor's workforce;
- F. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same restrictions and requirements contained in this Addendum and comply with the applicable requirements of the Security Rule;
- G. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
- H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.

8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.

- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
  - 1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).

- 2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
- a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
  - b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
  - c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
  - d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
  - e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
  - f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.
- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.
- F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's completed risk assessment and investigation documentation.
- G. **Additional State Reporting Requirements.** The parties agree that this Section 8.G applies only if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more

stringent requirements of California Health & Safety Code §1280.15. For purposes of this Section 8.G, "unauthorized" has the meaning given such term in California Health & Safety Code §1280.15(j)(2).

- 1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.
- 2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than two (2) business days after Contractor detects such incident. Contractor further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.

9. **Hold Harmless/Indemnification.**

- A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.
- D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned

to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

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

- 1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
- 2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.
- 3) If termination of the Underlying Agreement is not feasible, the breaching party, upon the request of the non-breaching party, shall implement, at its own expense, a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

B. **Effect of Termination.**

- 1) Upon termination of this Addendum, for any reason, Contractor shall return or, if agreed to in writing by County, destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.
- 2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

12. **General Provisions.**

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

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

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

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

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

F. **Interpretation of Addendum.**

- 1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
- 2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.

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

County HIPAA Privacy Officer: HIPAA Privacy Manager

County HIPAA Privacy Officer Address: 4080 Lemon Street, 7<sup>th</sup> Floor  
Riverside, CA 92502

County HIPAA Privacy Officer Fax Number: (951) 955-3490