

**FIRST AMENDMENT TO**  
**HEALTH BENEFIT SERVICES AGREEMENT**

THIS AMENDMENT, hereinafter referred to as First Amendment to Health Benefit Services Agreement, is made and entered into this 4<sup>th</sup> day of May, 2007, by and between the **COUNTY OF FRESNO**, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and **GALLAGHER BENEFIT SERVICES, INC.**, whose address is 7910 North Ingram Avenue, Fresno, CA 93711, hereinafter referred to as "CONTRACTOR".

WHEREAS, the parties entered into that certain Agreement, identified as COUNTY Agreement No. 07-098, effective March 27, 2007, whereby CONTRACTOR agreed to provide health benefit consultation services for COUNTY; and

WHEREAS, the parties desire to amend the Agreement to add a Confidentiality provision which outlines COUNTY's and CONTRACTOR's responsibilities with respect to the use and/or disclosure of Protected Health Information as mandated by the Privacy Rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as indicated below.

NOW, THEREFORE, in consideration of their mutual promises, covenants and conditions, hereinafter set forth, the sufficiency of which is acknowledged, the parties agree as follows:

1. That the following is inserted into the existing Agreement No. 07-098 at Page Nine (9), line 20:

**"19. CONFIDENTIALITY"**

All services performed by CONTRACTOR under this Agreement shall be in strict conformance with all applicable Federal, State of California and/or local laws and regulations relating to confidentiality, including but not limited to, California Civil Code section 56 *et seq.*, California Welfare and Institutions Code sections 5328, 10850 and 14100.2, Health and Safety Code sections 11977 and 11812, 22 California Code of Regulations section 51009, and 42 Code of Federal Regulations sections 2.1 *et seq.* CONTRACTOR shall submit to COUNTY's monitoring of said compliance with all State and Federal statutes and regulations regarding confidentiality.

CONTRACTOR shall ensure that no list of persons receiving services under this contract is published, disclosed, or used for any other purpose except for the direct administration of the program or other

1 uses authorized by law that are not in conflict with requirements for confidentiality.

2 Except as otherwise provided in this Agreement, CONTRACTOR, as a Business  
3 Associate of COUNTY, may use or disclose protected health information ("PHI") to perform  
4 functions, activities or services for or on behalf of COUNTY, as specified in this Agreement, provided  
5 that such use or disclosure shall not violate the Health Insurance Portability and Accountability Act  
6 (HIPAA), U.S.C. 1320d *et seq.*, and its implementing regulations including but not limited to 45  
7 C.F.R. Parts 142, 160, 162, and 164 (hereafter known as "the Privacy and Security Rules"). The uses  
8 and disclosures of PHI may not be more expansive than those applicable to COUNTY, as the  
9 "Covered Entity" under the Privacy Rule, except as authorized for management, administrative or  
10 legal responsibilities of the Business Associate.

11 CONTRACTOR shall not use or further disclose PHI other than as permitted or required  
12 by this Agreement, or as required by law.

13 CONTRACTOR shall implement administrative, physical and technical safeguards that  
14 reasonably and appropriately protect the confidentiality, integrity and availability of PHI that it  
15 creates, receives, maintains, or transmits on behalf of COUNTY.

16 CONTRACTOR shall ensure that any agent, including a subcontractor to whom  
17 CONTRACTOR provides PHI received from COUNTY, or to whom CONTRACTOR provides PHI  
18 which is created on behalf of COUNTY, agrees to the same restrictions and conditions that apply to  
19 CONTRACTOR with respect to such information.

20 CONTRACTOR shall report to COUNTY's Department of Personnel Services (DPS)  
21 Director, or designee, in writing within five (5) working days of any security incident of which  
22 CONTRACTOR becomes aware. It is understood that if the security incident is not corrected within  
23 sixty (60) days of CONTRACTOR's written notification to COUNTY's DPS Director,  
24 CONTRACTOR acknowledges that the COUNTY's DPS Director, or designee, may terminate this  
25 Agreement in accordance to Paragraph 3. of this Agreement if COUNTY's DPS Director, or designee,  
26 determines that CONTRACTOR has violated a material term of this Agreement.

27 CONTRACTOR shall provide access, at the request of COUNTY, and in the time and  
28 manner designated by COUNTY, to PHI in a designated record set (as defined in 45 C.F.R. §



1 164.501), to an individual or to COUNTY in order to meet the requirements of 45 C.F.R. §164.524  
2 regarding access by individuals to their PHI.

3 CONTRACTOR shall make any amendment(s) to PHI in a designated record set at the  
4 request of COUNTY, and in the time and manner designated by COUNTY in accordance with 45  
5 C.F.R. § 164.526

6 CONTRACTOR shall provide to COUNTY or to an individual, in a time and manner  
7 designated by COUNTY, information collected in accordance with 45 C.F.R. § 164.528, to permit  
8 COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in  
9 accordance with 45 C.F.R. §164.528.

10 CONTRACTOR shall make internal records related to the use, disclosure, and privacy  
11 protection of PHI received from COUNTY, or created/received by CONTRACTOR on behalf of  
12 COUNTY, available to COUNTY or to the Secretary of the United States Department of Health and  
13 Human Services for purposes of investigating or auditing COUNTY's compliance with the Health  
14 Insurance Portability and Accountability Act, in a time and manner designated by COUNTY or the  
15 Secretary.

16 CONTRACTOR shall, if feasible, return or destroy all PHI received from COUNTY's  
17 DPS, or created or received by CONTRACTOR on behalf of COUNTY's DPS upon expiration or  
18 termination of this Agreement. In the event that CONTRACTOR deems this infeasible,  
19 CONTRACTOR shall notify COUNTY's DPS of the conditions that make return or destruction  
20 infeasible, and upon mutual agreement of the parties that return or destruction is infeasible, extend the  
21 protections of this Agreement to the PHI in order to limit future disclosures of PHI by  
22 CONTRACTOR.

23 The parties agree to take such action as is necessary to amend this Agreement as  
24 necessary for COUNTY's DPS to comply with the requirements of the Privacy and Security Rules and  
25 the implementing regulations. Any such changes may be made with the written approval of  
26 COUNTY's Compliance Privacy Officer or designee, and/or the Security Officer or designee should  
27 the Security Officer obtain such authority from the Board of Supervisors.  
28

1 CONTRACTOR shall mitigate, to the extent practicable, any harmful effect that is  
2 known to CONTRACTOR of a use or disclosure of PHI by CONTRACTOR in violation of the  
3 requirements of this Agreement."

4 Except as otherwise provided in this First Amendment, all other provisions of the  
5 Agreement remain unchanged and in full force and effect. This First Amendment is effective  
6 retroactive to March 27, 2007.

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1 IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Health  
2 Benefit Services Agreement as of the day and year first hereinabove written.

3 ATTEST:

4 CONTRACTOR:

5 GALLAGHER BENEFIT SERVICES, INC.

COUNTY OF FRESNO

6 By: 

7 Print Name: \_\_\_\_\_

8 Title: \_\_\_\_\_

9 Chairman of the Board, or President,  
10 or any Vice President

11 By: 

12 Print Name: John Curahan

13 Title: Chief Financial Officer

14 Secretary (or Corporation), or any Assistant  
15 Secretary, or Chief Financial Officer, or  
16 Any Assistant Treasurer

By: 

Chairman, Board of Supervisors

JUN 05 2007

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By: 

17 APPROVED AS TO ACCOUNTING FORM:

18 VICKI CROW, C.P.A., AUDITOR-CONTROLLER/  
19 TREASURER-TAX COLLECTOR

By: 

20 APPROVED AS TO LEGAL FORM:

21 DENNIS A. MARSHALL, COUNTY COUNSEL

22 By: 

23 REVIEWED AND RECOMMENDED FOR  
24 APPROVAL:

25 By: 

26 Ralph Jimenez, Director  
Department of Personnel Services

27 FOR ACCOUNTING USE ONLY:

28 ORG No.: 89250200

Account No.: 7295 - Professional & Sp. Serv.

## CERTIFICATE OF DELIVERY OF DOCUMENT

I am employed by the County of Fresno as a Deputy Clerk of the Board of Supervisors. On June 5, 2007 I delivered a copy of Agreement 07-189 to the Chairperson of the Fresno County Board of Supervisors.

*Gael Storm*  
Gael Storm, Deputy Clerk