

COUNTY OF FRESNO

ADDENDUM NUMBER: ONE (1)

RFQ NUMBER: 964-5255

MEDICAL EXAMINATIONS - PRE-EMPLOYMENT, PERIODIC, COMPULSORY & DMV

April 14, 2014

PURCHASING USE

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IMPORTANT: SUBMIT QUOTATION IN SEALED PACKAGE WITH QUOTATION NUMBER, CLOSING DATE AND BUYER'S NAME MARKED CLEARLY ON THE OUTSIDE TO:

COUNTY OF FRESNO, Purchasing
4525 EAST HAMILTON AVENUE, 2ND FLOOR
FRESNO, CA 93702-4599

CLOSING DATE OF BID WILL BE AT 2:00 P.M., ON APRIL 24, 2014.

QUOTES WILL BE CONSIDERED LATE WHEN THE OFFICIAL PURCHASING TIME CLOCK READS 2:00 P.M.

Quotes will be opened and publicly read at that time. All quotation information will be available for review after contract award.

Clarification of specifications is to be directed to: **Louann M. Jones**, phone (559) 600-7118, e-mail CountyPurchasing@co.fresno.ca.us, fax (559) 600-7126.

NOTE THE FOLLOWING AND ATTACHED ADDITIONS AND CHANGES TO THE REQUIREMENTS OF REQUEST FOR QUOTATION NUMBER: 964-5255 AND INCLUDE THEM IN YOUR RESPONSE.

PLEASE SIGN AND RETURN THIS ADDENDUM PAGE WITH YOUR QUOTATION.

- *Closing date of bid has been moved to April 24, 2014 at 2:00 PM PST.*
- *See attached sample of model contract for HIPAA contract language review*

ACKNOWLEDGMENT OF ADDENDUM NUMBER ONE (1) TO RFQ 964-5255

COMPANY NAME: _____
(PRINT)

SIGNATURE: _____

NAME & TITLE: _____
(PRINT)

QUESTIONS AND ANSWERS

Q1. Do Bidders have to be present at the Vendor Conference?

A1. No.

Q2. Is the delivery of information remaining the same as it is currently?

A2. Yes, there were no changes indicated in the RFQ. It is something that can be discussed, as no specifics were noted.

Q3. Have any addendums been released since the initial RFQ was released?

A3. No. When something is released, there will be a notice that is mailed to everyone on the mailing list to notify of the changes and the date as to when the changes were made.

Q4. Should the cost of adding additional components to Medical Exam Profiles be included?

A4. Adding additional components can be discussed at a later date as we do not anticipate existing Medical Exam Profiles to change significantly.

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of [click here to enter month], [click here to enter year], by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and [click here to enter Contractor] whose address is [click here to enter Contractor's address], hereinafter referred to as "CONTRACTOR".

WITNESSETH:

1. OBLIGATIONS OF THE CONTRACTOR

- A.
- B. (etc.)

2. OBLIGATIONS OF THE COUNTY

- A.
- B. (etc.)

3. TERM

This Agreement shall become effective on the [click here to enter begin day] day of [click here to enter month], [click here to enter year] and shall terminate on the [click here to enter end day] day of [click here to enter month], [click here to enter year].

4. TERMINATION

A. Non-Allocation of Funds - The terms of this Agreement, and the services to be provided thereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

B. Breach of Contract - The COUNTY may immediately suspend or terminate this Agreement in whole or in part, where in the determination of the COUNTY there is:

- 1) An illegal or improper use of funds;
- 2) A failure to comply with any term of this Agreement;

1 3) A substantially incorrect or incomplete report submitted to the
2 COUNTY;

3 4) Improperly performed service.

4 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY
5 of any breach of this Agreement or any default which may then exist on the part of the
6 CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the
7 COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of
8 the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR
9 under this Agreement, which in the judgment of the COUNTY were not expended in accordance
10 with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon
11 demand.

12 C. Without Cause - Under circumstances other than those set forth above,
13 this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written
14 notice of an intention to terminate to CONTRACTOR.

15 5. COMPENSATION/INVOICING: (Note to County staff: If sales tax is
16 applicable and to be paid to an out-of-state vendor, it must be separated from the total
17 compensation and the vendor must have a California Sales Tax Permit Number.) COUNTY
18 agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation as follows:
19 [click here to enter compensation]. CONTRACTOR shall submit monthly invoices in triplicate to
20 the County of Fresno [click here to enter Department Name] .

21 In no event shall services performed under this Agreement be in excess of
22 [click here to enter maximum contract amount] during the term of this Agreement. It is
23 understood that all expenses incidental to CONTRACTOR'S performance of services under this
24 Agreement shall be borne by CONTRACTOR. (Note to County staff: If the number of days within
25 which payment must be made is specified, this paragraph must provide for payment after a
26 minimum of forty-five (45) days from date of receipt of invoice by the COUNTY.)

27 6. INDEPENDENT CONTRACTOR: In performance of the work, duties and
28 obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and

1 agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and
2 employees will at all times be acting and performing as an independent contractor, and shall act in
3 an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or
4 associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or
5 direct the manner or method by which CONTRACTOR shall perform its work and function.

6 However, COUNTY shall retain the right to administer this Agreement so as to verify that
7 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

8 CONTRACTOR and COUNTY shall comply with all applicable provisions of
9 law and the rules and regulations, if any, of governmental authorities having jurisdiction over
10 matters the subject thereof.

11 Because of its status as an independent contractor, CONTRACTOR shall have
12 absolutely no right to employment rights and benefits available to COUNTY employees.

13 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its
14 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely
15 responsible and save COUNTY harmless from all matters relating to payment of
16 CONTRACTOR'S employees, including compliance with Social Security withholding and all other
17 regulations governing such matters. It is acknowledged that during the term of this Agreement,
18 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this
19 Agreement.

20 7. MODIFICATION: Any matters of this Agreement may be modified from time
21 to time by the written consent of all the parties without, in any way, affecting the remainder.

22 8. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this
23 Agreement nor their rights or duties under this Agreement without the prior written consent of the
24 other party.

25 9. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold
26 harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees
27 from any and all costs and expenses, damages, liabilities, claims, and losses occurring or
28 resulting to COUNTY in connection with the performance, or failure to perform, by

1 CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all
2 costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person,
3 firm, or corporation who may be injured or damaged by the performance, or failure to perform,
4 of CONTRACTOR, its officers, agents, or employees under this Agreement.

5 10. INSURANCE

6 Without limiting the COUNTY's right to obtain indemnification from
7 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full
8 force and effect, the following insurance policies or a program of self-insurance, including but not
9 limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the
10 term of the Agreement:

11 A. Commercial General Liability

12 Commercial General Liability Insurance with limits of not less than One
13 Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars
14 (\$2,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require
15 specific coverages including completed operations, products liability, contractual liability,
16 Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed
17 necessary because of the nature of this contract.

18 B. Automobile Liability

19 Comprehensive Automobile Liability Insurance with limits for bodily injury of
20 not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred
21 Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty
22 Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred
23 Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used
24 in connection with this Agreement.

25 C. Professional Liability

26 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N.,
27 L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less
28 than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00)

1 annual aggregate.

2 D. Worker's Compensation

3 A policy of Worker's Compensation insurance as may be required by the
4 California Labor Code.

5 CONTRACTOR shall obtain endorsements to the Commercial General
6 Liability insurance naming the County of Fresno, its officers, agents, and employees, individually
7 and collectively, as additional insured, but only insofar as the operations under this Agreement are
8 concerned. Such coverage for additional insured shall apply as primary insurance and any other
9 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be
10 excess only and not contributing with insurance provided under CONTRACTOR's policies herein.
11 This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance
12 written notice given to COUNTY.

13 Within Thirty (30) days from the date CONTRACTOR signs and executes this
14 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated
15 above for all of the foregoing policies, as required herein, to the County of Fresno, (Name and
16 Address of the official who will administer this contract), stating that such insurance coverage have
17 been obtained and are in full force; that the County of Fresno, its officers, agents and employees
18 will not be responsible for any premiums on the policies; that such Commercial General Liability
19 insurance names the County of Fresno, its officers, agents and employees, individually and
20 collectively, as additional insured, but only insofar as the operations under this Agreement are
21 concerned; that such coverage for additional insured shall apply as primary insurance and any
22 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees,
23 shall be excess only and not contributing with insurance provided under CONTRACTOR's policies
24 herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)
25 days advance, written notice given to COUNTY.

26 In the event CONTRACTOR fails to keep in effect at all times insurance
27 coverage as herein provided, the COUNTY may, in addition to other remedies it may have,
28 suspend or terminate this Agreement upon the occurrence of such event.

1 All policies shall be issued by admitted insurers licensed to do business in the
2 State of California, and such insurance shall be purchased from companies possessing a current
3 A.M. Best, Inc. rating of A FSC VII or better.

4 11. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during
5 business hours, and as often as the COUNTY may deem necessary, make available to the
6 COUNTY for examination all of its records and data with respect to the matters covered by this
7 Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to
8 audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance
9 with the terms of this Agreement.

10 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR
11 shall be subject to the examination and audit of the Auditor General for a period of three (3) years
12 after final payment under contract (Government Code Section 8546.7).

13 12. NOTICES: The persons and their addresses having authority to give and
14 receive notices under this Agreement include the following:

<u>COUNTY</u>	<u>CONTRACTOR</u>
COUNTY OF FRESNO	[click here to enter Contractor]
[click here to enter County Address]	[click here to enter Contractor Address]
[click here to enter County Address]	[click here to enter Contractor Address]
[click here to enter County City/State]	[click here to enter Contractor City/State]

18 Any and all notices between the COUNTY and the CONTRACTOR provided
19 for or permitted under this Agreement or by law shall be in writing and shall be deemed duly
20 served when personally delivered to one of the parties, or in lieu of such personal services, when
21 deposited in the United States Mail, postage prepaid, addressed to such party.

22 13. GOVERNING LAW: Venue for any action arising out of or related to this
23 Agreement shall only be in Fresno County, California.

24 The rights and obligations of the parties and all interpretation and performance
25 of this Agreement shall be governed in all respects by the laws of the State of California.

26 14. DISCLOSURE OF SELF-DEALING TRANSACTIONS

27 This provision is only applicable if the CONTRACTOR is operating as a
28 corporation (a for-profit or non-profit corporation) or if during the term of the agreement, the

1 CONTRACTOR changes its status to operate as a corporation.

2 Members of the CONTRACTOR's Board of Directors shall disclose any self-
3 dealing transactions that they are a party to while CONTRACTOR is providing goods or
4 performing services under this agreement. A self-dealing transaction shall mean a transaction
5 to which the CONTRACTOR is a party and in which one or more of its directors has a material
6 financial interest. Members of the Board of Directors shall disclose any self-dealing
7 transactions that they are a party to by completing and signing a Self-Dealing Transaction
8 Disclosure Form, attached hereto as Exhibit A and incorporated herein by reference, and
9 submitting it to the COUNTY prior to commencing with the self-dealing transaction or
10 immediately thereafter.

11 15. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement
12 between the CONTRACTOR and COUNTY with respect to the subject matter hereof and
13 supersedes all previous Agreement negotiations, proposals, commitments, writings,
14 advertisements, publications, and understanding of any nature whatsoever unless expressly
15 included in this Agreement. *[If applicable, add the following: In the event of any inconsistency in*
16 *interpreting the documents which constitute this Agreement, the inconsistency shall be resolved*
17 *by giving precedence in the following order of priority: (1) the text of this Agreement (excluding*
18 *Attachment "A", the COUNTY'S Request for Quotation No. [click here to enter RFQ No.] and the*
19 *CONTRACTOR'S Quote in response thereto); (2) Attachment "A"; (3) the COUNTY'S Request for*
20 *Quotation No. [click here to enter RFQ No.]; and (4) the CONTRACTOR'S quotation made in*
21 *response to COUNTY'S Request for Quotation No. [click here to enter RFQ No.].]*

22 16. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

23 A. The parties to this Agreement shall be in strict conformance with all
24 applicable Federal and State of California laws and regulations, including but not limited to
25 Sections 5328, 10850, and 14100.2 et seq. of the Welfare and Institutions Code, Sections 2.1 and
26 431.300 et seq. of Title 42, Code of Federal Regulations (CFR), Section 56 et seq. of the
27 California Civil Code, Sections 11977 and 11812 of Title 22 of the California Code of Regulations,
28 and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to

1 Section 1320 D et seq. of Title 42, United States Code (USC) and its implementing regulations,
2 including, but not limited to Title 45, CFR, Sections 142, 160, 162, and 164, The Health
3 Information Technology for Economic and Clinical Health Act (HITECH) regarding the
4 confidentiality and security of patient information, and the Genetic Information Nondiscrimination
5 Act (GINA) of 2008 regarding the confidentiality of genetic information.

6 Except as otherwise provided in this Agreement, CONTRACTOR, as a
7 Business Associate of COUNTY, may use or disclose Protected Health Information (PHI) to
8 perform functions, activities or services for or on behalf of COUNTY, as specified in this
9 Agreement, provided that such use or disclosure shall not violate the Health Insurance Portability
10 and Accountability Act (HIPAA), 42 USC 1320d et seq. The uses and disclosures of PHI may not
11 be more expansive than those applicable to COUNTY, as the "Covered Entity" under the HIPAA
12 Privacy Rule (45 CFR 164.500 et seq.), except as authorized for management, administrative or
13 legal responsibilities of the Business Associate.

14 B. CONTRACTOR, including its subcontractors and employees, shall protect,
15 from unauthorized access, use, or disclosure of names and other identifying information, including
16 genetic information, concerning persons receiving services pursuant to this Agreement, except
17 where permitted in order to carry out data aggregation purposes for health care operations [45
18 CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)] This pertains to any
19 and all persons receiving services pursuant to a COUNTY funded program. This requirement
20 applies to electronic PHI. CONTRACTOR shall not use such identifying information or genetic
21 information for any purpose other than carrying out CONTRACTOR's obligations under this
22 Agreement.

23 C. CONTRACTOR, including its subcontractors and employees, shall not
24 disclose any such identifying information or genetic information to any person or entity, except as
25 otherwise specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164
26 or other law, required by the Secretary, or authorized by the client/patient in writing. In using or
27 disclosing PHI that is permitted by this Agreement or authorized by law, CONTRACTOR shall
28 make reasonable efforts to limit PHI to the minimum necessary to accomplish intended purpose

1 of use, disclosure or request.

2 D. For purposes of the above sections, identifying information shall include, but
3 not be limited to name, identifying number, symbol, or other identifying particular assigned to the
4 individual, such as finger or voice print, or photograph.

5 E. For purposes of the above sections, genetic information shall include genetic
6 tests of family members of an individual or individual, manifestation of disease or disorder of family
7 members of an individual, or any request for or receipt of, genetic services by individual or family
8 members. Family member means a dependent or any person who is first, second, third, or fourth
9 degree relative.

10 F. CONTRACTOR shall provide access, at the request of COUNTY, and in the
11 time and manner designated by COUNTY, to PHI in a designated record set (as defined in 45
12 CFR Section 164.501), to an individual or to COUNTY in order to meet the requirements of 45
13 CFR Section 164.524 regarding access by individuals to their PHI. With respect to individual
14 requests, access shall be provided within thirty (30) days from request. Access may be extended
15 if CONTRACTOR cannot provide access and provides individual with the reasons for the delay
16 and the date when access may be granted. PHI shall be provided in the form and format
17 requested by the individual or COUNTY.

18 CONTRACTOR shall make any amendment(s) to PHI in a designated record
19 set at the request of COUNTY or individual, and in the time and manner designated by COUNTY
20 in accordance with 45 CFR Section 164.526.

21 CONTRACTOR shall provide to COUNTY or to an individual, in a time and
22 manner designated by COUNTY, information collected in accordance with 45 CFR Section
23 164.528, to permit COUNTY to respond to a request by the individual for an accounting of
24 disclosures of PHI in accordance with 45 CFR Section 164.528.

25 G. CONTRACTOR shall report to COUNTY, in writing, any knowledge or
26 reasonable belief that there has been unauthorized access, viewing, use, disclosure, security
27 incident, or breach of unsecured PHI not permitted by this Agreement of which it becomes aware,
28 immediately and without reasonable delay and in no case later than two (2) business days of

discovery. Immediate notification shall be made to COUNTY's Information Security Officer and Privacy Officer and COUNTY's DPH HIPAA Representative, within two (2) business days of discovery. The notification shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or breached. CONTRACTOR shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State Laws and regulations. CONTRACTOR shall investigate such breach and is responsible for all notifications required by law and regulation or deemed necessary by COUNTY and shall provide a written report of the investigation and reporting required to COUNTY's Information Security Officer and Privacy Officer and COUNTY's DPH HIPAA Representative. This written investigation and description of any reporting necessary shall be postmarked within the thirty (30) working days of the discovery of the breach to the addresses below:

County of Fresno	County of Fresno	County of Fresno
Dept. of Public Health	Dept. of Public Health	Information Technology Services
HIPAA Representative	Privacy Officer	Information Security Officer
(559) 600-6439	(559) 600-6405	(559) 600-5800
P.O. Box 11867	P.O. Box 11867	2048 N. Fine Street
Fresno, CA 93775	Fresno, CA 93775	Fresno, CA 93727

H. CONTRACTOR shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR on behalf of COUNTY, in compliance with HIPAA's Privacy Rule, including, but not limited to the requirements set forth in Title 45, CFR, Sections 160 and 164. CONTRACTOR shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR on behalf of COUNTY, available to the United States Department of Health and Human Services (Secretary) upon demand.

CONTRACTOR shall cooperate with the compliance and investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during the

CONTRACTOR's normal business hours, however, upon exigent circumstances access at any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to CONTRACTOR and in possession of a Subcontractor, it must certify efforts to obtain the information to the Secretary.

I. Safeguards

CONTRACTOR shall implement administrative, physical, and technical safeguards as required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives, maintains or transmits on behalf of COUNTY and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI other than as provided for by this Agreement. CONTRACTOR shall conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidential, integrity and availability of electronic PHI.

CONTRACTOR shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of CONTRACTOR's operations and the nature and scope of its activities. Upon COUNTY's request, CONTRACTOR shall provide COUNTY with information concerning such safeguards.

CONTRACTOR shall implement strong access controls and other security safeguards and precautions in order to restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only. Said safeguards and precautions shall include the following administrative and technical password controls for all systems used to process or store confidential, personal, or sensitive data:

1. Passwords must not be:

- a. Shared or written down where they are accessible or recognizable by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;
- b. A dictionary word; or
- c. Stored in clear text

2. Passwords must be:

- a. Eight (8) characters or more in length;
- b. Changed every ninety (90) days;
- c. Changed immediately if revealed or compromised; and
- d. Composed of characters from at least three (3) of the following

four (4) groups from the standard keyboard:

- 1) Upper case letters (A-Z);
- 2) Lowercase letters (a-z);
- 3) Arabic numerals (0 through 9); and
- 4) Non-alphanumeric characters (punctuation symbols).

CONTRACTOR shall implement the following security controls on each workstation or portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive data:

- 1. Network-based firewall and/or personal firewall;
- 2. Continuously updated anti-virus software; and
- 3. Patch management process including installation of all

operating system/software vendor security patches.

CONTRACTOR shall utilize a commercial encryption solution that has received FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, compact disks and thumb drives) and on portable computing devices (including, but not limited to, laptop and notebook computers).

CONTRACTOR shall not transmit confidential, personal, or sensitive data via e-mail or other internet transport protocol unless the data is encrypted by a solution that has been validated by the National Institute of Standards and Technology (NIST) as conforming to the Advanced Encryption Standard (AES) Algorithm. CONTRACTOR must apply appropriate sanctions against its employees who fail to comply with these safeguards. CONTRACTOR must adopt procedures for terminating access to PHI when employment of employee ends.

J. Mitigation of Harmful Effects

1 CONTRACTOR shall mitigate, to the extent practicable, any harmful effect
2 that is suspected or known to CONTRACTOR of an unauthorized access, viewing, use,
3 disclosure, or breach of PHI by CONTRACTOR or its subcontractors in violation of the
4 requirements of these provisions. CONTRACTOR must document suspected or known harmful
5 effects and the outcome.

6 K. CONTRACTOR's Subcontractors

7 CONTRACTOR shall ensure that any of its contractors, including
8 subcontractors, if applicable, to whom CONTRACTOR provides PHI received from or created or
9 received by CONTRACTOR on behalf of COUNTY, agree to the same restrictions, safeguards,
10 and conditions that apply to CONTRACTOR with respect to such PHI and to incorporate, when
11 applicable, the relevant provisions of these provisions into each subcontract or sub-award to such
12 agents or subcontractors..

13 L. Employee Training and Discipline

14 CONTRACTOR shall train and use reasonable measures to ensure
15 compliance with the requirements of these provisions by employees who assist in the
16 performance of functions or activities on behalf of COUNTY under this Agreement and use or
17 disclose PHI and discipline such employees who intentionally violate any provisions of these
18 provisions, including termination of employment.

19 M. Termination for Cause

20 Upon COUNTY's knowledge of a material breach of these provisions by
21 CONTRACTOR, COUNTY shall either:

22 1. Provide an opportunity for CONTRACTOR to cure the breach or end
23 the violation and terminate this Agreement if CONTRACTOR does not cure the breach or end the
24 violation within the time specified by COUNTY; or

25 2. Immediately terminate this Agreement if CONTRACTOR has
26 breached a material term of these provisions and cure is not possible.

27 3. If neither cure nor termination is feasible, the COUNTY's Privacy
28 Officer shall report the violation to the Secretary of the U.S. Department of Health and Human

Services.

N. Judicial or Administrative Proceedings

COUNTY may terminate this Agreement in accordance with the terms and conditions of this Agreement as written hereinabove, if: (1) CONTRACTOR is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) there is a finding or stipulation that the CONTRACTOR has violated a privacy or security standard or requirement of the HITECH Act, HIPAA or other security or privacy laws in an administrative or civil proceeding in which the CONTRACTOR is a party.

O. Effect of Termination

Upon termination or expiration of this Agreement for any reason, CONTRACTOR shall return or destroy all PHI received from COUNTY (or created or received by CONTRACTOR on behalf of COUNTY) that CONTRACTOR still maintains in any form, and shall retain no copies of such PHI. If return or destruction of PHI is not feasible, it shall continue to extend the protections of these provisions to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents, if applicable, of CONTRACTOR. If CONTRACTOR destroys the PHI data, a certification of date and time of destruction shall be provided to the COUNTY by CONTRACTOR.

P. Disclaimer

COUNTY makes no warranty or representation that compliance by CONTRACTOR with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be adequate or satisfactory for CONTRACTOR's own purposes or that any information in CONTRACTOR's possession or control, or transmitted or received by CONTRACTOR, is or will be secure from unauthorized access, viewing, use, disclosure, or breach. CONTRACTOR is solely responsible for all decisions made by CONTRACTOR regarding the safeguarding of PHI.

Q. Amendment

The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of these provisions may be

1 required to provide for procedures to ensure compliance with such developments. The parties
2 specifically agree to take such action as is necessary to amend this agreement in order to
3 implement the standards and requirements of HIPAA, the HIPAA regulations, the HITECH Act and
4 other applicable laws relating to the security or privacy of PHI. COUNTY may terminate this
5 Agreement upon thirty (30) days written notice in the event that CONTRACTOR does not enter
6 into an amendment providing assurances regarding the safeguarding of PHI that COUNTY in its
7 sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA
8 regulations and the HITECH Act.

9 R. No Third-Party Beneficiaries

10 Nothing express or implied in the terms and conditions of these provisions is
11 intended to confer, nor shall anything herein confer, upon any person other than COUNTY or
12 CONTRACTOR and their respective successors or assignees, any rights, remedies, obligations or
13 liabilities whatsoever.

14 S. Interpretation

15 The terms and conditions in these provisions shall be interpreted as broadly
16 as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State
17 laws. The parties agree that any ambiguity in the terms and conditions of these provisions shall be
18 resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA
19 regulations.

20 T. Regulatory References

21 A reference in the terms and conditions of these provisions to a section in the
22 HIPAA regulations means the section as in effect or as amended.

23 U. Survival

24 The respective rights and obligations of CONTRACTOR as stated in this
25 Section shall survive the termination or expiration of this Agreement.

26 V. No Waiver of Obligations

27 No change, waiver or discharge of any liability or obligation hereunder on any
28 one or more occasions shall be deemed a waiver of performance of any continuing or other

obligation, or shall prohibit enforcement of any obligation on any other occasion.

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

CONTRACTOR

COUNTY OF FRESNO

(Authorized Signature)

Chairman, Board of Supervisors

Print Name & Title

Mailing Address

DATE:

DATE:

REVIEWED & RECOMMENDED FOR APPROVAL

Department Head's Signature

APPROVED AS TO LEGAL FORM

APPROVED AS TO ACCOUNTING FORM

County Counsel

Auditor-Controller/Treasurer-Tax Collector

FOR ACCOUNTING USE ONLY:

ORG No.: [click to type type org]
Account No.: [click to type type account]
Requisition No.: [click to type requisition number]

FCMC 06/11