

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Prepared on: 5/24/06
Department Name: Human Resources
Department No.: 064
Agenda Date: 6/6/06
Placement: Administrative
Estimate Time: N/A
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Susan Paul, Assistant CEO/HR Director
Human Resources Department

STAFF CONTACT: Scott Turnbull
x2821

SUBJECT: **Employee Benefits Consultant Contract**

Recommendation(s):

That the Board of Supervisors:

Approve the attached Employee Benefits Consultant contract with DriverAlliant at a first year cost of \$114,000, effective July 1, 2006 and authorize Asst. CEO/Human Resources Director to make any minor future administrative changes as necessary.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No. 3. A Strong, Professionally Managed County Organization.

Executive Summary and Discussion:

The County offers a wide variety of employee benefits to its employees including medical, dental, life, accident, disability, unemployment insurance, employee assistance, cafeteria plan options and other plans. These programs support employees' health and wellness and provide protection against personal catastrophic events. Employees enjoy favorable group rates as well as tax savings benefits by participating in the County's programs. In addition to the insurance plans, employees are covered by a variety of different leave laws including the federal Family & Medical Leave Act and California Family Rights Act which impact their rights to employee benefits.

These County employee benefits insurance and leave programs offer a competitive benefits package in order to recruit, retain and maintain the wellness of employees. These programs are governed by federal and state laws and regulations covered by Internal Revenue Service, Department of Labor, California Department of Fair Employment & Housing, COBRA, HIPAA and others. The increasing level of legal and administrative complexity requires the County to engage the services of specialized employee benefits consultants to negotiate, evaluate and recommend insurance products, advise and consult on the structure of plan offerings to maximize employee and employer contributions, reduce risk exposure, consider alternative funding methods, provide actuarial services, assist with employee communications, and provide information on legal and regulatory changes.

Since 1988, the County has retained the services of The Segal Company to provide these functions. In 2005, the County initiated an RFP process to identify the benefits consulting firm best qualified to serve the County's employee benefits needs. Fourteen companies submitted bids and six finalists were interviewed. The interviews were conducted by representatives from the CEO/Human Resources and Santa Barbara County Employee Retirement System offices which are most heavily involved in the health and welfare benefits programs. As a result of these interviews, DriverAlliant was selected as the consultant. They currently represent a large number of cities, counties and school districts and are the broker for the CSAC Excess Insurance Authority programs.

Fiscal and Facilities Impacts:

DriverAlliant has presented a contract for a 5 year term. The first year's cost is \$114,000 which will include all of the actuarial and benefits consulting services anticipated during the coming year. There are cost increases each year ending with \$132,000 in the fifth year. The funding source will be commissions previously earned on the current contracts. There is no additional cost to the County for DriverAlliant's services covered by the contract.

Special Instructions: Return two signed copies to Human Resources.

Concurrence: Auditor-Controller
County Counsel
Risk Management

cc: All Employee Organizations
Health Oversight Committee
Vicki Bouros, DriverAlliant

COUNTY OF SANTA BARBARA
EMPLOYEE BENEFITS CONSULTANT CONTRACT

PROFESSIONAL SERVICES AGREEMENT, made this 1st day of July, 2006 between the County of Santa Barbara, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), and Driver Alliant Insurance Services, Inc., a corporation duly organized and authorized to conduct business in the State of California (hereinafter referred to as "CONSULTANT").

THE PARTIES AGREE AS FOLLOWS:

SECTION 1. PURPOSE OF AGREEMENT. COUNTY has determined that a need exists for a consultant to provide certain services specified herein. CONSULTANT agrees to perform the services outlined in this contract and is retained by COUNTY to provide said services, all as more specifically detailed in Attachment 1, attached hereto and incorporated by reference.

SECTION 2. PERFORMANCE BY CONSULTANT. CONSULTANT hereby warrants that it has the qualifications, expertise, and experience to properly perform and complete the services it agrees to undertake. CONSULTANT shall undertake and perform the work diligently to conclusion, using that standard of care, skill and diligence normally provided by a professional person in the performance of such consulting services in work similar to that contemplated by this contract.

SECTION 3. CONSULTANT'S SERVICES. CONSULTANT shall diligently and expeditiously perform all necessary services to accomplish the Scope of Services as described in Attachment 1, attached hereto and incorporated by reference herein, or any modifications to said work agreed upon in writing by both parties.

SECTION 4. PROJECT MANAGER. CONSULTANT shall designate a Project Manager who shall represent it and be its agent in all consultations with COUNTY during the term of this AGREEMENT.

SECTION 5. TERM OF CONTRACT. This contract shall take effect July 1, 2006 subject to proper execution by both parties and after approval by the Santa Barbara County Board of Supervisors. This contract shall remain in effect until June 30, 2011 unless otherwise modified as required for completion of work or other reason, or terminated sooner as hereinafter provided.

SECTION 6. RESPONSIBILITY. The performance of the work pursuant to this agreement is the sole responsibility of CONSULTANT, and may not be assigned or delegated except as provided herein.

SECTION 7. INDEPENDENT CONTRACTOR. CONSULTANT is and shall be acting at all times as an independent contractor and not as an employee of the COUNTY. CONSULTANT shall secure, at their own expense, and be responsible for any and all payments of Income Tax, Social Security, Unemployment Compensation and other payroll deductions for CONSULTANT and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

SECTION 8. SUBCONTRACTORS. The performance of the contract may not be delegated except upon the written consent of COUNTY. CONSULTANT may assign monies due or to become due them under the contract, and such assignment will be recognized by COUNTY if given notice thereof, to the extent permitted by law, however, this contract is not otherwise assignable.

SECTION 9. DISCRIMINATION. In performing this Agreement, CONSULTANT will not engage in, nor permit its agents to engage in, discrimination in employment of persons protected by Federal, State or County law. Santa Barbara County's Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) prohibiting discrimination is incorporated herein.

SECTION 10. ASSIGNMENT. CONSULTANT will not assign any of its rights nor transfer any of its obligations under this Contract without COUNTY'S prior written consent, and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

SECTION 11. CALIFORNIA LAW. This Contract is governed by the laws of the State of California. Any litigation regarding this Contract or its contents must be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

SECTION 12. INDEMNIFICATION. CONSULTANT will indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs,

expenses (including attorney's fees), judgments or liabilities arising out of the negligent performance or attempted performance of the provisions hereof; including any willful or negligent act or omission to act on its part, or its agents or employees or other independent contractors directly responsible to it to the fullest extent allowable by law. CONSULTANT must notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Contract.

SECTION 13. INSURANCE. Without limiting your indemnification of the COUNTY, CONSULTANT will procure the following required insurance coverage at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the County Risk Manager. This insurance coverage must be maintained throughout the term of this Contract. Failure to comply with the insurance requirements will place you in default. Upon our request, you will provide a certified copy of any insurance policy within ten (10) working days.

13.1. Workers' Compensation Insurance. Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONSULTANT'S staff while performing any work related to the performance of this Contract. The policy must provide that no cancellation, major change in coverage, or expiration will be effective or occur until at least thirty (30) days after we receive notice of that event. If CONSULTANT is legally self-insured, it will furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if a) CONSULTANT has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Contract, and b) CONSULTANT has submitted to COUNTY a document stating that fact.

13.2. General and Automobile Liability Insurance. CONSULTANT'S *general liability* insurance must include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by it in the indemnity and hold harmless provisions of the Indemnification Section(s) of this Agreement between CONSULTANT and the County. The *automobile liability* insurance must cover all owned, non-owned and hired motor vehicles that are operated on its behalf pursuant to your activities hereunder. CONSULTANT is required to include all subcontractors under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. The COUNTY, its officers, employees, and agents shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the COUNTY has been added as an additional insured on the policy, must be attached to the certificate of

insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention (SIR) over \$10,000 requires approval by the County. Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. The policy or policies must contain a provision of the following form: "The insurance afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory." *If the policy is a "claims made" policy, you will maintain such a claims made policy for a minimum of three (3) years after expiration of the contract.* The policy or policies must provide that we will be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

SECTION 14. PROFESSIONAL LIABILITY INSURANCE. For those agreements where required, professional liability insurance shall include coverage for the activities of your professional staff with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. *If the policy is a "claims made" policy, you will maintain such a claims made policy for a minimum of three (3) years after the expiration of the contract.*

SECTION 15. COMPLIANCE WITH LAW, REGULATIONS, ETC. CONSULTANT shall obtain all licenses and permits necessary for the performance of the Scope of Services provided herein, and shall comply with all statutes, laws, ordinances, regulations, or administrative orders of any federal, state, or local governmental agency having jurisdiction over such matter.

SECTION 16. OWNERSHIP OF ALL DOCUMENTS. COUNTY will be the owner of the following items incidental to this Contract, upon production and whether or not completed: all data collected, all documents of any type whatsoever (paper or electronic), and any material necessary for the practical use of the data and/or documents from the time of collection and/or production, whether or not performance under this Contract is completed or terminated prior to completion. CONSULTANT agrees not to release any materials under this paragraph except after our prior written approval.

SECTION 17. USE OF MATERIALS PRODUCED. Although some or all of the material produced by the CONSULTANT under this Agreement may be subject to copyright in the United States, the

COUNTY shall have unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data or other materials prepared under this Agreement.

SECTION 18. RECORDS. CONSULTANT shall keep such business records pursuant to this Contract as would be kept by a reasonable prudent practitioner of its profession, and will maintain those records for at least four (4) years following the termination of this Contract. All accounting records must be kept in accordance with generally accepted accounting practices. COUNTY shall retain the right to audit and review all such documents and records at any time during CONSULTANT'S regular business hours or upon reasonable notice.

SECTION 19. CHANGES OR ADDITIONS. COUNTY may at any time, with CONSULTANT's agreement make any changes or additions in the services to be performed under this Agreement (including changes or revisions to previously approved documents or other elements of services) by amending this Agreement. If such changes or additions cause an increase or decrease in CONSULTANT's cost of doing the work under this Agreement, or in the time required for its performance, a mutually agreeable, equitable adjustment shall be made, and the Agreement shall be modified in writing accordingly. CONSULTANT's claims for an equitable adjustment shall be submitted to COUNTY and shall include a description of the effect of the change upon CONSULTANT's performing the services as changed. Any modification that would result in an extension of time of performance or an increase in compensation shall not be ordered or executed by COUNTY without prior written approval.

SECTION 20. CONFLICT OF INTEREST. CONSULTANT covenants that CONSULTANT presently has no interest and shall not acquire any interest, direct, or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

SECTION 21. RECORDS, AUDIT, AND REVIEW CONSULTANT must keep such business records pursuant to this Contract as would be kept by a reasonably prudent practitioner of its profession, and will maintain those records for at least four (4) years following the termination of this Contract. All accounting records must be kept in accordance with generally accepted accounting practices. COUNTY shall have the right to audit and review all such documents and records at any time during your regular business hours or upon reasonable notice.

SECTION 22. PAYMENTS. This Section applies to all work performed by CONSULTANT under this agreement. The services listed under the Scope of Services in Attachment 1 shall be provided for a fixed annual retainer of:

Term	Fixed Fee
Year 1	\$114,000
Year 2	\$118,000
Year 3	\$123,000
Year 4	\$128,000
Year 5	\$132,000

It is agreed that CONSULTANT shall be designated as broker of record with respect to all health and welfare benefits provided to COUNTY employees through a contract(s) of insurance and CONSULTANT will only receive commissions so designated by the COUNTY. All such commissions paid during the term of this AGREEMENT shall be applied as an offset to the compensation otherwise due the consultant during the period of this AGREEMENT. In addition to the compensation that the CONSULTANT receives, its related entity, Alliant Specialty Insurance Services, Inc. ("ASIS") may receive compensation from CONSULTANT and or the carrier for providing underwriting or program management services. The financial impact of the compensation received by ASIS is a cost included in the premium. Additionally, the related entities of Driver Signature Services and/or Strategic HR may receive compensation from Broker/or carrier for providing designated, value-added services. Services contracted for or by the client directly will be invoiced accordingly. Otherwise, services will be provided at the expense of the CONSULTANT and/or the carrier.

SECTION 23. TAXES. COUNTY will not be responsible for paying any taxes on your behalf, and should we be required to do so by state, federal, or local taxing agencies, you agree to promptly reimburse us for the full value of such taxes paid plus interest and penalty assessed, if any. These taxes include, but are not limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

SECTION 24. TERMINATION. This contract may be terminated in whole or in part upon thirty (30) calendar days written notice by COUNTY or CONSULTANT for any reason. In the case of a material breach of contract, the COUNTY may terminate the contract immediately upon service of notice to CONSULTANT. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the date such Notice of Termination is provided to CONSULTANT, and for such other services

which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be liable to pay more than the total fixed fee amount of the contract. Upon receipt of a Notice of Termination, CONSULTANT shall promptly discontinue all services affected, unless the notice directs otherwise. In the event of a termination for default, COUNTY reserves the right to take over and complete the work by contract or by any other means.

SECTION 25. HIPAA PRIVACY BUSINESS ASSOCIATE AGREEMENT. COUNTY and CONSULTANT acknowledge that the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1320 et seq., and its implementing regulations including but not limited to 45 Code of Federal Regulations parts 142, 160, 162, and 164 ("Privacy Rule"), mandate them to enter into a business associate agreement in order to safeguard protected health information that may be accessed during the performance of the Agreement. Said business associate agreement is specifically detailed in Attachment 2, attached hereto and incorporated by reference.

SECTION 26. AUTHORITY. By execution of this Agreement, each of the undersigned represents that they are duly and properly authorized officers to bind the respective party to terms and conditions of this Agreement and enter said Agreement on the party's behalf.

Passed and adopted by the Board of Supervisors of the County of Santa Barbara, State of California, this _____ day of _____, 2006 by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

Chair, Board of Supervisors

County Clerk of the Board

Driver Alliant Insurance Services, Inc.
Mark Conway
Senior Vice President

By: _____

By: _____

APPROVED AS TO FORM

County Counsel

By: _____

County Auditor-Controller

By: _____

County Risk Manager

By: _____

ATTACHMENT 1
Scope of Services

1. Annual Report

We will prepare an annual report analyzing claims experience, benefits paid, contributions, administrative expenses, gross and net cost of insured benefits, net cost of any self-insured coverages and other relevant items that pertain to the health benefits program.

This report will also include a projected income and expense budget and necessary premium/rate changes for the coming year based on an analysis of prior experience and known or anticipated factors affecting future operations. Together with an evaluation of the plan's reserve position, this budget should serve as a guide to financial and benefit planning decisions.

2. Consultation

We will be available for consultation on many aspects of the plan's operation as well as the plan's overall progress and development. Among the specific aspects are claims levels and trends, reserves and performance of the plan's various providers such as HMO's, third party administrators and insurance carriers.

We are available to consult with the County staff, Board of Supervisors, legal counsel and the administrator regarding changes to be made in the plan of benefits and eligibility for such benefits.

We will solicit competitive bids on behalf of the County for any or all of the health and welfare programs and make appropriate recommendations based on our findings.

3. Benefit Changes

We will provide advice to the County and then take appropriate action as authorized by the County for implementing any benefit changes including revision in premium and plan recordkeeping procedures, master policy certificates and plan amendments or modifications.

4. Benefit Provider Negotiations

As authorized by the County, we will negotiate with benefit providers to obtain appropriate adjustments in costs, level and type of service and such other matters as may arise in the plan's normal course of operation.

5. Self-Insured Benefits

In the event the plan provides some or all benefits through self insurance, we will calculate the appropriate reserve and claims trend factors that should be taken into account from a sound planning and policy point of view.

6. Communication with Participants

We will be available for consultation with the County or legal counsel to assist in drafting notices to plan participants about plan or administrative changes, updates of the Summary Plan Description, or other plan documents as required by plan or regulatory changes. Changes are to be made in an understandable manner, subject to review and approval by legal counsel.

7. Plan Administration Support

We will be available for consultation with the plan administrator, as requested, with regard to routine changes in forms and procedures and general recordkeeping, in terms of efficiency and cost. Compliance with the recordkeeping requirements of laws or regulations are matters subject to the advice of legal counsel. However, we will be available for consultation in this regard, from a non-legal standpoint.

8. Coordination with Other Professional Advisors

We will, as appropriate, coordinate our efforts with those of legal counsel, plan administrator, the auditor and investment advisors regarding policy matters of interest to the County and the efficient operation of the plan in general.

9. Trends in Legislation, New Benefits, Plan Design

By means of our periodic newsletters and special advisory reports, we will keep the County apprised of new developments in the employee benefits field that may bear upon planning and policy decisions.

10. Meetings

We will attend meetings, as appropriate. We will do preparation and follow-up work for these meetings. Of course, between meetings, we are continually available for consultation with the County, the plan administrator and plan's other professional advisors.

Any services not specified in the RFP may require additional compensation.

Attachment 2

HIPAA Business Associate Agreement

1. Use and Disclosure of Protected Health Information

Except as otherwise provided in this Exhibit, the Contractor may use or disclose protected health information ("PHI")¹ to perform functions, activities or services for or on behalf of the County, as specified in the underlying agreement, provided that such use or disclosure does not violate HIPAA or other law. The uses and disclosures of PHI may not exceed the limitations applicable to the County under the regulations except as authorized for management, administrative or legal responsibilities of the Contractor. PHI includes without limitation "Electronic Protected Health Information" ("EPHI")².

2. Further Disclosure of PHI

The Contractor shall not use or further disclose PHI other than as permitted or required by the underlying Agreement, or as required by law.

3. Safeguarding PHI

The Contractor shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the underlying Agreement. Contractor shall 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. The actions taken by the Contractor to safeguard EPHI shall include, but may not be limited to:

- a. Encrypting EPHI that it stores and transmits;
- b. Implementing strong access controls, including physical locks, firewalls, and strong passwords;
- c. Using antivirus software that is upgraded regularly;
- d. Adopting contingency planning policies and procedures, including data backup and disaster recovery plans; and
- e. Conducting periodic security training.

4. Unauthorized Use or Disclosure of PHI

The Contractor shall report to the County any use or disclosure of the PHI not provided for by the underlying Agreement or otherwise in violation of the Privacy Rule or Security Rule. Contractor shall report to County any security incidents within 10days of becoming aware of such incidents. For purposes of this paragraph, "security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system.

¹ "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

² "Electronic Protected Health Information" means Protected Health Information, which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

5. Agents and Subcontractors of the Business Associate

The Contractor shall ensure that any agent, including a subcontractor, to which the Contractor provides PHI received from, or created or received by the Contractor on behalf of the County, shall comply with the same restrictions and conditions that apply through the underlying Agreement to the Contractor with respect to such information. The Contractor shall ensure that any agent to whom it provides PHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such PHI. Contractor shall not use subcontractors or agents, unless it receives prior written consent from County.

6. Access to PHI

At the request of the County, and in the time and manner designated by the County, the Contractor shall provide access to PHI in a Designated Record Set to an Individual or the County to meet the requirements of 45 Code of Federal Regulations section 164.524.

7. Amendments to Designated Record Sets

The Contractor shall make any amendment(s) to PHI in a Designated Record Set that the County directs or at the request of the Individual, and in the time and manner designated by the County in accordance with 45 Code of Federal Regulations section 164.526.

8. Documentation of Uses and Disclosures

The Contractor shall document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 Code of Federal Regulations section 164.528. Contractor agrees to implement a process that allows for an accounting to be collected and maintained by Contractor and its agents or subcontractors for at least six years prior to the request, but not before the compliance date of the Privacy Rule.

9. Accounting of Disclosure

The Contractor shall provide to the County or an Individual, in the time and manner designated by the County, information collected in accordance with 45 Code of Federal Regulations section 164.528, to permit the County to respond to a request by the Individual for an accounting of disclosures of PHI in accordance with 45 Code of Federal Regulations section 164.528.

10. Records Available to Covered Entity and Secretary

The Contractor shall make available records related to the use, disclosure, security and privacy protection of PHI received from the County, or created or received by the Contractor on behalf of the County, to the County or to the Secretary of the United State Department of Health and Human Services for purposes of investigating or auditing the County's compliance with the HIPAA privacy and security regulations, in the time and manner designated by the County or the Secretary.

11. Destruction of PHI

a. Upon termination of the underlying Agreement for any reason, the Contractor shall:

- (1) Return all PHI received from the County, or created or received by the Contractor on behalf of the County required to be retained by the Privacy Rule; or
- (2) Return or destroy all other PHI received from the County, or created or received by the Contractor on behalf of the County.

This provision also shall apply to PHI in possession of subcontractors or agents of the Contractor. The Contractor, its agents or subcontractors shall retain no copies of the PHI. However, Contractor, its agents or subcontractors shall retain all protected information throughout the term of the underlying

Agreement and shall continue to maintain the information required under Section 8 of this Exhibit for a period of six years after termination of the underlying Agreement.

b. In the event the Contractor determines that returning or destroying the PHI is not feasible, the Contractor shall provide the County notification of the conditions that make return or destruction not feasible. If the County agrees that the return of the PHI is not feasible, the Contractor shall extend the protections of this Exhibit to such PHI and limit further use and disclosures of such PHI for so long as the Contractor, or any of its agents or subcontractors, maintains such PHI.

12. Amendments

The Parties agree to take such action as is necessary to amend the underlying Agreement as necessary for the County to comply with the requirements of the Privacy Rule and its implementing regulations.

13. Mitigation of Disallowed Uses and Disclosures

The Contractor shall mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of PHI by the Contractor in violation of the requirements of the underlying Agreement or the Privacy Rule.

14. Termination of Agreement

The County shall terminate the underlying Agreement upon knowledge of a material breach by the Contractor of which the Contractor fails to cure.

15. Definitions

Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those in the Privacy Rule.

16. Interpretation

Any ambiguity in this Exhibit shall be resolved to permit County to comply with the Privacy Rule and Security Rule.