

AGREEMENT FOR PROFESSIONAL SERVICES

Of

**CONTRACTOR ON PAYROLL
Not Subject to Retirement**

Between

COUNTY OF SANTA BARBARA

And

NANCY NUDELL KUPPERMAN, M.D.

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter "COUNTY") and Nancy Nudell Kupperman, M.D. (hereafter "CONTRACTOR") wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein:

WHEREAS, COUNTY contracts with substitute providers to backfill for regularly scheduled providers on an as needed basis in order to ensure full staffing for the Public Health Clinics; and

WHEREAS, CONTRACTOR has been providing substitute medical services in the Public Health Clinics for several years under Purchasing contracts; and

WHEREAS, CONTRACTOR has been providing services under Purchasing Contract #CN06046 and will reach the "not to exceed amount" of CONTRACTOR's contract in December 2007; and

WHEREAS, COUNTY desires to continue contracting with CONTRACTOR, a California licensed Physician with expertise/specialty in Pediatrics to provide substitute medical services in the Public Health Clinics.

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

1. **DESIGNATED REPRESENTATIVE.** Elizabeth Snyder, Public Health Department Assistant Deputy Director, Primary Care & Family Health Division, at phone number (805) 681-5252 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Dawn McGrew, Public Health Department Departmental Analyst at telephone number (805) 681-5205 is contract contact. Nancy Nudell Kupperman, M.D. at phone number (805) 682-2199 is the authorized representative for CONTRACTOR. Changes in Designated Representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, delivered as follows:

To COUNTY: Dawn McGrew
Contracts Unit
Public Health Department
County of Santa Barbara
300 North San Antonio Road
Santa Barbara, CA, 93110
Email: Dawn.McGrew@sbcphd.org

To CONTRACTOR: Nancy Nudell Kupperman, M.D.
4085 Cuervo Ave.
Santa Barbara, CA 93110

Or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. Mail.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to COUNTY in accordance with Exhibit A attached hereto and incorporated by reference herein.

4. **TERM.** CONTRACTOR shall commence performance on December 17, 2007 and end performance upon completion, but no later than June 14, 2009 unless otherwise directed by COUNTY or unless earlier terminated.

5. **COMPENSATION OF CONTRACTOR.** CONTRACTOR shall be paid for professional services under this Agreement in accordance with the terms of Exhibit B attached hereto and incorporated herein by reference. The maximum reimbursement under this Agreement shall not be exceeded during the term of this Agreement without a written notice from COUNTY.

6. **CONTRACTOR ON PAYROLL** CONTRACTOR understands and agrees that CONTRACTOR's term of employment is governed solely by this Agreement; that no right of tenure is created hereby; and that CONTRACTOR does not and will not, by virtue of this Agreement, hold a position in any department or office of the COUNTY and that CONTRACTOR's services to the COUNTY under this Agreement is authorized pursuant to Government Code Section 31000.

CONTRACTOR warrants that CONTRACTOR is fully licensed to perform all work contemplated in this Agreement, and CONTRACTOR agrees to submit, upon request, verification of licensure.

7. **PAID LEAVE.** CONTRACTOR shall receive paid leave as specified in Exhibit B. Paid leave shall be taken at a time determined and agreed upon in advance between CONTRACTOR, and COUNTY's designated representative. Accumulated paid leave must be taken within the contract period, as paid leave cannot be accrued to subsequent agreements; unused paid leave will be lost upon expiration of the Agreement. Prorated unused paid leave will be paid out if the contract is terminated early by COUNTY. CONTRACTOR may use his or her paid leave specified in Exhibit B for holidays, vacations, sickness, jury duty, and any other absence from work, and is not otherwise entitled to any additional paid holidays, vacation, sick leave or other leave. Special requirements may apply to CONTRACTOR's coding of his or her time card in order to be able to receive paid leave.

8. **RETIREMENT.** CONTRACTOR shall be a member of the Santa Barbara County Employees Retirement System ONLY if all of these conditions are true: 1) CONTRACTOR is required to work at least forty (40) hours per bi-weekly pay period; and 2) the Agreement is for over one thousand-forty hours (1040) in a one-year period; and 3) CONTRACTOR's assignment is not deemed by COUNTY to be temporary or seasonal. Retirement shall be pro-rated in eighths of a full-time equivalent (i.e. 4/8, 5/8, 6/8, 7/8, 8/8ths).

9. **OTHER BENEFITS.** Except as required by law, CONTRACTOR is not eligible for any other job benefits accruable to an employee in the classified service of the COUNTY, unless otherwise specified herein or in Exhibit B.

Benefits payable to CONTRACTOR pursuant to this Agreement are limited to:

- A. Travel Expense. CONTRACTOR may be permitted to use COUNTY vehicles as part of CONTRACTOR's assignment and shall maintain a valid California Driver's License.

As authorized by the hiring authority, CONTRACTOR may be paid travel expense reimbursement for mileage claims with prior written authorization.

- B. Employer Costs: Employer's share of either Social Security (aka FICA) or the Social Security Alternative Plan (aka SSAP); employer's share of federal Medicare health insurance; County workers' compensation insurance; and State unemployment insurance.

CONTRACTOR shall not be entitled to the following:

- A. Health Insurance. CONTRACTOR understands and agrees that CONTRACTOR is not and will not be eligible for membership in or any benefits from any COUNTY group plan or hospital, surgical or medical insurance.
- B. Other Professional Expenses. CONTRACTOR is responsible for licensure fees, subscriptions to journals and other professional expenses not specifically detailed in this Agreement.

COUNTY may reimburse CONTRACTOR for necessary and prior-approved out-of-pocket expenses while performing required services for COUNTY, in accordance with COUNTY policy. All travel claims and other claim documents, when applicable, must include the board contract number as shown on the first page of the Agreement. If the invoice does not properly reference the contract number, those invoices will be returned, delaying payment.

10. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that CONTRACTOR has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to COUNTY pursuant to this Agreement shall be prepared in a first class and professional manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY's request without additional compensation.

11. **TAXES.** The COUNTY shall pay CONTRACTOR for professional services pursuant to this Agreement, payable upon biweekly submission of a time card, which shall be subject to deductions and include withholding of State and Federal taxes as required by law.

12. **CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR 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. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR.

13. **RESPONSIBILITIES OF COUNTY.** COUNTY shall provide all information reasonably necessary by CONTRACTOR in performing the services provided herein.

14. **OWNERSHIP OF DOCUMENTS.** COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, 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 Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any materials under this section except after prior written approval of COUNTY.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents, or other materials prepared under this Agreement.

15. **RECORDS, AUDIT, AND REVIEW.** CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall 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 CONTRACTOR's regular business hours or upon reasonable notice.

16. **INDEMNIFICATION AND INSURANCE.** As a Contractor on Payroll, COUNTY will defend and indemnify CONTRACTOR against any claim, lawsuit, or judgment arising out of CONTRACTOR's duties under this Agreement

CONTRACTOR agrees to notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

CONTRACTOR shall bear the cost of CONTRACTOR's own defense and liability for any act or omission arising from professional duties outside the scope of this Agreement. Nothing contained herein shall be deemed to increase COUNTY'S liability beyond limitations set forth by law.

17. **NONDISCRIMINATION.** COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

18. **NON-EXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts

with others providing the same or similar services as those provided by CONTRACTOR, as the COUNTY desires.

19. **ASSIGNMENT.** CONTRACTOR shall not assign any rights nor transfer any obligations under this Agreement without the prior written consent of COUNTY 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.

20. **TERMINATION.** Either of the parties hereto may, for any reason prior to the expiration date of this Agreement, cancel and terminate this Agreement upon thirty- (30) day's written notice to the other. Upon a material breach of the terms and conditions of the Agreement by one of the parties, the non-breaching party (including Designated Representative's superiors) may terminate this Agreement upon the mailing of a written notice of termination to the breaching party. Written notification as required under this paragraph shall be given by CONTRACTOR to the COUNTY Designated Representative. Written notification by COUNTY shall be given to the CONTRACTOR. In the case of material breach (for example: gross negligent conduct, malpractice or criminal conduct, etc.) by CONTRACTOR, the Designated Representative or designee may immediately terminate the Agreement.

21. **NONAPPROPRIATION.** In the event that no funds or insufficient funds are appropriated and budgeted or otherwise not available for payments in the fiscal year covered by the term of the Agreement, then COUNTY will immediately contact CONTRACTOR of such occurrence and the Agreement may be terminated by COUNTY. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.

22. **SECTION HEADINGS.** The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

23. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

24. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

25. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

26. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

27. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties, or undertakings by any of the parties, either

oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended, or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

28. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

29. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at CONTRACTOR's sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY be a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

30. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall 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.

31. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

32. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity (ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

33. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

34. **BUSINESS ASSOCIATE.** The County is considered to be a "Hybrid Entity" under the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d et seq. and its implementing regulations including but not limited to 45 Code of Federal Regulations parts 142, 160, 162, and 164, ("Privacy and Security Rule"). The Contractor is considered to be a "Business Associate" under the Privacy Rule. Contractor must also comply with the Security Rule as a Business Associate, if under this Agreement; it receives, maintains or transmits any health information in electronic form in connection with a transaction covered by part 162 of title 45 of the Code of Federal Regulations.

The County and Contractor acknowledge that HIPAA mandates them to enter into a business associate agreement in order to safeguard protected health information that may be accessed during the

performance of this Agreement. The parties agree to the terms and conditions set forth in Exhibit E - HIPAA Business Associate Agreement.

Agreement for Services of Contractor on Payroll between the County of Santa Barbara and Nancy Nudell Kupperman, M.D.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective December 17, 2007.

COUNTY OF SANTA BARBARA

ATTEST
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Deputy

By: _____
Chair, Board of Supervisors

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W GEIS, CPA
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____
Deputy

APPROVED:
ELLIOT SCHULMAN, MD, MPH
DIRECTOR/HEALTH OFFICER
PUBLIC HEALTH DEPARTMENT

APPROVED AS TO FORM
RAY AROMATORIO, ARM, AIC
RISK PROGRAM ADMINISTRATOR

By: _____
Director

By: _____

Agreement for Services of Contractor on Payroll between the County of Santa Barbara and Nancy Nudell Kupperman, M.D.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective December 17, 2007.

CONTRACTOR

By: _____ Date: _____
Nancy Nudell Kupperman, M.D.

EXHIBIT A

STATEMENT OF WORK

SERVICES TO BE PROVIDED. It is agreed that under this Agreement, CONTRACTOR shall provide medical and professional services as listed below in accordance with the policies of the Public Health Department. Modifications in services may be made by mutual agreement provided such modifications do not result in compensation exceeding the total Agreement amount budgeted in any given fiscal year. Permanent service modifications will be noticed according to Section 2 of this Agreement by the County's Designated Representative.

I. HOSPITAL CARE

- A. Hospital care is not included as part of this contract for services.

II CLINIC CARE

- A. Attend and staff contracted and/or substituted hours at designated Public Health Clinics as scheduled and/or requested.
- B. Follow up all laboratory results, consultations and radiological or pathology studies ordered by CONTRACTOR.
- C. Document the patient visit in the medical record.
- D. Appropriately complete the Superbill by the end of each worked day.
- E. Review and counter sign charts as required if supervising a health care practitioner.

III. ADMINISTRATIVE

- A. Remain current on policies and procedures relative to the practice of CONTRACTOR's specialty at Santa Barbara County Public Health Department.

EXHIBIT B

Contractor On Payroll

COMPENSATION

COUNTY shall pay CONTRACTOR for professional services pursuant to this Agreement upon biweekly submission by CONTRACTOR of a time sheet and such payment shall be subject to deductions and include withholding of State and Federal taxes. In no event shall the compensation payable exceed the total sum of \$110,000 without written amendment. This not to exceed amount includes the following:

- \$110,000 for approximately 1,365 hours of work by CONTRACTOR at a rate of \$78.597 per hour.

EXHIBIT C

---- INTENTIONALLY OMITTED ----

THIS AGREEMENT DOES NOT INCLUDE EXHIBIT C

EXHIBIT D

---- INTENTIONALLY OMITTED ----

THIS AGREEMENT DOES NOT INCLUDE EXHIBIT D

Exhibit E

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. Requirement to Train Own Employees

The Contractor has a responsibility to provide effective training for all members of its workforce (including its own employees, management, staff, volunteers and independent contractors) who will or who are likely to have any access to or exposure to PHI or EPHI. Members of the Contractor's workforce who use, disclose, handle, view, process, distribute, access, audit, create, receive or have any exposure to PHI or EPHI must receive training on both the HIPAA Privacy Rule and the HIPAA Security Rule. Privacy Rule Training shall meet the requirements of 45 Code of Federal Regulations Section 164.530 (b). Security Rule Training shall meet the requirements of 45 Code of Federal Regulations Section 164.308 (a)(5).

3. 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.

4. 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.

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. 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 10 days 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Accounting of Disclosures

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.

11. 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.

12. 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 9 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.

13. 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.

14. 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.

15. 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.

16. Definitions

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

17. Interpretation

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