

**G.**

**22-1311:**

Consideration of entering into an Amendment to MCC No. 11295-18 with Merced County Public Health Department for utilization review for both counties to maintain Outpatient Rehabilitation Certification extending the term date to June 30, 2027 and authorize the Chairman to sign.



# BOARD OF SUPERVISORS COUNTY OF MADERA

MADERA COUNTY GOVERNMENT CENTER  
200 WEST 4<sup>TH</sup> STREET / MADERA, CALIFORNIA 93637  
(559) 675-7700 / FAX (559) 673-3302 / TDD (559) 675-8970  
Agendas available: [www.MaderaCounty.com](http://www.MaderaCounty.com)

## Members of the Board

Tom Wheeler  
Brett Frazier  
David Rogers  
Robert L. Poythress  
Leticia Gonzalez

## Board of Directors

January 10, 2023  
Chairman David Rogers

<b>DEPARTMENT</b> PUBLIC HEALTH DEPARTMENT	<b>DEPARTMENT CONTACT</b> Brian Cochran 559-675-7893	<b>AGENDA ITEM</b> <b>G</b> <b>CONSENT CALENDAR</b>								
<b>SUBJECT:</b> <b>Madera Merced Medical Therapy Program MOU</b>	<b>REQUIRED VOTE:</b> 3/5 Vote Required	<b>DOC. ID NUMBER</b> 22-1311								
<b>STRATEGIC FOCUS AREA(S):</b> Health										
<b>CLERK NOTES:</b> <div style="text-align: center;"><u>For Clerk of the Board's Office Use Only</u></div> <div><table><tr><td><b>RESULT:</b></td><td><b>[ TO ]</b></td></tr><tr><td><b>MOVER:</b></td><td>{{motions.mover format="[[firstname]] [[lastname]], [[title]]"}}</td></tr><tr><td><b>SECONDER:</b></td><td>{{motions.seconder format="[[firstname]] [[lastname]], [[title]]"}}</td></tr><tr><td><b>AYES:</b></td><td>{{voting.for_names format="[[lastname]]"}}</td></tr></table></div>			<b>RESULT:</b>	<b>[ TO ]</b>	<b>MOVER:</b>	{{motions.mover format="[[firstname]] [[lastname]], [[title]]"}}	<b>SECONDER:</b>	{{motions.seconder format="[[firstname]] [[lastname]], [[title]]"}}	<b>AYES:</b>	{{voting.for_names format="[[lastname]]"}}
<b>RESULT:</b>	<b>[ TO ]</b>									
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<b>SECONDER:</b>	{{motions.seconder format="[[firstname]] [[lastname]], [[title]]"}}									
<b>AYES:</b>	{{voting.for_names format="[[lastname]]"}}									
Is this item Budgeted? Yes Will this item require additional personnel? No Previous Relevant Board Actions: MCC No. 11295-18 PowerPoint Presentation? No Supporting Documents: Contract/Agreement/MOU		<b>DOCUMENT NO(S).</b>								

## RECOMMENDED ACTIONS:

Consideration of entering into an Amendment to MCC No. 11295-18 with Merced County Public Health Department for utilization review for both counties to maintain Outpatient Rehabilitation Certification extending the term date to June 30, 2027 and authorize the Chairman to sign.

## DISCUSSION / FISCAL IMPACT / STRATEGIC FOCUS:

The Madera County Public Health Department has partnered with Merced County Public Health since 2010 and we wish to continue this partnership for our respective Medical Therapy Units (MTU) programs. This MOU will consist of Madera County Public Health faxing required medical records to Merced County Public Health to be reviewed and Merced County Public Health faxing required medical records to Madera County Public Health to be reviewed. This program will not include any exchange of funds and exchange is mutually beneficial to both Counties.



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Tom Wheeler  
Brett Frazier  
David Rogers  
Robert L. Poythress  
Leticia Gonzalez

## ATTACHMENTS

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1. Amendment 01
2. MCC NO. 11295-18

**AMENDMENT 01  
TO  
CONTRACT NO. 2019023  
BETWEEN  
MERCED COUNTY PUBLIC HEALTH DEPARTMENT  
AND  
MADERA COUNTY PUBLIC HEALTH DEPARTMENT**

This Amendment to Contract No. 2019023, is executed by and between the County of Merced, a political subdivision of the State of California, (hereinafter called "County of Merced"), and Madera County Public Health Department (hereinafter called "County of Madera").

This Amendment is hereby annexed to and made a part of the printed part of the Agreement to which it is attached or modifies the existing Agreement between the parties. In each instance in which the provisions of this Amendment shall contradict or be inconsistent with the provisions of the printed portion of the original Agreement and any previous amendments, the provision of this Amendment shall prevail and govern and the contradicted or inconsistent provisions shall be deemed amended accordingly. Both parties agree that there is new and adequate consideration for this Amendment.

This Amendment shall be deemed to have been duly approved when executed by both parties to the original Agreement. Once duly approved, this Amendment shall become effective as of the date signed by the Chairman of the Merced County Board of Supervisors.

**MODIFICATIONS:**

1). Section III, entitled "TERMS OF UNDERSTANDING", is amended as follows: "This MOU will take effect immediately upon its execution of approval to continue through June 30, 2027."

Either Department may terminate this MOU upon thirty (30) days written notice without liabilities.

[Signatures on the next page]

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**County of Merced**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Lloyd Pareira, Jr.

\_\_\_\_\_  
Merced County Board of Supervisors

**County of Madera**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
David Rogers

\_\_\_\_\_  
Chairman, Board of Supervisors

APPROVED AS TO LEGAL FORM  
MERCED COUNTY COUNSEL

BY: \_\_\_\_\_

Approved as to Legal Form:  
COUNTY COUNSEL

By **Claire Chang**  
Digitally signed by: Claire Chang  
DN: CN = Claire Chang email =  
cchang@lozanosmith.com C = US O = Lozano Smith  
Date: 2022.12.21 12:05:50 -08'00'

ACCOUNT NUMBERS:

\_\_\_\_\_  
\_\_\_\_\_

CONTRACTING PARTIES:

MERCED CO. DEPT. PUBLIC HEALTH

MADERA CO. DEPT. PUBLIC HEALTH

TITLE OF CONTRACT:

CONTRACT NUMBER 2019023

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO: BOARD OF SUPERVISORS  
 THROUGH: COUNTY EXECUTIVE OFFICER  
 FROM: REBECCA NANYONJO-KEMP, DrPH, DIRECTOR OF PUBLIC HEALTH

Merced County Health Dept  
*[Signature]*

VENDOR OR CONTRACTOR Madera County Public Health Department  
 PRODUCT OR SERVICE Physical and Occupational Therapy Services  
 TYPE Memorandum of Understanding ACTION New No.  
 Process Other-Explain Date of last Competitive Process N/A  
 Original Contract Date N/A Date of last Board Action NA

**SCOPE OF SERVICES/SUMMARY**

The Medical Therapy Program (MTP) is a part of the Merced County Department of Public Health (Department) Children's Medical Services Program established to provide necessary to provide utilization review activities to eligible children in Merced County, as required in Chapter 26.5 of the California Government Code and the California Code of Regulations (CCR), Title 2, sections 60300-60610. Due to a shortage of qualified pediatric therapists in the local area the Department's former Director entered into a Memorandum of Understanding (MOU) with Madera County Public Health Department, to establish a mutually beneficial staff exchange program to provide mandated utilization review services for the MTP in both Counties.

This no-cost MOU allows a Madera County Physical Therapist to provide utilization review services in Merced County and a Merced County Occupational Therapist to provide utilization review services in Madera County, on a part-time basis, with each county responsible for its own expenses. The Department is asking for forgiveness for not bringing this MOU previously to the Board of Supervisors due to delayed negotiations and asks that the Board ratify the MOU with Madera County Public Health Department. The MOU will be effective July 1, 2018 to June 30, 2023.

**REQUIRED REVIEW:**

☒ Auditor-Controller ☒ CEO ☒ Risk ☒ Counsel ☒ Admin Services

Department Contact/Phone Diane Tollefson, Ext 1027

**REQUEST/RECOMMENDATION/ACTION NEEDED:**

1) Approve the no-cost Memorandum of Understanding between the Merced County Department of Public Health and the Madera County Public Health Department to provide utilization review services for the period of July 1, 2018 through June 30, 2023; and 2) Authorize the Chair to sign all copies of the no-cost agreement.

For Board Staff Only

Target Board Date: 1/29/19

**BOARD ACTION: 1/29/2019**

**LOR / MCDANIEL - APPROVED RECOMMENDATION**

**CONTRACT NO. 2019023**

**TO: HLTH**



**HE 1901**

**Page 2**

**Budget Unit** 40007

**Contract Period Beginning** 07/01/18

**Total Contract Amount** N/A

**Difference** N/A

**Budgeted Amount** N/A

**Funding Source**

**Account Number** NA

**Ending** 6/30/23 **Months** 60

**Prior Contract Amount** N/A

**Actual Expenditures** N/A

**Budget Transfer Attached** No

**Staffing Impact:** None

**Additional information if needed**

This Memorandum of Understanding was approved by the Madera County Board of Supervisors on November 20, 2018.





**DEPARTMENT OF PUBLIC HEALTH**

**Rebecca Nanyonjo-Kemp, DrPH**  
*Director*

February 5, 2019

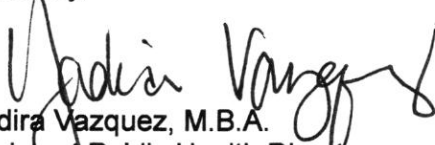
Sara Bosse, Director  
Madera County Department of Public Health  
14215 Road 28  
Madera, CA 93638

Dear Ms. Bosse:

Enclosed you will find one (1) fully executed memorandum of understanding approved by the Merced County Board of Supervisors at their meeting on January 29, 2019.

If you have questions, I can be reached at 209-381-1203.

Sincerely,



Yadira Vazquez, M.B.A.  
Assistant Public Health Director

YV:mc

RECEIVED

FEB 04 2019

Merced County Health Dept

## MEMORANDUM OF UNDERSTANDING

Between

Madera County Public Health Department

And

Merced County Public Health Department

This Memorandum of Understanding (MOU) establishes a beneficial staff program in the Medical Therapy Program (MTP) of the California Children's Services (CCS) Program in both counties.

### I. PURPOSE & SCOPE

The purpose of this MOU is to meet state regulations and statutes in Utilization Review for both Counties. Utilization Review Activities are needed to maintain Outpatient Rehabilitation Certification, which allows the County to bill Medi-Cal for reimbursement for Therapy services provided at the Medical Therapy Unit (MTU).

The Scope of this MOU includes both Madera and Merced Counties, using a licensed Physical Therapist or Occupational Therapist from each of their respective programs (staff) along with the Merced County Medical Consultant, to provide utilization review activities for Medi-Cal reimbursement including record review and utilization purposes, once per month, depending on staff and Medical Consultant availability. It is agreed that Madera County will fax the required medical records to Merced County to be reviewed and Merced County will fax the required medical records to Madera County to be reviewed. Each staff will conduct their activities within their respective professional guidelines and under the guidance of the host county MTP Program Coordinator and/or Supervising Therapist or CCS Administrator. The attached HIPAA Business Associate Addendum in ATTACHMENT A and ATTACHMENT B (one for each County) is hereby incorporated by reference in its entirety.

Each County is responsible for its own expenses relating to this MOU. There will not be an exchange of funds between the two Counties for tasks associated with this MOU.

Merced County will comply with the HIPAA Business Associate Addendum in ATTACHMENT A and Madera County will comply with the HIPAA Business Associate Addendum in ATTACHMENT B.

### II. RESPONSIBILITIES

#### MADERA COUNTY

CCS/MTU Program  
Title: PT/OT Unit Supervisor  
Address: 117 W. Dunham  
Phone: (559) 662-4815  
Fax: (559) 661-1228

#### MERCED COUNTY

CCS/MTU Program  
Title: Supervising Therapist  
Address: 123 South N Street  
Phone: (209) 381-5993  
Fax: (209) 723-1261

### III. TERMS OF UNDERSTANDING

This MOU will take effect immediately upon its execution of approval to continue through June 30, 2023.

Either department may terminate this MOU upon thirty (30) days written notice without liabilities.

### IV. AUTHORIZATION

The execution of this MOU is not a formal undertaking; it implies that the signatories will strive to reach, to the best of their abilities, the purpose and scope stated in the MOU.

 11/20/18

Sara Bosse, Director, Madera County Department of Public Health

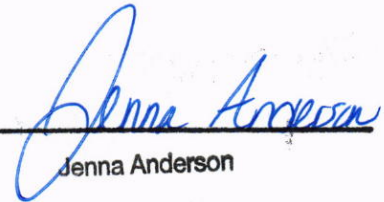
 1-29-19

Merced County Board of Supervisors

APPROVED AS TO LEGAL FORM

JAMES N. FINCHER  
MERCED COUNTY COUNSEL

BY:

  
Jenna Anderson



Approved as to Legal Form:  
COUNTY COUNSEL

By Dale E. Bacigalupi  
Digitally signed by: Dale E. Bacigalupi  
DN: CN = Dale E. Bacigalupi email =  
dbacigalupi@lozanosmith.com C = US  
Date: 2018.11.01 10:57:28 -08'00'

ACCOUNT NUMBERS:

\_\_\_\_\_  
\_\_\_\_\_

CONTRACTING PARTIES:

MADERA COUNTY PUBLIC HEALTH DEPARTMENT

MERCED COUNTY PUBLIC HEALTH DEPARTMENT

TITLE OF CONTRACT:

MEMORANDUM OF UNDERSTANDING  
\_\_\_\_\_  
\_\_\_\_\_



ATTACHMENT A  
HIPAA BUSINESS ASSOCIATE ADDENDUM

MADERA COUNTY DEPARTMENT OF HEALTH

This Health Insurance Portability Accountability Act (hereafter referred to as "HIPAA") Business Associate Addendum supplements and is made a part of the parties' underlying Agreement by and between Madera County and the other contracting party (referred to hereafter as "Business Associate").

Business Associate shall comply with, and assist the County in complying with, the privacy and security requirements of HIPAA, codified at Title 42 USC 1320d et seq., and its implementing regulations, including but not limited to Title 45 CFR, Parts 160 and 164, as amended from time to time, hereinafter collectively referred to as the "Privacy Rule" or "Security Rule" as appropriate. Terms used but not otherwise defined in this Addendum shall have the same meaning as those terms that are used in the Privacy Rule and Security Rule.

1. Use and Disclosure of Protected Health Information:

- a. Except as otherwise provided in this Addendum, Business Associate may use or disclose HIPAA protected health information (hereafter referred to as "PHI") or electronic protected health information (hereinafter referred to as "EPHI") to perform functions, activities or services for or on behalf of the County, as specified in this Addendum, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by the County or the minimum necessary policies and procedures of the County component.
- b. Except as otherwise limited in this Addendum, Business Associate may use and disclose PHI/EPHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that such disclosures are required by law or Business Associate obtains reasonable assurances from the person or entity to whom the information is disclosed that such PHI/EPHI will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person or entity, and that such person or entity notifies the Business Associate of the instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited by this Addendum, Business Associate may access PHI/EPHI to provide data aggregation services related to the health care operation of the County without disclosure of confidential information of individuals.

2. Safeguard of PHI/EPHI:

- a. Business Associate shall use reasonable and appropriate safeguards to prevent the use or disclosure of PHI/EPHI not provided for by this Addendum, the Privacy Rule, or the Security Rule.
- b. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of the County health care component as required by the HIPAA Security Rule.

3. Unauthorized Use or Disclosure of PHI/EPHI:  
Business Associate shall report to the County health care component any use or disclosure of PHI/EPHI not provided for by this Addendum, the Privacy Rule or the Security Rule.
4. Mitigation of Disallowed Uses and Disclosures:  
Business Associate shall mitigate, to the extent practicable, any harmful effects that are known to the Business Associate of a use or disclosure of PHI/EPHI by the Business Associate in violation of the requirements of this Addendum, the Privacy Rule or the Security Rule.
5. Agents and Subcontractors of the Business Associate:  
Business Associate shall ensure that any agent, including but not limited to a subcontractor, to which the Business Associate provides PHI/EPHI either created or received by the Business Associate from or on behalf of the County health care component, shall comply with the same restrictions and conditions of this Addendum, the Privacy Rule, and the Security Rule.
6. Access to PHI/EPHI:  
  
Business Associate shall provide access to any PHI/EPHI maintained by the Business Associate on behalf of the County health care component at the request of, and in a time and manner reasonably designated by the County health care component. The Business Associate shall also provide access to PHI/EPHI in accordance with the terms of the contractual Agreement hereunder in order for the County component to meet the requirements of the Privacy Rule and 45 CFR 164.524.
7. Amendment(s) to PHI and Addendum:
  - a. Business Associate shall make any amendment(s) to PHI/EPHI that the County health care component directs or at the request of the County, and in a time and manner designated by the County component in accordance with the Privacy Rule and 45 CFR 164.526.
  - b. Notwithstanding any provision to the contrary in the parties Agreement or this Addendum, the County health care component may amend this Addendum by providing ten (1) day prior written notice to Business Associate in order to maintain compliance with the Privacy Rule. Such amendment(s) shall be binding on the Business Associate at the end of the ten (1) day period and shall not require the further consent of the Business Associate. Business Associate may elect to discontinue the parties Agreement within the ten (1) day period, but the Business Associate's duties hereunder to maintain the security and privacy of PHI shall survive such discontinuance or termination. County component and Business Associate may otherwise amend this Addendum by mutual written consent.
8. Documentation of Uses and Disclosures:  
  
Business Associate shall document all disclosures of PHI/EPHI and information related to such disclosures in a manner as would be required for the County health care component to respond to a request by an individual for an accounting of disclosures of PHI/EPHI in accordance with the Privacy Rule and 45 CFR 164.528.



9. Accounting of Disclosures:

Business Associate shall provide to the County health care component, in the time and manner reasonably designated by the County component, information collected in accordance with 45 CFR 164.528 and the Privacy Rule, to permit the County to respond to a request by an individual for an accounting of disclosures of PHI/EPHI pursuant to the Privacy Rule and 45 CFR 164.528.

10. Records Available to the County and the Secretary of HHS:

Business Associate shall make its internal practices and records related to the use, disclosure, and privacy protection of PHI/EPHI received from the County health care component, or created or received by the Business Associate on behalf of the County component, available to the County or to the Secretary of the Health and Human Services ("HHS") for purposes of the Secretary of HHS in determining the County's compliance with the Privacy Rule and Security Rule in the time and manner reasonably designated by the County or the Secretary of HHS.

11. Federal Health Care Exclusion:

Business Associate shall provide to the County health care component written certification that no employee, subcontractor or agent of the Business Associate is on the list of Federal Health Care Excluded Individuals/Entities.

12. Transfer or Destruction of Information on Contract Termination:

Prior to or at the time of termination, for any reason, of the parties contractual Agreement with this Addendum, Business Associate with agreement of COUNTY shall elect to comply with one of the following procedures.

- a. Business Associate shall transfer or return to the County health care component all PHI/EPHI records and information that were either received from the County component or were created or received by the Business Associate on behalf of the County component. No copies of PHI/EPHI arising from this agreement may be kept. This provision applies to relative PHI/EPHI in the possession of employees, subcontractors or agents of the Business Associate. The PHI/EPHI and any related information created or received from or on behalf of the County component are and shall remain the property of the County. Business Associate agrees that it acquires no title in or rights to the information, including any de-identified information.
- b. Business Associate shall destroy all PHI/EPHI received from the County health care component, or created or received by the Business Associate on behalf of the County component. This provision shall apply to PHI/EPHI in possession of subcontractors or agents of the Business Associate. Business Associate, its employees, agents or subcontractors shall retain no copies of PHI/EPHI records or information.
- c. In the event that the Business Associate determines that neither transferring nor destroying such PHI/EPHI records or information is legally feasible, Business Associate shall provide the County health care component notification of the conditions that make transfer or destruction infeasible. Upon mutual agreement of the parties that transfer or destruction of the PHI/EPHI is not feasible, Business Associate shall extend the protections of this Addendum to such PHI/EPHI and limit as required by the Privacy Rule or Security Rule any further use or disclosures of such PHI/EPHI for so long as Business Associate, its successors, employees, agents or subcontractors, maintains such PHI/EPHI. Business Associate's obligation to

maintain the security and privacy of such PHI/EPHI shall survive the termination of the parties Agreement and this Addendum.

13. Material Breach and Termination:

Notwithstanding any other provision in the parties contractual Agreement hereunder, and this Addendum, if the County health care component becomes aware of a pattern of activity(s) that violates this Addendum, the Privacy Rule or the Security Rule by the Business Associate, its employees, agents or subcontractors, and reasonable steps to cure the violation(s) within thirty (30) days from the mailing of the written notice by the County to cure the violation(s) is unsuccessful, then the /County will terminate the parties Agreement and this Addendum, or if not feasible; report the violation(s) to the Secretary of the Health and Human Services. COUNTY at any time may exercise all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI/EPHI by the Business Associate, by any Business Associate employees, agents or subcontractors, or by any third party who has received PHI/EPHI from the Business Associate.

14. Indemnification and Hold Harmless:

Business Associate shall defend, indemnify and hold harmless the County and its respective employees and agents from and against any and all losses, costs, claims, damages, penalties, fines, liabilities, legal actions, judgments and expenses of every kind, including but not limited to reasonable attorney's fees, asserted or imposed against the County, or its employees or agents, arising out of the acts or omissions of Business Associate or any of its employees, agents or subcontractors related to the performance or non performance of this Addendum and compliance with the Privacy Rule and Security Rule.

15. Interpretation:

Any ambiguity in this Addendum shall be resolved to permit the County to comply with the Privacy Rule and Security Rule. There shall be no legal construction of this Addendum, its provisions or language against its drafter. If any provision of this Addendum is deemed by the court of proper jurisdiction to be illegal or unenforceable by law, all other remaining provisions and the parties intent under this Addendum are to be given full legal effect so as to further the protections of the private medical information under the Privacy Rule and Security Rule.

END OF DOCUMENT

Merced County Department of Public Health

Contract Number: \_\_\_\_\_

Addendum Number: \_\_\_\_\_

**ATTACHMENT B**  
**HIPAA BUSINESS ASSOCIATE ADDENDUM**

This Health Insurance Portability Accountability Act (hereafter referred to as "HIPAA") Business Associate Addendum supplements and is made a part of the parties underlying Agreement (Contract No.: \_\_\_\_\_) by and between Merced County and the other contracting party (referred to hereafter as "Business Associate").

Business Associate shall comply with, and assist the County in complying with, the privacy and security requirements of HIPAA, codified at Title 42 USC 1320d et. seq., and its implementing regulations, including but not limited to Title 45 CFR, Parts 160 and 164, as amended from time to time, hereinafter collectively referred to as the "Privacy Rule" or "Security Rule" as appropriate. Terms used but not otherwise defined in this Addendum shall have the same meaning as those terms that are used in the Privacy Rule and Security Rule.

1. Use and Disclosure of Protected Health Information:

a. Except as otherwise provided in this Addendum, Business Associate may use or disclose HIPAA protected health information (hereafter referred to as "PHI") or electronic protected health information (hereinafter referred to as "EPHI") to perform functions, activities or services for or on behalf of the County, as specified in this Addendum, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by the County or the minimum necessary policies and procedures of the County component.

b. Except as otherwise limited in this Addendum, Business Associate may use and disclose PHI/EPHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that such disclosures are required by law or Business Associate obtains reasonable assurances from the person or entity to whom the information is disclosed that such PHI/EPHI will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person or entity, and that such person or entity notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

c. Except as otherwise limited by this Addendum, Business Associate may access PHI/EPHI to provide data aggregation services related to

the health care operation of the County without disclosure of confidential information of individuals.

2. Safeguard of PHI/EPHI:

a. Business Associate shall use reasonable and appropriate safeguards to prevent the use or disclosure of PHI/EPHI not provided for by this Addendum, the Privacy Rule, or the Security Rule.

b. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of the County health care component as required by the HIPAA Security Rule.

3. Unauthorized Use or Disclosure of PHI/EPHI:

Business Associate shall report to the County health care component any use or disclosure of PHI/EPHI not provided for by this Addendum, the Privacy Rule or the Security Rule.

4. Mitigation of Disallowed Uses and Disclosures:

Business Associate shall mitigate, to the extent practicable, any harmful effects that are known to the Business Associate of a use or disclosure of PHI/EPHI by the Business Associate in violation of the requirements of this Addendum, the Privacy Rule or the Security Rule.

5. Agents and Subcontractors of the Business Associate:

Business Associate shall ensure that any agent, including but not limited to a subcontractor, to which the Business Associate provides PHI/EPHI either created or received by the Business Associate from or on behalf of the County health care component, shall comply with the same restrictions and conditions of this Addendum, the Privacy Rule, and the Security Rule.

6. Access to PHI/EPHI:

Business Associate shall provide access to any PHI/EPHI maintained by the Business Associate on behalf of the County health care component at the request of, and in a time and manner reasonably designated by the County health care component. The Business Associate shall also provide access to PHI/EPHI in accordance with the terms of the contractual Agreement hereunder in order for the County component to meet the requirements of the Privacy Rule and 45 CFR 164.524.

7. Amendment(s) to PHI and Addendum:

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8. Documentation of Uses and Disclosures:

Business Associate shall document all disclosures of PHI/EPHI and information related to such disclosures in a manner as would be required for the County health care component to respond to a request by an individual for an accounting of disclosures of PHI/EPHI in accordance with the Privacy Rule and 45 CFR 164.528.

9. Accounting of Disclosures:

Business Associate shall provide to the County health care component, in the time and manner reasonably designated by the County component, information collected in accordance with 45 CFR 164.528 and the Privacy Rule, to permit the County to respond to a request by an individual for an accounting of disclosures of PHI/EPHI pursuant to the Privacy Rule and 45 CFR 164.528.

10. Records Available to the County and the Secretary of HHS:

Business Associate shall make its internal practices and records related to the use, disclosure, and privacy protection of PHI/EPHI received from the County health care component, or created or received by the Business Associate on behalf of the County component, available to the County or to the Secretary of the Health and Human Services ("HHS") for purposes of the Secretary of HHS in determining the County's compliance with the Privacy Rule and Security Rule in the time and manner reasonably designated by the County or the Secretary of HHS.



#### 11. Federal Health Care Exclusion:

Business Associate shall provide to the County health care component written certification that no employee, subcontractor or agent of the Business Associate is on the list of Federal Health Care Excluded Individuals/Entities.

#### 12. Transfer or Destruction of Information on Contract Termination:

Prior to or at the time of termination, for any reason, of the parties contractual Agreement with this Addendum, Business Associate with agreement of COUNTY shall elect to comply with one of the following procedures.

a. Business Associate shall transfer or return to the County health care component all PHI/EPHI records and information that were either received from the County component or were created or received by the Business Associate on behalf of the County component. No copies of PHI/EPHI arising from this agreement may be kept. This provision applies to relative PHI/EPHI in the possession of employees, subcontractors or agents of the Business Associate. The PHI/EPHI and any related information created or received from or on behalf of the County component are and shall remain the property of the County. Business Associate agrees that it acquires no title in or rights to the information, including any de-identified information.

b. Business Associate shall destroy all PHI/EPHI received from the County health care component, or created or received by the Business Associate on behalf of the County component. This provision shall apply to PHI/EPHI in possession of subcontractors or agents of the Business Associate. Business Associate, its employees, agents or subcontractors shall retain no copies of PHI/EPHI records or information.

c. In the event that the Business Associate determines that neither transferring nor destroying such PHI/EPHI records or information is legally feasible, Business Associate shall provide the County health care component notification of the conditions that make transfer or destruction infeasible. Upon mutual agreement of the parties that transfer or destruction of the PHI/EPHI is not feasible, Business Associate shall extend the protections of this Addendum to such PHI/EPHI and limit as required by the Privacy Rule or Security Rule any further use or disclosures of such PHI/EPHI for so long as Business Associate, its successors, employees, agents or subcontractors, maintains such PHI/EPHI. Business Associate's obligation to maintain the security and privacy of such PHI/EPHI shall survive the termination of the parties Agreement and this Addendum.

### 13. Material Breach and Termination:

Notwithstanding any other provision in the parties contractual Agreement hereunder, and this Addendum, if the County health care component becomes aware of a pattern of activity(s) that violates this Addendum, the Privacy Rule or the Security Rule by the Business Associate, its employees, agents or subcontractors, and reasonable steps to cure the violation(s) within thirty (30) days from the mailing of the written notice by the County to cure the violation(s) is unsuccessful, then the County will terminate the parties Agreement and this Addendum, or if not feasible; report the violation(s) to the Secretary of the Health and Human Services. COUNTY at any time may exercise all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI/EPHI by the Business Associate, by any Business Associate employees, agents or subcontractors, or by any third party who has received PHI/EPHI from the Business Associate.

### 14. Indemnification and Hold Harmless:

Business Associate shall defend, indemnify and hold harmless the County and its respective employees and agents from and against any and all losses, costs, claims, damages, penalties, fines, liabilities, legal actions, judgments and expenses of every kind, including but not limited to reasonable attorney's fees, asserted or imposed against the County, or its employees or agents, arising out of the acts or omissions of Business Associate or any of its employees, agents or subcontractors related to the performance or non performance of this Addendum and compliance with the Privacy Rule and Security Rule.

### 15. Interpretation:

Any ambiguity in this Addendum shall be resolved to permit the County to comply with the Privacy Rule and Security Rule. There shall be no legal construction of this Addendum, its provisions or language against its drafter. If any provision of this Addendum is deemed by the court of proper jurisdiction to be illegal or unenforceable by law, all other remaining provisions and the parties intent under this Addendum are to be given full legal effect so as to further the protections of the private medical information under the Privacy Rule and Security Rule.