

# MEMORANDUM OF UNDERSTANDING (MOU) FOR DEVELOPMENT OF COLLABORATIVE AND REGIONAL HEALTH AND HUMAN SERVICES

**MOU Term:** July 1, 2016 through June 30, 2017

**THIS AGREEMENT** is made at Auburn, California, as of July 1, 2016, by and between the County of Placer, a political subdivision of the State of California ("County"), and the County of Nevada, a political subdivision of the State of California ("Primary Employer"), who agrees as follows:

1. **Services:** Subject to the terms and conditions set forth in this Agreement, Primary Employer shall provide the services of a Health and Human Services Agency (HHS) Program Manager ("Program Manager") as further described herein and in Exhibit A.
2. **Payment:** County shall pay Primary Employer at an hourly rate of \$101.96 per hour for 50% of all paid hours (inclusive actual hours worked and paid leave time), plus related approved expenses, for the services of the Program Manager, for a total contract maximum amount not to exceed **One Hundred Eleven Thousand Five Hundred Thirty Seven Dollars (\$111,537)** over the contract period. Primary Employer shall also be reimbursed for mileage/travel, training, meals, and other project-related expenses in accordance with County's current reimbursement rates/policies. Mileage, training, expenses and other County-approved costs are included in this contract maximum, and shall not exceed a total of **Five Thousand Five Hundred Dollars (\$5,500)**. Primary Employer shall provide invoices to the County on a quarterly basis, within 30 days of the close of each quarter. Invoices shall include detail of costs being claimed during the billing period. County will review, approve, and pay all valid invoices within 30 days of receipt.

Invoices for payment shall be submitted to the following address, and shall include the contract number indicated on the first page of this Agreement, the Primary Employer name and remittance address, and all additional specific information indicated herein:

Placer County HHS Fiscal  
Attn: Accounts Payable  
3091 County Center Drive, Suite 290  
Auburn, CA 95603

3. **Exhibits:** All exhibits referred to herein will be attached hereto and by this reference incorporated herein.
4. **Time for Performance:** Time is of the essence. Failure of Primary Employer to perform any services within the time limits set forth herein shall constitute material breach of this contract.
5. **Amendments:** This Agreement constitutes the entire Agreement between the parties. Any amendments or changes to this Agreement shall be agreed to in writing, specifying the change(s) and the effective date(s) and shall be executed by duly authorized representatives of both parties.
6. **Contingency of Funding:**
  - 6.1 This Agreement is valid and enforceable only if the County of Placer, State and/or the United States government make sufficient funds available to the County for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations or conditions enacted by the Congress or the State that may affect the provisions, terms, or funding of this Agreement in any manner.
  - 6.2 It is mutually agreed that if the Congress, State, or County of Placer does not appropriate the same level of funding that was anticipated by County at the time this Agreement was initiated, or if funding amounts are modified at any time during the term of this Agreement,

this Agreement may, at the discretion of County, be amended to reflect such changes in funding allocations.

- 6.3 County has the option to void the Agreement under the termination clause to reflect any reduction of funds.
- 6.4 Adjustments in funding shall be made through a written contract amendment, and shall include any changes required to the Scope in response to modifications in funding. The amount of such adjustment shall not exceed any augmentation or reduction in funding to County by the County of Placer, State and/or the United States government. Amendments issued in response to adjustments in funding shall be considered fully executed when approved by the Primary Employer and by the County. Primary Employer understands that amendments to this Agreement may not reflect the entire amount of any augmentation or reduction in funding provided to County for the subject services.

7. **Policies.** Program Manager of the Primary Employer provided herein is not an independent contractor. Primary Employer agrees that Program Manager, when performing duties pursuant to this Agreement, will adhere to all Primary Employer's applicable policies except as specifically provided in this Paragraph 7. Program Manager shall be provided a copy of this Agreement and execute an acknowledgement that he/she has received said copy. Program Manager shall, as exclusively provided in this Paragraph 7, be subject to the control and supervision of County regarding County employees and policies. Program Manager shall not have the authority to discipline or hire County employees but is expected to make recommendations to County regarding discipline and hiring. Program Manager shall be subject to the following Placer County Policies:

Placer County Administrative Rules Contained in the Placer Administrative Manual. These rules will apply to the Program Manager:

- Meals, Lodging, Travel & Transportation Policy
- Vehicle Policy
- County Office Hours and Work Schedule Policy –Exempt
- Mobile Communication Devices Policy
- Voicemail, Email, Internet & Computer Use Policy
- Data Network Security Standards Policy
- Drug & Alcohol Policy
- Reasonable Accommodation Policy & Procedures
- Workplace Discrimination, Harassment and Retaliation, Policy Against
- Workplace Relationships Policy
- Workplace Violence, Policy Against
- Use of County Facilities Policy

Placer County Safety and Health Program Manual. This policy will apply to the Program Manager.

Placer County Safety and Loss Prevention Manual. This policy will apply to the Program Manager.

Placer County Department Procedures for Reporting Job Related Injuries/Illness. This policy will apply to the Program Manager except that employee shall notify and pursue all worker's compensation and related claims through the Program Manager's existing policies related thereto.

Program Manager shall acknowledge in writing that she/he has been informed that the policies set forth in this section 7 apply to her/him and that he/she has been instructed as to their application by a member of the

Placer County Personnel Department and that she/he agrees to comply with these policies and understands that violations of said policies may be considered a breach of the MOU between Placer and Nevada County and may lead to the termination of said MOU.

8. **Licenses, Permits, Etc.:** Primary Employer represents and warrants to County that Program Manager has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Employee to practice its profession. Primary Employer represents and warrants to County that Primary Employer shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Program Manager to practice its profession at the time the services are performed.
9. **Time:** Program Manager shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Primary Employer's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.
10. **Insurance:** It is agreed that Primary Employer and County shall each maintain at all times during the performance of this Agreement insurance coverage or self-insurance in the amounts of not less than One Million Dollars (\$1,000,000) to cover all of its operations. Specifically, but not limited to, not less than One Million Dollars (\$1,000,000) general liability, One Million Dollars (\$1,000,000) automobile liability, One Million Dollars (\$1,000,000) workers' compensation, and One Million Dollars (\$1,000,000) professional liability (E&O).
11. **Indemnity:** Nothing herein shall be construed as a limitation of either party's liability, and each party shall defend, indemnify and hold harmless the other and its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, damages, losses and expense (including without limitation defense costs and attorney fees of litigation) which may arise or which such party may incur as a consequence of any occurrence arising out of this Contract which is occasioned in whole or in part by reason of the willful misconduct, or negligent actions or omissions of the indemnifying party's directors, officers, agents, servants, employees, or volunteers, reduced in proportion to and to the extent such claims are caused in whole or in part by any negligent or willful act or omission of the party being indemnified, or its directors, officers, agents, servants, employees or volunteers.
12. **Confidentiality:** County and Primary Employer agree to maintain confidentiality of information and records as required by applicable federal, state and local laws, regulations and rules, and further agree to hold each other harmless from any breach of confidentiality, as set forth in the hold harmless provisions contained herein.
13. **HIPAA Compliance:** This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations"). As set forth in this Agreement, Primary Employer is the Business Associate of County that provides services, arranges, performs or assists in the performance of functions or activities on behalf of County and creates, receives, maintains, transmits, uses or discloses protected health information (PHI). Primary Employer agrees to the provisions set forth in Exhibit B, HIPAA Business Associate Agreement Addendum, to satisfy certain standards and requirements of HIPAA and the HIPAA regulations, and other applicable laws.
14. **Primary Employer Not Agent:** Except as County may specify in writing Program Manager shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Program Manager shall have no authority, express or implied pursuant to this Agreement to bind County to any obligation whatsoever.

15. **Personnel:** Primary Employer shall assign only competent personnel to perform services pursuant to this Agreement. In the event that County, at any time during the term of this Agreement, is not satisfied with the performance of the person or persons assigned by Primary Employer to perform services pursuant to this Agreement, including those members of the Project Team as explained below, County shall notice Primary Employer immediately and Primary Employer and County shall meet and confer to resolve any issues. If unable to resolve the issues, County may terminate the Agreement according to the Termination Clause.
16. **Standard of Performance:** The Program Manager assigned by Primary Employer shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Program Manager is engaged in the geographical area in which Program Manager practices his/her profession. All products of whatsoever nature which Program Manager delivers to County pursuant to this Agreement shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in Program Manager's profession.
17. **Termination:**
- 17.1 County shall have the right to terminate this Agreement at any time by giving thirty (30) working days advance written notice of such termination to Primary Employer. In the event County shall give notice of termination, Primary Employer shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:
- 17.1.1 The Program Manager shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, Photostatting, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
- 17.1.2 County shall have full ownership and control of all such writings delivered by Program Manager pursuant to this Agreement.
- 17.1.3 County shall pay Primary Employer the reasonable value of services rendered by Program Manager to the date of termination pursuant to this Agreement not to exceed the amount documented by Primary Employer and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the Agreement specified herein, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Primary Employer had Primary Employer completed the services required by this Agreement. In this regard, Primary Employer shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by the Program Manager. The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.
- 17.2 Primary Employer may terminate its services under this Agreement upon thirty (30) working days' advance written notice to the County.
18. **Nondiscrimination:** During the performance of this Agreement, Primary Employer shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, including the provisions of the Americans with Disabilities Act of 1990, and Fair Employment and Housing Act, and will not discriminate against employees, applicants or clients because of race, sex, sexual orientation, color, ancestry, religion or religious creed, national origin or ethnic group identification, mental disability, physical disability, medical condition (including cancer, HIV and AIDS), age (over 40), marital status, use of Family and Medical Care Leave and/or Pregnancy

Disability Leave or any other class of individuals protected by federal, state or local law in regard to any position within the County.

19. **Records:** Primary Employer shall maintain, at all times, complete detailed records with regard to work performed under this Agreement in a form acceptable to County, and County shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this Agreement, no payments shall be made to Primary Employer until County is satisfied that work of such value has been rendered pursuant to this Agreement. However, County shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute. Primary Employer shall be subject to the examination and audit of the State Auditor General for a period of three years after final payment under contract (Government Code, Section 8546.7).
20. **Waiver:** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.
21. **Conflict of Interest:** Primary Employer certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this Agreement. In addition, Primary Employer agrees that no such person will be employed in the performance of this Agreement without immediately notifying the County.
22. **Entirety of Agreement:** This Agreement contains the entire agreement of County and Primary Employer with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.
23. **Governing Law:** This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this Agreement shall be brought under the jurisdiction of the Superior Court of the County of Nevada, State of California, and Primary Employer hereby expressly waives those provisions in California Code of Civil Procedure §394 that may have allowed it to transfer venue to another jurisdiction.
24. **Notification:** Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, and addressed to the parties as follows:

COUNTY OF PLACER:

Placer County Dept. of Health and Human  
Services  
Attn: Jeffrey S. Brown, M.P.H., M.S.W.  
Director  
3091 County Center Drive, Suite 290  
Auburn, CA 95603

PRIMARY EMPLOYER:

Nevada County Health and Human  
Services Agency  
Attn: Michael Heggarty, MFT,  
Director  
950 Maidu Ave., Suite 120  
Nevada City, CA 95959

Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

**IN WITNESS WHEREOF**, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the day first above stated:

COUNTY OF NEVADA ("PRIMARY  
EMPLOYER")

COUNTY OF PLACER ("COUNTY")

\_\_\_\_\_  
Dan Miller, Chair  
Board of Supervisors

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Julie Patterson Hunter  
Clerk of the Board of Supervisors

Date: \_\_\_\_\_

Approved as to Form  
Office of Nevada County Counsel

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey S. Brown, M.P.H., M.S.W., Director  
Department of Health & Human Services

Date: \_\_\_\_\_

Approved as to Form  
Office of Placer County Counsel

\_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBITS:**

Exhibit A: Scope of Services

Exhibit B: HIPAA Business Associate  
Agreement

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Services shall include the provision of consultative hours by the Nevada County Health and Human Services Agency's (HHSA) Truckee Program Manager to explore and develop collaborative programming between Placer and Nevada Counties HHS agencies. An average of twenty hours per week shall be provided to:

1. Explore and develop plans for the delivery of collaborative and regional adult and child mental health services, Adult Protective Services, and Child Welfare Services. The Directors of the Placer County Adult and Children's Systems of Care will provide programmatic direction for Adult System of Care (ASOC) and Children's System of Care (CSOC) issues, respectively.
2. Perform all tasks related to the position as the lead on-site manager for Placer County HHS programs and offices in North Lake Tahoe, including Tahoe City, Carnelian Bay, Tahoe Vista, and Kings Beach including, but not limited to, the following:
  - a. General management of Placer County HHS Tahoe operations, including ASOC, CSOC, Human Services, Public Health, Animal Services, and Environmental Health divisions
    - i. Address facility issues including snow removal, building evacuation, and bear incidents.
    - ii. Assure HHS programs are appropriately staffed and alert Placer HHS Director's Team of concerns or needs associated with department staffing, performance, etc.
    - iii. Provide input into HHS staff performance appraisals as requested by managers.
  - b. Emergency management and response, including coordination of mass care and shelter response to emergencies/disasters.
  - c. Contract monitoring.
  - d. Participation at stakeholder and department meetings.
    - i. Attend various division managers' meetings as scheduled, in person or by phone.
    - ii. Attend and facilitate attendance by other Tahoe regional partners at monthly meetings of the Campaign for Community Wellness (CCW).
    - iii. Assure representation by Placer at County or Primary Employer School Attendance Review Board meetings.
3. Provide community representation for Placer County HHS, including meetings of the Community Collaborative of Tahoe Truckee that will be augmented by appropriate Placer HHS management.
4. Meet monthly with executive staff from both Nevada County and Placer County HHS agencies to discuss agreed-upon priorities, and the availability and allocation of the Nevada County HHSA Program Manager's time.
5. Respond to inquiries from local stakeholders for information about Placer HHS programs.

Program Manager shall provide approximately 740 hours of consultation services during the contract term in the performance of the above duties. Consultation may be expanded to include other health and human service program areas upon the agreement of both parties.

Oversight of the Nevada County HHSA Truckee Program Manager's work performed under this Agreement will be conducted by the Placer County Director of Health and Human Services. However, if Program Manager perceives a conflict with County direction, Program Manager shall notify the Director of HHSA for both County and Primary Employer who shall meet in good faith to resolve the conflict. If the conflict is not resolved, this Agreement may be terminated pursuant to Paragraph 17.

## **EXHIBIT B**

### **PLACER COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES HIPAA BUSINESS ASSOCIATE AGREEMENT-ADDENDUM**

This is a **Business Associate Agreement-Addendum** made and entered into on this 1st day of July, 2016 between the County of Placer, a political subdivision of the State of California, hereinafter referred to as "COUNTY/Covered Entity" ("CE"), and County of Nevada, hereinafter referred to as "PRIMARY EMPLOYER/Business Associate" ("BA") supplements and is made part of the contract ("Contract") by and between COUNTY and PRIMARY EMPLOYER dated July 1, 2016. This Addendum is effective as of July 1, 2016 (the "Addendum Effective Date").

**Whereas** County/CE wishes to disclose certain information to PRIMARY EMPLOYER/BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below).

**Whereas** County/CE and PRIMARY EMPLOYER/BA intend to protect the privacy and provide for the security of PHI disclosed to PRIMARY EMPLOYER/BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services ("the HIPAA Regulations") and other applicable laws.

**Whereas** PRIMARY EMPLOYER/BA shall comply with the Business Associate Provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act (Section 13001 of Public Law 111-5, the HITECH Act regulations located in 45 CFR 160 & 164), including but not limited to Title 42, United States Code, Section 1320d et seq. and its implementing regulations (including but not limited to Title 45, Code of Federal Regulations (CFR), Parts 160, 162, and 164).

**Whereas** PRIMARY EMPLOYER/BA shall comply with the State of California regulations regarding the reporting of unauthorized releases of protected health information (PHI). The regulations are found in: Health and Safety Code Sections 1280.15, and Section 130203; and Civil Code Section 56.05.

**Whereas** as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require County/CE to enter into a contract containing specific requirements with PRIMARY EMPLOYER/BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Addendum.

**Whereas** County/CE will make available and/or be transferring to PRIMARY EMPLOYER/BA certain information, in conjunction with goods and services to be provided by PRIMARY EMPLOYER/BA as outlined in the Contract, that is confidential and must be afforded special treatment and protection;

**Whereas** PRIMARY EMPLOYER/BA will have access to and/or receive from County/CE certain information that can be used or disclosed only in accordance with this Business Associate Agreement-Addendum and the HHS privacy regulations;

**Whereas** PRIMARY EMPLOYER/BA does hereby assure County/CE that PRIMARY EMPLOYER/BA will appropriately safeguard protected health information made available to PRIMARY EMPLOYER/BA, in implementation of such assurance and without otherwise limiting the obligations of PRIMARY EMPLOYER/BA as set forth in the Contract;

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, **COUNTY/Covered Entity and CONTRACTOR/Business Associate agree as follows:**



## 1. **DEFINITIONS**

The following terms shall have the meaning ascribed to them in this section. Other terms shall have the meaning ascribed to them in the context in which they first appear.

- 1.1 **CONTRACT** - shall refer to the separate agreement between CE and BA for Consultative Services to develop collaborative programming between the Placer and Nevada Counties.
- 1.2 **BREACH** – shall have the meaning given to such term under HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402]
- 1.3 **BREACH NOTIFICATION RULE** – shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- 1.4 **BUSINESS ASSOCIATE** – shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- 1.5 **COVERED ENTITY** – shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- 1.6 **COUNTY** - shall mean the entity providing/making available the information.
- 1.7 **DATA AGGREGATION** – shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- 1.8 **DESIGNATED RECORD SET** – shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- 1.9 **ELECTRONIC PROTECTED HEALTH INFORMATION** – means Protected Health Information that is maintained in or transmitted by electronic media.
- 1.10 **ELECTRONIC HEALTH RECORD** – shall have the meaning given to such term in the HITECH Act, including, but not limited to 42 U.S.C. Section 17921.
- 1.11 **HEALTH CARE OPERATIONS** – shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. Section 164.501.
- 1.12 **INDIVIDUAL** - shall mean any person/client/patient who is the subject of the information, is a third-party beneficiary to this Business Associate Agreement - Addendum, and has the same meaning as the term “individual” as defined by 45 CFR 164.501.
- 1.13 **INFORMATION** - shall mean any “health information” provided to and/or made available by COUNTY to CONTRACTOR, and has the same meaning as the term “health information” as defined by 45 CFR 160.102.
- 1.14 **PARTIES** - shall mean COUNTY/Covered Entity and CONTRACTOR/Business Associate.
- 1.15 **PRIVACY RULE** – shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- 1.16 **PROTECTED HEALTH INFORMATION or PHI** – means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; and (ii) 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, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501]
- 1.17 **PROTECTED INFORMATION** – shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.

- 1.18 **SECRETARY** - shall mean the Secretary of the Department of Health and Human Services ("HHS") and any other officer or employee of HHS to whom the authority involved has been delegated.
- 1.19 **SECURITY INCIDENT** – shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- 1.20 **SECURITY RULE** – shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- 1.21 **UNSECURED PHI** – shall have the meaning given to such term under the HITECH ACT and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## **2. TERM**

The term of this agreement shall expire when all of the information provided by County/CE to PRIMARY EMPLOYER/BA is destroyed or returned to County/CE pursuant to the remaining Contract provisions. PRIMARY EMPLOYER/BA agrees to return or destroy all information received or created by PRIMARY EMPLOYER/BA on behalf of County/CE and agrees not to retain any copies of information after termination of the Contract. If PRIMARY EMPLOYER/BA elects to destroy some or all of the information retained, it shall certify to County/CE that the information has been destroyed. This provision survives termination of the Contract.

## **3. OBLIGATIONS OF CONTRACTOR/BUSINESS ASSOCIATE**

The HIPAA Business Associate Agreement (BAA) is required for all contracts in which an individual's protected health information is included in the contract between County/CE (a covered entity for HIPAA purposes) and a private individual or private business entity (Business Associate for HIPAA purposes). The purpose of the HIPAA Business Agreement is to ensure that the PRIMARY EMPLOYER/BA, during the performance of its contractual obligations with County/CE, protects the health information of individuals in accordance with State and Federal regulations.

**3.1 Permitted Uses.** PRIMARY EMPLOYER/BA shall use Protected Information only for the purpose of performing PRIMARY EMPLOYER/BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. Further, PRIMARY EMPLOYER/BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by County/CE. However, PRIMARY EMPLOYER/BA may use Protected Information as necessary (i) for the proper management and administration of PRIMARY EMPLOYER/BA; (ii) to carry out the legal responsibilities of PRIMARY EMPLOYER/BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.504(e) (2) and 164.504(e) (4) (i)].

**3.2 Permitted Disclosures.** PRIMARY EMPLOYER/BA shall disclose Protected Information only for the purpose of performing PRIMARY EMPLOYER/BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. PRIMARY EMPLOYER/BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by County/CE. However, PRIMARY EMPLOYER/BA may disclose Protected Information as necessary (i) for the proper management and administration of PRIMARY EMPLOYER/BA; (ii) to carry out the legal responsibilities of PRIMARY EMPLOYER/BA; (iii) as required by law; or (iv), for Data Aggregation purposes relating to the Health Care Operations of County/CE. If PRIMARY EMPLOYER/BA discloses Protected Information to a third party, PRIMARY EMPLOYER/BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify PRIMARY EMPLOYER/BA of any breaches, suspected breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with the Notification of Possible Breach requirements set forth in

this Addendum (subparagraph 3.12), to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

**3.3. Prohibited Uses and Disclosures.** PRIMARY EMPLOYER/BA shall not use or disclose PHI other than as permitted or required by the Contract and Addendum, or as required by law. PRIMARY EMPLOYER/BA shall not use or disclose Protected Information for fundraising or marketing purposes. PRIMARY EMPLOYER/BA shall not disclose Protected Information to a health plan for payment or health care operation purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. PRIMARY EMPLOYER/BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of County/CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d) (2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a) (5) (ii); however, this prohibition shall not affect payment by County/CE to PRIMARY EMPLOYER/BA for services provided pursuant to the Contract.

**3.4 Appropriate Safeguards.** PRIMARY EMPLOYER/BA shall implement appropriate safeguards to prevent the use or disclosure of Protected Information other than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e) (2) (ii) (B); 45 C.F.R. Section 164.308(b)]. PRIMARY EMPLOYER/BA shall comply with the policies and procedures and documentation requirements of the Security rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]

**3.5 Business Associate's Subcontractors and Agents.** PRIMARY EMPLOYER/BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of PRIMARY EMPLOYER/BA, agree in writing to the same restrictions and conditions that apply to PRIMARY EMPLOYER/BA with respect to such Protected Information and implement the safeguards required by paragraph 3.4 above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)] PRIMARY EMPLOYER/BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation. [45 C.F.R. Sections 164.530(f) and 164.530(e) (1)]

**3.6 Access to Protected Information.** If PRIMARY EMPLOYER/BA maintains a designated record set on behalf of County/CE, PRIMARY EMPLOYER/BA shall make Protected Information maintained by PRIMARY EMPLOYER/BA or its agents or subcontractors in Designated Record Sets available to County/CE for inspection and copying within five (5) days of a request by County/CE to enable County/CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If PRIMARY EMPLOYER/BA maintains Protected Information in electronic format, PRIMARY EMPLOYER/BA shall provide such information in electronic format as necessary to enable County/CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. Section 164.524.

**3.7 Amendment of PHI.** If PRIMARY EMPLOYER/BA maintains a designated record set on behalf of County/CE, within ten (10) days of a request by County/CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, PRIMARY EMPLOYER/BA and its agents and subcontractors shall make such Protected Information available to County/CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from PRIMARY EMPLOYER/BA or its agents or subcontractors, PRIMARY EMPLOYER/BA must notify County/CE in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by PRIMARY EMPLOYER/BA or its agents or subcontractors [45 C.F.R. Section 164.504(e) (2) (ii) (F)].

**3.8 Accounting Disclosures.** Promptly upon any disclosure of Protected Information for which County/CE is required to account to an individual, PRIMARY EMPLOYER/BA and its agents and subcontractors shall make available to County/CE the information required to provide an accounting of

disclosures which would allow County/CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by County/CE. PRIMARY EMPLOYER/BA agrees to implement a process that allows for an accounting to be collected and maintained by PRIMARY EMPLOYER/BA and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that PRIMARY EMPLOYER/BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to PRIMARY EMPLOYER/BA or its agents or subcontractors, PRIMARY EMPLOYER/BA shall within five (5) days of the request forward it to County/CE in writing.

**3.9 Governmental Access to Records.** PRIMARY EMPLOYER/BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to County/CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining PRIMARY EMPLOYER/BA's compliance with HIPAA [45 C.F.R. Section 164.5049eA)(2)(ii)(I)]. PRIMARY EMPLOYER/BA shall provide County/CE a copy of any Protected Information and other documents and records that PRIMARY EMPLOYER/BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.

**3.10 Minimum Necessary.** PRIMARY EMPLOYER/BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)] PRIMARY EMPLOYER/BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

**3.11 Data Ownership.** PRIMARY EMPLOYER/BA acknowledges that PRIMARY EMPLOYER/BA has no ownership rights with respect to the Protected Information.

**3.12 Notification of Possible Breach.** PRIMARY EMPLOYER/BA shall notify County/CE within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in and information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by PRIMARY EMPLOYER/BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the PRIMARY EMPLOYER/BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that County/CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited to, 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. PRIMARY EMPLOYER/BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e) (2) (ii) (c); 45 C.F.R. Section 164.308 (b)]

**3.13 Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.5404(e) (1) (ii), if the PRIMARY EMPLOYER/BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum

or other arrangement, the PRIMARY EMPLOYER/BA must take reasonable steps to cure the breach or end the violation. If steps are unsuccessful, the PRIMARY EMPLOYER/BA must terminate the Contract or other arrangement if feasible. PRIMARY EMPLOYER/BA shall provide written notice to County/CE of any pattern of activity or practice of a subcontractor or agent that PRIMARY EMPLOYER/BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with County/CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

**3.14 Audits, Inspection and Enforcement.** Within ten (10) days of a request by County/CE, PRIMARY EMPLOYER/BA and its agents and subcontractors shall allow County/CE or its agents or subcontractors to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether PRIMARY EMPLOYER/BA has complied with this Addendum or maintains adequate security safeguards; provided, however, that (i) PRIMARY EMPLOYER/BA and County/CE shall mutually agree in advance upon the scope, timing, and location of such an inspection, (ii) County/CE shall protect the confidentiality of all confidential and proprietary information of PRIMARY EMPLOYER/BA to which County/CE has access during the course of such inspection; and (iii) County/CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by PRIMARY EMPLOYER/BA. The fact that County/CE inspects, or fails to inspect, or has the right to inspect, PRIMARY EMPLOYER/BA's facilities, systems, books, records, agreements, policies, and procedures does not relieve PRIMARY EMPLOYER/BA of its responsibility to comply with this Addendum, nor does County/CE's (i) failure to detect or (ii) detection, but failure to notify PRIMARY EMPLOYER/BA or require PRIMARY EMPLOYER/BA's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of County/CE's enforcement rights under the Contract or Addendum. PRIMARY EMPLOYER/BA shall notify County/CE within five (5) days of learning that PRIMARY EMPLOYER/BA has become the subject of an audit, compliance review, or complaint investigation by the Office of Civil Rights or other state or federal government entity.

#### **4. HIPAA COMPLIANCE PLAN REQUIREMENT**

In order to ensure that the PRIMARY EMPLOYER/BA complies with Federal and State regulations regarding protected health information, the PRIMARY EMPLOYER/BA shall submit a "HIPAA Compliance Plan" to the County/CE describing:

- 4.1 The training of staff and any subcontractors regarding HIPAA and State regulations.
- 4.2 A process for tracking the training of staff and subcontractors.
- 4.3 A process for staff and subcontractors to report any breaches of protected health information. This shall include employee disciplinary procedures for employees who violate HIPAA guidelines, and whistle blower protection for staff reporting breaches.
- 4.4 A description of how the PRIMARY EMPLOYER/BA plans to secure and safeguard electronically stored health information. This shall include, at minimum, descriptions of passwords, encryption, and any other technology designed to prevent unauthorized access to protected health information.
- 4.5 A process for reviewing security measures and identifying areas of potential risk for a breach, a plan for mitigating identified risks, and assurance that such risk evaluation shall be conducted annually.

#### **5. DATA AGGREGATION SERVICES**

PRIMARY EMPLOYER/BA is also permitted to use or disclose information to provide data aggregation services as that term is defined by 45 CFR 164.501, relating to the health care operations of County/CE.

#### **6. TERMINATION**

A breach by PRIMARY EMPLOYER/BA of any provision of this Addendum, as determined by County/CE shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e) (2) (iii)]. County/CE may terminate the Contract, effective immediately, if (i) PRIMARY EMPLOYER/BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the PRIMARY EMPLOYER/BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has joined. Upon termination of the Contract for any reason, PRIMARY EMPLOYER/BA shall, at the option of County/CE, return or destroy all Protected Information that PRIMARY EMPLOYER/BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by County/CE, PRIMARY EMPLOYER/BA shall continue to extend the protections and satisfy the obligations of this Addendum to such information, and limit further use and disclosure of such PHI to those persons that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e) (ii) (2) (J)]. If County/CE elects destruction of the PHI, PRIMARY EMPLOYER/BA shall certify in writing to County/CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

## **7. ADDITIONAL BREACH GROUNDS**

Any non-compliance by PRIMARY EMPLOYER/BA with the provisions of this Business Associate Agreement Addendum or the HHS privacy regulations will automatically be considered grounds for breach if PRIMARY EMPLOYER/BA knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

## **8. INJUNCTIVE RELIEF**

Notwithstanding any rights or remedies provided for in the Contract, County/CE retains all rights to seek injunctive relief to prevent or stop unauthorized use or disclosure of information by PRIMARY EMPLOYER/BA or any agent, subcontractor or third party recipient of information from PRIMARY EMPLOYER/BA.

## **9. AMENDMENTS**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that County/CE must receive satisfactory written assurance from PRIMARY EMPLOYER/BA that PRIMARY EMPLOYER/BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of the amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. County/CE may terminate the Contract upon thirty (30) days written notice in the event (i) PRIMARY EMPLOYER/BA does not promptly enter into negotiations to amend the Contract or Addendum when requested by County/CE pursuant to this section or (ii) PRIMARY EMPLOYER/BA does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that County/CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

## **10. DISCLAIMER**

County/CE makes no warranty or representation that compliance by PRIMARY EMPLOYER/BA with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for PRIMARY EMPLOYER/BA's own purposes. PRIMARY EMPLOYER/BA is solely responsible for all decisions made by PRIMARY EMPLOYER/BA regarding the safeguarding of PHI.

**11. LITIGATION OR ADMINISTRATIVE PROCEEDINGS**

PRIMARY EMPLOYER/BA shall notify County/CE within forty-eight (48) hours of any litigation or administrative proceedings commenced against PRIMARY EMPLOYER/BA or its agents or subcontractors. In addition, PRIMARY EMPLOYER/BA shall make itself, and any subcontractors, employees and agents assisting PRIMARY EMPLOYER/BA in the performance of its obligations under the Contract or Addendum, available to County/CE, at no cost to County/CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against County/CE, its supervisors, directors, officers, managers or employees based upon a claimed violation of HIPAA, the HITECH Act, the HIPAA regulations, or other state or federal laws relating to security and privacy, except where the PRIMARY EMPLOYER/BA or its subcontractors, employees or agents are a named adverse parties.

**12. NO THIRD PARTY BENEFICIARIES**

Nothing express or implied in the Contract or Addendum is intended to confer, nor shall anything herein confer, upon any person other than County/CE, PRIMARY EMPLOYER/BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

**13. EFFECT ON CONTRACT**

Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.

**14. INTERPRETATION**

The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations, and other state and federal laws related to security and privacy. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the HIPAA regulations, and other state and federal laws related to security and privacy.

**15. SOFTWARE SECURITY**

If applicable, PRIMARY EMPLOYER/BA warrants that software security features will be compatible with the County/CE's HIPAA compliance requirements.

This HIPAA Business Associate Agreement-Addendum shall supersede any prior HIPAA Business Associate Agreements between County/CE and PRIMARY EMPLOYER/BA.

**IN WITNESS WHEREOF**, the parties hereto have caused their duly authorized representatives to execute this Business Associate Agreement-Addendum as of the day first above stated:

“COUNTY/ COVERED ENTITY”

“PRIMARY EMPLOYER/BUSINESS ASSOCIATE”

\_\_\_\_\_  
Jeffrey S. Brown, M.P.H., M.S.W.  
Director, Dept. of Health & Human Services.

\_\_\_\_\_  
Dan Miller  
Chair, Board of Supervisors

Date: \_\_\_\_\_

Date: \_\_\_\_\_