

MEMORANDUM OF UNDERSTANDING
Between
COUNTY OF FRESNO
And
CAL POLY CORPORATION, dba CAL POLY PARTNERS, SAN LUIS OBISPO

This Memorandum of Understanding (MOU) is entered into by and between the County of Fresno, a political subdivision of the State of California, through its Public Health Department (County), and Board of Trustees of the California State University through its campus Cal Poly Corporation, dba Cal Poly Partners, San Luis Obispo (Contractor). This MOU shall set forth the terms in which County and Contractor intend to work together to promote and study cardiovascular health among pregnant and postpartum people and infants in the County of Fresno.

Background

The National Institute of Health (NIH) has funded the Cal Poly Corporation, dba Cal Poly Partners, through its Cal Poly Center for Health Research to promote and study cardiovascular health among pregnant women and infants. This is a seven-year research project involving more than 400 participants in California and Rhode Island enrolled in programs with evidence-based home health visitation services, including Nurse Family Partnership, Healthy Families of America, and Parents as Teachers.

The grant is part of the NIH Early Intervention to Promote Cardiovascular Health of Mothers and Children (ENRICH) program to promote heart health and address health disparities in low-income pregnant and postpartum people and their infants living in low-resource communities.

The research will entail program development, implementation and evaluation of a new program designed to promote cardiac health in families. In collaboration with local home visiting partners, the program seeks to reduce such heart disease risk factors as obesity, sedentary lifestyles, smoking, poor diets, high blood pressure, and high glucose.

Cal Poly faculty, students, and staff from diverse disciplines are collaborating with counterparts at Brown University, a private research institution in Providence, Rhode Island, and other centers and home visiting programs across the nation to develop and evaluate the effectiveness of the heart health program relative to usual home visiting. The research team expects to develop and implement strategies around healthy eating, activity, obesity prevention and other cardiovascular health behaviors.

The objective of this research is to facilitate the prevention and treatment of cardiovascular health among pregnant and postpartum people and children.

Scope of Work: The Research project ("Project") entitled "ENRICH" as described in Attachment A, shall be performed on a reasonable efforts basis.

TERMS AND CONDITIONS:

- 1. TERM:** The term of this MOU shall become effective upon execution and terminate 06/01/2030 unless extended in writing executed by both County and Contractor.
- 2. COMPENSATION:** No funding will be associated with this agreement.
- 3. INDEPENDENT CONTRACTOR:** Contractor is an independent contractor, working under his/her own supervision and direction and is not a representative or employee of County.
- 4. MUTUAL HOLD HARMLESS:** Contractor shall defend, indemnify and hold harmless the County, its officials, officers, employees and agents from and against any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising out of Contractor's performance of this MOU but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Contractor, its officers, agents or employees. In the execution of this MOU, the Contractor hereby acknowledges and agrees that their scope of work is distinctly separate from that of the County. Furthermore, the Contractor assumes full responsibility for defending, indemnifying, and holding harmless the County, its officials, officers, employees, and agents from any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising directly from the Contractor's performance under this MOU. Such defense, indemnification, and hold harmless obligation shall only apply to the extent and in proportion to which such liability, loss, expense, attorney's fees, or claims for injury or damages arise from the negligent or intentional acts or omissions of the Contractor, its officers, agents, or employees.

The County shall defend, indemnify and hold harmless Contractor, its officers, employees and agents from and against any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising out of County's performance of this MOU, but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the County, its officers, agents or employees.

4.1 SURVIVAL. This section 4 survives the termination of this Agreement.

- 5. INSURANCE:** Without limiting the County's right to obtain indemnification from the Contractor or any third parties, Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

(A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a

per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.

- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- (E) **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) the Contractor shall maintain the policy and provide to the County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Contractor shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.
- (F) **Molestation Liability.** Sexual abuse / molestation liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence, with an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis.
- (G) **Cyber Liability.** Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include claims involving Cyber Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Contractor.

Definition of Cyber Risks. "Cyber Risks" include but are not limited to (i)

Security Breach, which may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) data breach; (iii) breach of any of the Contractor's obligations under [identify the Article, section, or exhibit containing data security obligations] of this Agreement; (iv) system failure; (v) data recovery; (vi) failure to timely disclose data breach or Security Breach; (vii) failure to comply with privacy policy; (viii) payment card liabilities and costs; (ix) infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (x) invasion of privacy, including release of private information; (xi) information theft; (xii) damage to or destruction or alteration of electronic information; (xiii) cyber extortion; (xiv) extortion related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; (xv) fraudulent instruction; (xvi) funds transfer fraud; (xvii) telephone fraud; (xviii) network security; (xix) data breach response costs, including Security Breach response costs; (xx) regulatory fines and penalties related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; and (xxi) credit monitoring expenses.

5.1 Additional Requirements

- (A) **Verification of Coverage.** Within 30 days after the Contractor signs this Agreement, and at any time during the term of this Agreement as requested by the County's Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County of Fresno, Department of Public Health, P.O. Box 11867, Fresno, CA 93775, Attention: Contracts Section – 6th Floor, or email, DPHContracts@fresnocountyca.gov, certificates of insurance and endorsements for all of the coverages required under this Agreement.
- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
 - (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor's policy.

- (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
- (iv) The professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
- (v) The cyber liability insurance certificate must also state that it is endorsed, and include an endorsement, to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Contractor.

(B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.

(C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.

(D) **County's Entitlement to Greater Coverage.** If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.

(E) **Waiver of Subrogation.** The Contractor waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.

(F) **County's Remedy for Contractor's Failure to Maintain.** If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under this Agreement.

(G) **Subcontractors.** The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize the Contractor to provide services under this Agreement using subcontractors.

6. ALTERATION OF TERMS: The body of this MOU fully expresses all understandings of the parties concerning all matters covered and shall constitute the total MOU. No addition to, or alteration of, the terms of this MOU whether by written or verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of written amendment to this MOU which is formally approved and executed by all parties.

7. NOTICES: All notices, claims, correspondence, reports and/or statements authorized or required by this MOU shall be addressed as follows:

County:

David Luchini, RN, PHN

Director – Department of Public Health

Health Agency: Fresno County Department of Public Health

County of Fresno

Address: 1221 Fulton Street

Fresno, CA 93721

Email: dluchini@fresnocountyca.gov

Phone: 559-600-3200

Contractor:

Name: Darya Veach

Title: Director, Sponsored Programs

Email: sponprog@calpoly.edu

Phone: 805-756-1123

8. Change of Contact Information. Either party may change the information in section 7 by giving notice as provided in section 9.

9. Method of Delivery. Each notice between the County and the City provided for or permitted under this Agreement must be in writing, state that it is a notice provided

under this Agreement, and be delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, by telephonic facsimile transmission, or by Portable Document Format (PDF) document attached to an email.

- a) A notice delivered by personal service is effective upon service to the recipient.
- b) A notice delivered by first-class United States mail is effective three County business days after deposit in the United States mail, postage prepaid, addressed to the recipient.
- c) A notice delivered by an overnight commercial courier service is effective one County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient.
- d) A notice delivered by telephonic facsimile transmission or by PDF document attached to an email is effective when transmission to the recipient is completed (but, if such transmission is completed outside of County business hours, then such delivery is deemed to be effective at the next beginning of a County business day), provided that the sender maintains a machine record of the completed transmission.

10. DISPUTE RESOLUTION: Any dispute resolution action arising out of this MOU shall be resolved in accordance with the laws of the State of California.

11. APPLICABLE LAW AND FORUM: This MOU shall be construed and interpreted according to California law.

12. TERMINATION:

1. Termination without cause.

This Agreement may be terminated by either Party without cause upon thirty (30) days written notice.

2. Termination with cause.

This Agreement may be terminated immediately by either Party if the terms of this Agreement are violated in any manner.

3. Other grounds for termination.

In the event that any other Agreement, as being related to or necessary for the performance of this Agreement, terminates or expires, this Agreement may be terminated upon the effective date of the termination of that Agreement, informal Agreement, even if such termination shall occur with less than thirty (30) days written notice.

13. PUBLICITY: The Corporation/University will not use the name of County, or its employees or subcontractor of Community Health Centers, in any publicity without approval. County shall not use the name of the University or Corporation, nor any of its employees, or other persons or entities affiliated with the project, in any publicity, advertising, or news release without the prior written approval of the authorized representative of the University or Corporation. Except for on-campus or internal

County newsletters and reports.

- 14. NON-DISCLOSURE:** Contractor and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of protected health information, records, and other information. Contractor shall not use or disclose protected health information or any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement. Contractor shall not use any confidential information gained by Contractor in the performance of this Agreement except for the sole purpose of carrying out Contractor obligations under this Agreement or as required by law. Anything in this Agreement to the contrary notwithstanding, any and all protected health information, knowledge, know-how, practices, process, or other information (hereinafter referred to as "Confidential Information") disclosed in writing or in other tangible form which is designated Confidential Information or which, if initially orally disclosed, is reduced to writing within forty-five (45) days of disclosure, to either party by the other shall be received and maintained by the receiving party in strict confidence and shall not be disclosed to any third party unless required by law.

Furthermore, neither party shall use said Confidential Information for any purpose other than those purposes specified in this Agreement. The parties may disclose Confidential Information to those requiring access thereto for the purpose of this Agreement provided, however, that prior to making any such disclosures, such employees shall be apprised of the duty and obligation to maintain Confidential Information in confidence and not use such information for any purpose other than in accordance with the terms and conditions of this Agreement. All parties agree to use reasonable efforts not to disclose any agreed to Confidential Information. Nothing contained herein will in any way restrict or impair either party's right to use, disclose, or otherwise deal with any Confidential Information which at the time of receipt:

- (a) was lawfully known by the receiving party before receipt of it from the disclosing party;
- (b) is or becomes generally available in the public domain, or thereafter becomes available to the public through no wrongful act or omission of the receiving party;
- (c) is rightfully provided to the receiving party by a third party, without restriction on disclosure or use;
- (d) is independently developed by personnel of the receiving party, without breach of the obligations of confidentiality set forth in this Agreement;
- (e) is explicitly approved for release by written authorization of the disclosing party, but only to the extent of and subject to such conditions as may be imposed in such written authorizations; or
- (f) is made available by the disclosing party to a third party, without restriction concerning use or disclosure and not in violation of any confidentiality agreement.

No party will be liable for disclosure of Confidential Information to the extent made: (a)

to comply with a valid Public Records Act request (as applicable to public entities); or (b) in response to a valid order of court or authorized government agency, provided that notice must first be given to the party owning the Confidential Information, so a protective order, if appropriate, may be sought by the owner. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Agreement. The above obligations for Confidential Information shall be in effect for a period of 1 year from the termination or expiration of the Agreement.

15. NO DELEGATION OR ASSIGNMENT: County and Contractor shall not delegate, transfer or assign its duties or rights under this MOU, either in whole or in part, directly or indirectly, by acquisition, asset sale, merger, change of control, operation of law or otherwise, without the prior written consent of the other party and any prohibited delegation or assignment shall render the contract in breach. Upon consent to any delegation, transfer or assignment, the parties will enter into an amendment to reflect the transfer and successor to Contractor or County.

16. SIGNATURE AUTHORITY: Each party has the full power and authority to enter into and perform this MOU, and the person signing this MOU on behalf of each party has been properly authorized and empowered to enter into this MOU.


17. MISCELLANEOUS There are no third-party intended beneficiaries of this Agreement. No provision of this Agreement may be waived or modified except in an amendment to this Agreement signed by both parties. No waiver shall be implied from the passage of time, and no waiver shall be construed to constitute an ongoing waiver.

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

Contractor:

Cal Poly Corporation, dba Cal Poly Partners, San Luis Obispo

Julia Mena on behalf of Darya Veach, Director, Sponsored Programs

Signature:  Date: 01/10/2025
Julia Mena (Jan 10, 2025 09:55 PST)

County of Fresno:

Ernest Buddy Mendes, Chairman of the Board of Supervisors of the County of Fresno

Signature: _____ Date: _____

EXHIBITS/ATTACHMENTS:

ATTACHMENT A: ENRICH National Institute of Health Study

ATTACHMENT B: HIPAA Business Associate Exhibit

ATTACHMENT A
ENRICH
National Institute of Health (NIH) Study

The goal of ENRICH is to determine the effectiveness of combining pre- and postnatal lifestyle interventions within established and sustained evidence-based home visiting programs, Nurse Family Partnership, Healthy Families America and Parents as Teachers to reduce cardiovascular disease risk factors in Hispanic and non-Hispanic birthing persons and children. During the initial 2-year phase, we will work with our home visiting partners in the development of a high-impact heart health program. During the subsequent 5-year phase, we will conduct a Hybrid Type 1 effectiveness-implementation trial in which we recruit 550 perinatal women (275 in CA and 275 in RI) who are randomized to receive a usual home visiting program or usual home visiting with heart health content integrated into the curriculum.

ENRICH is important for public health for many reasons

- The program has outstanding potential for reducing cardiovascular disease risk factors and interrupting the intergenerational transmission of obesity and cardiovascular disease risk factors in socially disadvantaged, Hispanic and non-Hispanic populations at high risk of cardiovascular disease morbidity and mortality.
- Our model of enhancing home visiting is very likely to have a sustained impact because it is part of an established home visiting infrastructure that has been in place for several years, ensuring sustainability of the implementation context.
- The approach has great potential to reduce the healthcare sector and societal health costs associated with cardiovascular disease.

Overall Procedures

1. Public Health staff will provide clients with program brochures related to the ENRICH program.
2. If a Public Health client requests more information regarding ENRICH, Public Health staff will provide the client a "Permission to Contact" form for voluntary client signature. Signed forms will be provided to Cal Poly representatives who will contact the client to provide more detailed information about the program. Forms may be completed using paper and pencil method or electronically.
3. Public Health client may also be identified through County electronic records and offered participation via telephone, email, text message, or by returning the permission to contact card to Cal Poly or Public Health staff.
4. If a Public Health client opts to enroll in the Cal Poly ENRICH, Cal Poly representatives will conduct study-related activities in accordance with institutionally approved protocols, including screening, consenting, and assessment activities. Public Health staff will integrate brief intervention modules into home visiting activities, as feasible.
5. For Public Health clients who have provided informed consent and volunteered to participate in ENRICH, Public Health staff may provide information about the client's attendance or contact information changes or other information to Cal Poly ENRICH staff in accordance with institutionally approved protocols.
6. When feasible, home visitors will attend training sessions describing the ENRICH heart health curriculum and provide the curriculum to their clients, as they deem appropriate.
7. Cal Poly will answer Public Health client's questions related to ENRICH and refer clients to Public Health staff if a client's questions are related to Public Health matters and care.

Cal Poly representatives will abide by the following procedures:

1. Coordinate with home visiting personnel regarding scheduled visits by Cal Poly personnel to clinics for training, recruitment or other purposes.
2. Inform Public Health staff of a client's participation in the study.
3. Provide home visitors with access to the ENRICH curriculum to deliver to their clients who have enrolled in the ENRICH intervention.
4. Provide home visitors with opportunities to attend training sessions describing the ENRICH heart health curriculum.
5. For Public Health clients who have provided informed consent and volunteered to participate in ENRICH,

Cal Poly may provide a limited scope of information about the client's measures to Public Health staff in accordance with institutionally approved protocols.

6. Maintain strict confidentiality of all participant records and ensure all HIPAA requirements are met throughout research study procedures.
7. Provide written and verbal confirmation to participants that participation in ENRICH is entirely voluntary and separate from usual home visiting services. Participants can withdraw from ENRICH at any time without adversely affecting their eligibility or receipt of usual home visiting services.
8. If a home visiting client withdraws from ENRICH, Cal Poly will in no way hold Public Health responsible or expect Public Health to convince a participant to re-enroll.

Public Health representatives will abide by the following procedures:

1. Offer (and not require) evidence-based home visiting clients the opportunity to participate in ENRICH.
2. Public Health staff may provide information about a client (e.g., contact information changes, attendance, or other information) to Cal Poly ENRICH staff in accordance with institutionally approved protocols and client consent.
3. When feasible, attend home visitor training sessions describing the ENRICH heart health curriculum and provide curriculum to consenting clients.

Attachment B
HIPAA Business Associate Exhibit

I. Recitals.

A. 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").

B. The County of Fresno ("County") wishes to, or may, disclose to Cal Poly Corporation, San Luis Obispo ("Business Associate") certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI") pursuant to HIPAA regulations.

C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health or dental care to an individual, or the past, present, or future payment for the provision of health or dental 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. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.

D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.

E. As set forth in this Agreement, Cal Poly Corporation, San Luis Obispo. ("Contractor") 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 PHI.

F. County and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations.

G. The purpose of this Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations, and other applicable laws.

H. The terms used in this Exhibit, but not otherwise defined, shall have the same meanings as those terms are defined in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

II. Permitted Uses and Disclosures of PHI by Business Associate.

A. ***Permitted Uses and Disclosures.*** Except as otherwise indicated in this Exhibit, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of County, provided that such use or disclosure would not violate the HIPAA regulations, if done by County.

B. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this Exhibit, Business Associate may:

- 1) ***Use and Disclose for Management and Administration.*** Use and disclose PHI for the

proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

III. Responsibilities of Business Associate.

Business Associate agrees:

A. ***Nondisclosure.*** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.

B. ***Safeguards.*** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of County; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide County with its current and updated policies.

C. ***Security.*** The Business Associate shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing County PHI. These steps shall include, at a minimum:

1) Complying with all of the data system security precautions listed in the Business Associate Data Security Standards set forth in Attachment 1 to this Exhibit;

2) Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the County ITSD Help Desk. Business Associate shall take:

- i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
- ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

3) ***Investigation of Breach.*** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. ***Within seventy-two (72) hours of the discovery,*** to notify the County:

- i. What data elements were involved, and the extent of the data involved in the breach,
- ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
- iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
- iv. A description of the probable causes of the improper use or disclosure; and
- v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.

4) ***Written Report.*** To provide a written report of the investigation to the County under

HIPAA within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

5) ***Notification of Individuals.*** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The County shall approve the time, manner and content of any such notifications.

6) ***County Contact Information.*** To direct communications to the above referenced County staff, Business Associate shall initiate contact as indicated herein. County reserves the right to make changes to the contact information below by giving written notice to the Business Associate. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

County of Fresno
Administration
Attn: HIPAA compliance officer
Address P.O. Box 11867, Fresno, CA 93775
Phone (559) 600-6403

D. ***Employee Training and Discipline.*** To train and use reasonable measures to ensure compliance with the requirements of this Exhibit by employees who assist in the performance of functions or activities on behalf of County under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Exhibit, including by termination of employment. In complying with the provisions of this section K, Business Associate shall observe the following requirements:

1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of County under this Agreement and use or disclose PHI.

2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.

3) Business Associate shall retain each employee's written certifications for County inspection for a period of six (6) years following contract termination.

IV. Obligations of County.

County agrees to:

A. ***Notice of Privacy Practices.*** Provide Business Associate with applicable and relevant Notice(s) of Privacy Practices that County HIPAA-covered healthcare components produce in accordance with 45 CFR 164.520, as well as any changes to such notice(s).

B. ***Permission by Individuals for Use and Disclosure of PHI.*** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.

C. ***Notification of Restrictions.*** Notify the Business Associate of any restriction to the use or disclosure of PHI that County has agreed to in accordance with 45 CFR 164.522, to the extent that such

restriction may affect the Business Associate's use or disclosure of PHI.

D. ***Requests Conflicting with HIPAA Rules.*** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by County.

V. Audits, Inspection and Enforcement.

From time to time, County may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Exhibit. Business Associate shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the County Privacy Officer or the County Chief Information Security Officer in writing. The fact that County inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Exhibit, nor does County's:

A. Failure to detect or

B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of County's enforcement rights under this Agreement and this Exhibit.

VI. Termination.

A. ***Termination for Cause.*** Upon County's knowledge of a material breach of this Exhibit by Business Associate, County shall:

1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by County;

2) Immediately terminate this Agreement if Business Associate has breached a material term of this Exhibit and cure is not possible; or

3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.

B. ***Judicial or Administrative Proceedings.*** Business Associate will notify County if it is named as a defendant in a criminal proceeding for a violation of HIPAA. County may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. County may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.

C. ***Effect of Termination.*** Upon termination or expiration of this Agreement for any reason, Business Associate shall promptly return or destroy all PHI received from County (or created or received by Business Associate on behalf of County) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Exhibit to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VII. Miscellaneous Provisions.

A. ***Disclaimer.*** County makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

B. ***Amendment.*** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit 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 HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon County's request, Business Associate agrees to promptly enter into negotiations with County concerning an amendment to this Exhibit embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. County may terminate this Agreement upon thirty (30) days written notice in the event:

1) Business Associate does not promptly enter into negotiations to amend this Exhibit when requested by County pursuant to this Section or

2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding and security of PHI that County, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

C. ***Assistance in Litigation or Administrative Proceedings.*** Business Associate shall make itself and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under this Agreement, available to County at no cost to County to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against County, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee, or agent is a named adverse party.

D. ***No Third-Party Beneficiaries.*** Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than County or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

E. ***Interpretation.*** The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

F. ***Regulatory References.*** A reference in the terms and conditions of this Exhibit to a section in the HIPAA regulations means the section as in effect or as amended.

G. ***Survival.*** The respective rights and obligations of Business Associate under Section VII. C of this Exhibit shall survive the termination or expiration of this Agreement.

H. ***No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Attachment 1

Business Associate Data Security Standards

I. General Security Controls.

A. **Confidentiality Statement.** All persons that will be working with County PHI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to County PHI. The statement must be renewed annually. The Business Associate shall retain each person's written confidentiality statement for County inspection for a period of six (6) years following contract termination.

B. **Background Check.** Before a member of the Business Associate's workforce may access County PHI, Business Associate must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Business Associate shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

C. **Workstation/Laptop Encryption.** All workstations and laptops that process and/or store County PHI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. The encryption solution must be full disk unless approved by the County Information Security Office.

D. **Server Security.** Servers containing unencrypted County PHI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

E. **Minimum Necessary.** Only the minimum necessary amount of County PHI required to perform necessary business functions may be copied, downloaded, or exported.

F. **Removable Media Devices.** All electronic files that contain County PHI data must be encrypted when stored on any removable media or portable device using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.

G. **Antivirus Software.** All workstations, laptops and other systems that process and/or store County PHI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

H. **Patch Management.** All workstations, laptops and other systems that process and/or store County PHI must have security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within thirty (30) days of vendor release.

I. **User IDs and Password Controls.** All users must be issued a unique user name for accessing County PHI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be changed every sixty (60) days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:

- Upper case letters (A-Z)

- Lower case letters (a-z)
- Arabic numerals (0-9)
- Non-alphanumeric characters (punctuation symbols)

J. **Data Sanitization.** All County PHI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the County PSCI is no longer needed.

II. System Security Controls.

A. **System Timeout.** The system must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.

B. **Warning Banners.** All systems containing County PHI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.

C. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for County PHI, or which alters County PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If County PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least six (6) years after occurrence.

D. **Access Controls.** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.

E. **Transmission Encryption.** All data transmissions of County PHI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level, or the data files containing County PHI can be encrypted. This requirement pertains to any type of County PHI in motion such as website access, file transfer, and E-Mail.

F. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting County PHI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

III. Audit Controls.

A. **System Security Review.** All systems processing and/or storing County PHI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews shall include vulnerability scanning tools.

B. **Log Reviews.** All systems processing and/or storing County PHI must have a routine procedure in place to review system logs for unauthorized access.

C. **Change Control.** All systems processing and/or storing County PHI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

IV. Business Continuity / Disaster Recovery Controls.

A. **Disaster Recovery.** Business Associate must establish a documented plan to enable

continuation of critical business processes and protection of the security of electronic County PHI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than twenty-four (24) hours.

B. ***Data Backup Plan.*** Business Associate must have established documented procedures to back-up County PHI to maintain retrievable exact copies of County PHI. The plan must include a regular schedule for making back-ups, storing back-ups offsite, an inventory of back-up media, and the amount of time to restore County PHI should it be lost. At a minimum, the schedule must be a weekly full back-up and monthly offsite storage of County data.

V. **Paper Document Controls.**

A. ***Supervision of Data.*** County PHI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. County PHI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

B. ***Escorting Visitors.*** Visitors to areas where County PHI is contained shall be escorted and County Protected Health Information shall be kept out of sight while visitors are in the area.

C. ***Confidential Destruction.*** County PHI must be disposed of through confidential means, using NIST Special Publication 800-88 standard methods for data sanitization when the County PSCI is no longer needed.

D. ***Removal of Data.*** County PHI must not be removed from the premises of the Business Associate except with express written permission of County.

E. ***Faxing.*** Faxes containing County PHI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.

F. ***Mailing.*** County PHI shall only be mailed using secure methods. Large volume mailings of County Protected Health Information shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with a County approved solution, such as a solution using a vendor product specified on the CSSI.