RESOLUTION - ACTION REQUESTED 2014-349

MEETING: July 15, 2014

TO: The Board of Supervisors

FROM: Chevon Kothari, Human Services Director

RE: Doctors Medical Center Inpatient Psychiatric Agreement with Behavioral Health

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Doctors Medical Center to provide inpatient psychiatric services for Mariposa County Behavioral Health in an amount not to exceed $20,000, and authorize the Board of Supervisors Chair to sign the Agreement.

The County does not operate psychiatric inpatient residential facilities and therefore contracts for such placements. Multiple contracts are necessary to meet the potential need for mental health emergency services because beds are in short supply throughout California. If the County limits the number of contracts, there would likely come a time that someone were in danger to themselves or others, and no bed space would be available.

Mental Health Board Review:
On recurring contract renewals, the Mental Health Advisory Board has set direction that such contracts will be available for review by the Mental Health Advisory Board members and do not require individual approval unless there are changes in the provisions of the contract. This contract meets these criteria and is submitted to the Board of supervisors for a positive action.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The existing contract was reviewed and approved by your Board on July 9, 2013 by Resolution No. 2013-282. Previous contracts were approved by Res. 2012-403, August 7, 2012; Res. 11-152, April 9, 2011; Res. 10-443 September 21, 2010; and by Res. 09-333 July 14, 2009.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If this contract is not approved, Behavioral Health crisis response workers may have greater difficulty in placing clients who require emergency psychiatric hospitalization.

FINANCIAL IMPACT:
This contract will continue to be paid within the Behavioral Health budget unit and does not affect the Mental Health Services Act corrective action plan. The cost will not exceed the daily rate of $1,312 per client per day as stated in Exhibit A of the contract. There is no impact to the County General Fund.

ATTACHMENTS:
Doctors Medical Center Agreement 2015 (PDF)
CAO RECOMMENDATION
Requested Action Recommended

Rick Benson, County Administrator

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: John Carrier, District V Supervisor
SECONDER: Lee Stetson, District I Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier
INPATIENT PSYCHIATRIC SERVICES AGREEMENT

This Inpatient Psychiatric Services Agreement ("Agreement") is made and entered into in the City of Modesto, State of California, by and between the Doctors Medical Center of Modesto, Inc., a California corporation ("DMC") and County of Mariposa, a political subdivision of the State of California ("COUNTY"), for and in consideration of the below recitals, and the mutual promises, covenants, and agreements as are hereinafter set forth.

A. DMC operates an acute inpatient psychiatric facility located at 1501 Clause Rd, Modesto, California 95355, and referred to herein as the DMC Behavioral Health Center ("BHC").

B. COUNTY is mandated to provide comprehensive inpatient psychiatric services for (i) Medi-Cal adult beneficiaries of County, (ii) adult indigent uninsured residents of County, and (iii) County prison inmates in need of "Restore to Competency Services" (as defined in Section 1.5 below) (collectively, the "County Patients").

C. COUNTY and DMC hereby agree that the best and most appropriate means of deriving the most efficient and economical use of the inpatient psychiatric facilities available in the Central California region is for DMC to contract with COUNTY for the care of County Patients at BHC.

D. DMC is willing to serve as a contracting agency with COUNTY for the care of adult County Patients in need of "Covered Services" (as defined in Section 1.2 below).

E. COUNTY desires to contract with DMC to provide Covered Services to County Patients in accordance with the terms and conditions contained in this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. SERVICES

1.1 The recitals above are a material part of this Agreement.

1.2 DMC shall provide medically necessary acute inpatient hospital psychiatric services ("Covered Services") to County Patients on a space available basis. As used herein, "Covered Services" shall mean acute inpatient hospital psychiatric services for the direct care and treatment of the acute crisis phase of a mental condition as defined in CCR, Title 9, § 1810.247(b).

1.3 DMC shall arrange for a licensed psychiatrist to provide daily professional psychiatric services to County Patients at BHC ("Professional Services"). Such Professional Services shall be limited to monitoring the County Patient’s treatment and prescribing necessary medication and ordering necessary clinical services, and shall be separate and distinct from Covered Services.
1.4 DMC shall also arrange for an authorized physician to conduct a history and physical for each County Patient at time of admission ("History and Physical").

1.5 When requested in advance by COUNTY and agreed to by DMC, DMC shall also provide Covered Services and arrange for Professional Services as necessary to restore an individual’s competency to stand trial pursuant to Penal Code § 1370.01 ("Restore to Competency Services").

1.6 Clinical services other than Covered Services, Professional Services, and Restore to Competency Services that may be needed and authorized in advance by COUNTY ("Additional Services") may be arranged for by mutual agreement between COUNTY and DMC.

1.7 Covered Services shall be provided to County Patients in a manner prescribed by the laws of the State of California and in accordance with the rules and regulations of relevant federal regulations.

1.8 Covered Services shall be provided under the direction of the BHC medical director and shall meet appropriate community standards.

1.9 DMC shall notify COUNTY of the proposed discharge date of all County Patients served under this Agreement. DMC will make reasonable efforts to assist COUNTY with discharge planning, including provision of clinical information necessary to support placement attempts and the referral of County Patients for appropriate aftercare services.

2. NON-DISCRIMINATION

2.1 DMC shall not employ any unlawful discriminatory practices in the admission of patients, assignment of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, sexual preference, mental or physical disability including individuals with AIDS or those with a record of or who are regarded as having a substantially limiting impairment, or cancer-related medical condition, pregnancy related condition, or political affiliation or belief in accordance with the requirements of applicable federal or state law.

2.2 DMC shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Welfare Agency, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.

2.3 The parties to this Agreement shall comply with applicable laws, regulations and state policies relating to patient rights.

3. CONFIDENTIALITY
3.1 The parties to this Agreement shall comply with California Welfare and Institutions Code § 5328 et seq. regarding the confidentiality of patient information.

3.2 DMC shall not disclose, except as otherwise specifically permitted by this Agreement, authorized by law or authorized by the County Patient or his/her legal representative, any patient identifying information to anyone other than COUNTY without prior written authorization from COUNTY and in accordance with state and federal laws.

4. HIPAA

DMC understands and agrees that this Agreement and certain data which may be exchanged hereunder is subject to the Health Insurance Portability and Accountability Act of 1996 and regulations issued or to be issued thereunder, as amended ("HIPAA"). Effective April 14, 2003, and to the extent applicable, DMC agrees to comply with HIPAA, including but not limited to HIPAA standards for (a) privacy, (b) code set, (c) data transmission standards, and (d) security regarding physical storage, maintenance, transmission of and access to individual health information.

5. ELIGIBILITY

5.1 Patients admitted to DMC must meet medical necessity and other admission criteria of DMC. A County Patient will not be admitted to DMC unless COUNTY provides information sufficient to demonstrate the medical necessity of Covered Services, and agrees to be financially responsible for such County Patient.

5.2 COUNTY must contact DMC in advance to verify whether space is available for a County Patient.

5.3 COUNTY must obtain prior approval from DMC before transporting a County Patient to DMC.

6. PAYMENT

6.1 COUNTY is financially responsible for all Covered Services, History and Physicals, Professional Services and Restore to Competency Services provided to County patients admitted to DMC under this Agreement. The rates for such services, except for Professional Services, are as set forth in this Agreement and at the rates set forth on Exhibit A, attached hereto and incorporated herein by reference. In no event shall the total services to be performed hereunder exceed Twenty Thousand Dollars ($20,000) for the period upon execution through the term of this Agreement. This exceeded dollar reimbursement shall not apply to Psychiatric Emergency Admissions. Emergency Psychiatric Admissions beyond $20,000.00 shall be reimbursed according to Exhibit A. Rates for Transportation and Professional Services are not included in this Agreement and shall be paid for by COUNTY separately. COUNTY shall pay for Additional Services at rates to be negotiated between the parties.

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6.2 If a County Patient is a Medi-Cal beneficiary, daily rates for Covered Services will be at the “Medi-Cal Inpatient Rate” as set forth on Exhibit A. For purposes of this Agreement, County Patients shall not include Medicare beneficiaries who qualify for Medi-Cal program assistance (i.e., “Medi-Medi patients”).

6.3 If a County Patient is not a Medi-Cal beneficiary, daily rates for Covered Services will be at the “Non Medi-Cal Inpatient Rate” as set forth on Exhibit A. In addition, COUNTY shall be billed the Non Medi-Cal Inpatient Rate for all County Patients whose Medi-Cal eligibility cannot be verified by DMC.

6.4 Charges for a History and Physical are the same for all County Patients and shall be paid for by COUNTY.

6.5 Charges for Restore to Competency Services are the same for all County Patients and shall be paid for by COUNTY.

6.6 DMC shall notify COUNTY when a County Patient no longer meets the medical necessity criteria to receive Covered Services and requires discharge, as defined by Medi-Cal and/or the discharge criteria of DMC. COUNTY shall have up to twenty-four (24) hours, after notification from DMC, if needed to make discharge arrangements for the County Patient. When a County Patient remains at DMC following the above notification, and no longer meets the medical necessity criteria to receive Covered Services COUNTY shall be billed for each day that such County Patient remains at DMC. Such additional days shall be referred to herein as “Administrative Days.” COUNTY shall be billed for each Administrative Day at the “Administrative Day Rate” in the amount set forth on Exhibit A. The Administrative Day Rate for Administrative Days applies to all County Patients.

6.7 The compensation set forth in this Section 6 is the total payment due to DMC for all Covered Services, History and Physicals, and Restore to Competency Services provided to County Patients at BHC pursuant to the terms of this Agreement. DMC shall not bill COUNTY for any Covered Services, History and Physicals or Restore to Competency Services provided to County Patients pursuant to this Agreement except as provided for in this Agreement.

6.8 COUNTY shall be responsible for transportation and other costs associated with delivering all County Patients to DMC, and transportation and other costs associated with the discharge of all County Patients back to COUNTY.

6.9 Termination of Funding: The parties acknowledge that the nature of government finance is unpredictable and that the rights and obligations set forth in this Contract are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Contract and all obligations of the County arising from this Contract shall be discharged upon 30 day written notification as indicated in Term section 9 of this Agreement. County agrees to inform Contractor no later than thirty (30) calendar days.
days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

7. BILLING AND PAYMENT PROCEDURES

7.1 DMC shall submit a claim to COUNTY no later than thirty (30) days following the date of each County Patient’s discharge from BHC. COUNTY shall make payment to DMC for all Covered Services, History and Physicals, and Restore to Competency Services within thirty (30) days after receipt of a claim.

7.2 Payments received by DMC more than forty-five (45) days from COUNTY’S receipt of a claim shall be assessed interest at the rate of the lesser of one percent (1%) per month or the maximum rate permitted by California law.

8. INDEMNIFICATION AND INSURANCE

8.1 Each of the parties hereto shall be solely liable for negligent or wrongful acts or omissions of its employees occurring in the performance of this Agreement, and if either party becomes liable for damages caused by its employees, it shall pay such damages without contribution by the other party. Each party hereto agrees to indemnify, defend and save harmless the other party, its officers, agents and employees from any and all claims and losses proximately caused by the party’s solely negligent or wrongful acts or omissions.

8.2 DMC shall maintain in force at all times during the performance of this Agreement, a policy or policies of insurance, or self insurance, covering all of its operations, including comprehensive general liability, workers’ compensation insurance and professional liability insurance. The limit of insurance shall not be less than One Million Dollars ($1,000,000) per occurrence combined single limit for bodily injury and/or property damage.

9. TERM

This Agreement shall commence as of the later of July 1, 2014 and or the execution of the Agreement continue through June 30, 2015. Either party may terminate this Agreement by giving at least thirty (30) days written notice to the other party.

10. RELATIONSHIP OF PARTIES

It is understood that this is an Agreement by and between two (2) independent contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other relationship. DMC employees providing services under this Agreement are not employees of COUNTY for any purposes whatsoever.
11. NOTICES

Any notice or communication required or permitted by this Agreement shall be deemed to have been given on the date when such notice or communication is personally delivered, delivered by overnight courier service, delivered by United States Mail, or sent via facsimile with confirmation of delivery, to the following:

If to DMC: Doctors Medical Center of Modesto, Inc.
1441 Florida Avenue
Modesto, California 95350
Attention: Chief Executive Officer

If to COUNTY: County of Mariposa
Behavioral Health and Recovery Services
Post Office Box 99
Mariposa, California 95338
Attention: [Signature]

12. AMENDMENT

This Agreement may be modified, amended, changed, added to, or subtracted from by mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

13. REFERENCES TO LAWS AND RULES

In the event any statute, regulation, or policy referred to in this Agreement is amended during the term of this Agreement; the parties shall comply with the amended provision as of the effective date of such amendment.

14. ASSIGNMENT

COUNTY shall not assign its rights or delegate its duties under this Agreement without first obtaining DMC's prior written consent. DMC may assign this Agreement at any time to any successor/operator of BHC, so long as such successor/operator of BHC agrees to abide by the terms and conditions of this Agreement.
15. **WAIVER OF DEFAULT**

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement.

16. **GOVERNING LAW; VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the City of Modesto, County of Stanislaus, State of California.

17. **ENTIRE AGREEMENT**

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter.

**IN WITNESS WHEREOF**, the parties have executed this Agreement through their duly authorized representatives as of the date first written above.

**COUNTY:**

**County of Mariposa**, a political subdivision of the State of California

By: 

Name: Kevin Cann
Board of Supervisors

Date: **7-16-14**

**DMC:**

**Doctors Medical Center of Modesto, Inc.**, a California corporation

By: 

Name: W. J. Kirk
Title: CEO

Date: **6/16/14**

**APPROVED AS TO FORM**

By: 

Name: Steven W. Dahlern
County Counsel

Date: **7/16/14**

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Tenet California
EXHIBIT A
RATES*

<table>
<thead>
<tr>
<th>Services</th>
<th>Reimbursement</th>
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<tr>
<td>Medi-Cal Inpatient Rate, Per Day</td>
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<tr>
<td>Non Medi-Cal / CMSP Inpatient Rate, Per Day</td>
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<td>(Rev code 169)</td>
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**Exclusions**

- Transportation -

  *Transportation services are the financial responsibility of the COUNTY.*

- Professional Fees -

  *Professional fees do not apply to this Agreement and shall be billed separately.*

**Notes.**

Rates shall be adjusted in accordance with the Short-Doyle/Medi-Cal Maximum Allowable Rates as promulgated by the California State Department of Mental Health. Rates are inclusive of Hospital fees only, professional fees are excluded.
ADDENDUM

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Addendum ("Addendum") supplements and is made a part of the contract ("Contract") between Mariposa County Behavioral Health Services referred to herein as Covered Entity ("CE"), and CONTRACTOR referred to herein as Business Associate ("BA"), for the term of July 1, 2014 through June 30, 2015. This Addendum is effective upon execution of the attached Agreement.

Recitals

CE wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, some of which may constitute Protected Health Information (PHI) (defined below).

CE and BA intend to protect the privacy and provide for the security of PHI disclosed to 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 (HITECH Act), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (HIPAA Regulations) and other applicable laws.

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

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

I. Definitions

A. Business Associate shall mean CONTRACTOR above and 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.

B. Covered Entity shall mean Mariposa County Behavioral Health Services and 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.

C. Breach shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].

D. 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.

E. 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.

F. Electronic Health Record Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media. It shall have the meaning given to such term in the HITECT Act, including, but not limited to, 42 U.S.C. Section 17921. 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.
G. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

H. **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; or the past, present or future payment for 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].

I. **Protected Information** shall mean PHI provided by CE to BA or created or received by BA on CE’s behalf.

J. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

K. **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).

II. **Obligations and Activities of Business Associate**

A. **Permitted Uses.** BA shall not use Protected Information except for the purpose of performing BA’s obligations under the Contract and as permitted under the Contract and Addendum. Further, 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 CE. However, BA may use Protected Information (i) for the proper management and administration of BA, (ii) to carry out the legal responsibilities of BA, or (iii) for Data Aggregation purposes for the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2)(i)(A) and 164.504(e)(4)(i)].

B. **Permitted Disclosures.** BA shall not disclose Protected Information except for the purpose of performing BA’s obligations under the Contract and as permitted under the Contract and Addendum. 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 CE. However, BA may disclose Protected Information (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of CE. If BA discloses Protected Information to a third party, 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 only disclosed as required by law or for the purposes for which is was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
C. **Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations 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)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.

D. **Appropriate Safeguards.** BA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 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)]. BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].

E. **Reporting of Improper Access, Use or Disclosure.** BA shall report to CE in writing of any access, use or disclosure of Protected Information not permitted by the Contract and Addendum, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 60 calendar days after discovery [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)].

F. **Business Associate’s Agents.** BA shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph D 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)]. 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 (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

G. **Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under 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 BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).

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

I. **Accounting Rights.** BA and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or 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 BA maintains an electronic health record and is subject to this requirement. 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. In the event that the request for an accounting is delivered directly to BA or its agents or subcontractors, BA shall within five (5) days of a request forward it to CE in writing. It shall be CE’s responsibility to prepare and deliver any such accounting requested. BA shall not disclose any Protected Information except as set forth in Sections 2.b. of this Addendum [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528].

J. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) for purposes of determining BA’s compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. BA shall provide to CE a copy of any Protected Information that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.

K. **Minimum Necessary.** BA (and its agents or 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)(3)]. 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.”

L. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
M. Notification of Breach. During the term of the Contract, BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use of disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Breaches shall be reported to either the Director or the Quality Management Supervisor of the CE. BA shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

N. Breach Pattern or Practice by Covered Entity. Pursuant to 42 U.S.C. Section 17934(b), if the BA knows of a pattern of activity or practice of the CE that constitutes a material breach or violation of the CE’s obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. BA shall provide written notice to CE of any pattern of activity or practice of the CE that BA believes constitutes a material breach or violation of the CE’s obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

O. Audits, Inspection and Enforcement. Within ten (10) days of a written request by CE, BA and its agents or subcontractors shall allow CE 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 BA has complied with this Addendum; provided, however, that (i) BA and CE shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) CE shall protect the confidentiality of all confidential and proprietary information of BA to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by BA. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA’s facilities, systems, books, records, agreements, policies and procedures does not relieve BA of its responsibility to comply with this Addendum, nor does CE’s (i) failure to detect or (ii) detection, but failure to notify BA or require BA’s remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE’s enforcement rights under the Contract or Addendum. BA shall notify CE within ten (10) days of learning that BA has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.
III. Termination of Contract related to breaches

A. Material Breach. A breach by BA of any provision of this Addendum, as determined by 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)].

B. Judicial or Administrative Proceedings. CE may terminate the Contract, effective immediately, if (i) 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 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 been joined.

C. Effect of Termination. Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA or its agents or 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 CE, BA shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(l)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed.

IV. Disclaimer

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

V. Certification

To the extent that CE determines that such examination is necessary to comply with CE’s legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE’s expense, examine BA’s facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which BA’s security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this Addendum.

VI. Amendment to Comply with Law

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract of 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 Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that 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 an amendment to this
Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or Addendum when requested by CE pursuant to this Section or (ii) BA does not enter not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

VII. Assistance in Litigation of Administrative Proceedings

BA shall make itself, and any subcontractors, employees or agents assisting BA in the performance of its obligations under the Contract or Addendum, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is named adverse party.

VIII. 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 CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

IX. 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.

X. 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 Privacy Rule and the Security Rule. 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 Privacy Rule and the Security Rule.
IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives as of the date first written above.

COUNTY:

County of __________________________ a political subdivision of the State of California

By: __________________________
Chairman

Print Name: Kevin Cann
Mariposa County Board of Supervisors
Date: 7-16-14

DMC:

Doctors Medical Center of Modesto, Inc., a California corporation

By: __________________________

Print Name: Warrick Kim
Title: CEO
Date: 6/16/14

APPROVED AS TO FORM

By: __________________________

Print Name: Steven W. Dahlem
Mariposa County Counsel
Date: 7/16/16

Tenet California