RESOLUTION - ACTION REQUESTED 2020-13

MEETING: January 7, 2020

TO: The Board of Supervisors

FROM: Chevon Kothari, Health and Human Services Director

RE: MOU with Blue Cross of California Partnership Plan to Provide Kiosk

RECOMMENDATION AND JUSTIFICATION:
Approve a Memorandum of Understanding with Blue Cross of California Partnership Plan to Coordinate Access to Kiosks for Clients; and Authorize the Mariposa County Health and Human Services Agency (HHSA) Director to Sign the Memorandum of Understanding. This is a new Memorandum of Understanding (MOU) with Blue Cross of California Partnership Plan (Anthem).

Kiosks include hardware such as iPad, tablet stand/cart, hand held exam kit, locks, and software installed in hardware. The purpose of this MOU is to describe the responsibilities of Anthem in providing the placement of Kiosks in designated areas of HHSA, ultimately servicing Anthem Medi-Cal beneficiaries and other people of the community to access various digital solutions.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
This is a new Memorandum of Understanding (MOU) for kiosks with Blue Cross of California Partnership Plan (Anthem).

The Board of Supervisors approved another MOU with Blue Cross of California Partnership Plan (Anthem) on July 15, 2014 through Resolution No. 2014-347.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If this MOU is not approved, HHSA and Anthem would have to rely on less than optimal tools to deliver services to clients.

FINANCIAL IMPACT:
There will be no exchange of funds between Anthem and Mariposa County Health and Human Services Agency. There will be no impact to the County General Fund.

ATTACHMENTS:
MOU with Anthem - Kiosk - Wcsignature (PDF)
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Marshall Long, District III Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
MEMORANDUM OF UNDERSTANDING
BETWEEN
BLUE CROSS OF CALIFORNIA PARTNERSHIP PLAN, INC. ("Anthem")
AND
Mariposa County Public Health
("Organization")

KIOSK

This Memorandum of Understanding becomes effective as of 1/7/2020 and can be terminated by either party with 90 days’ notice.

<table>
<thead>
<tr>
<th>CATEGORY</th>
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<tbody>
<tr>
<td>DESCRIPTION</td>
<td>The term “Kiosks” includes hardware such as an iPad, tablet stand/cart,</td>
<td>Anthem will provide a Kiosk(s) to be placed in the Organization’s office space for use by Anthem Medi-Cal beneficiaries and other people of the community to access to various digital solutions.</td>
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<td>handheld exam kit, locks, and software installed on the hardware.</td>
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<td>PURPOSE</td>
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<td>Anthem will provide a Kiosk(s) to be placed in the Organization’s office</td>
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<td>space for use by Anthem Medi-Cal beneficiaries and other people of the</td>
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<td>community to access to various digital solutions.</td>
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<tr>
<td>LIAISON</td>
<td>Responsible for appointing a Liaison to coordinate activities with Anthem.</td>
<td>Identify a local Anthem Liaison to coordinate activities with the</td>
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<td></td>
<td>Organization.</td>
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<tr>
<td>LOCATION OF KIOSK/IPAD</td>
<td>Organization will place a Kiosk(s) in a secure location that is protected</td>
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<td>from the weather and can be monitored against vandalism or being used for</td>
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<td>reasons other than described in the Purpose of this MOU</td>
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<td>STANDARD MAINTENANCE AND</td>
<td>Organization will identify resources to assist with regular sanitation and</td>
<td>Anthem will cover all technical maintenance and support of Kiosk(s).</td>
</tr>
<tr>
<td>SUPPORT</td>
<td>cleaning of Kiosk(s).</td>
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<td></td>
<td>Organization will ensure Kiosk(s) is cleaned and ready for visits.</td>
<td>Maintenance Services specifically excludes support for any errors</td>
</tr>
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<td>Organization will ensure Kiosk(s) is powered on, charged and connected to</td>
<td>caused by use of the Kiosk(s) in a manner not in accordance with the</td>
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<td>WiFi at all times to eliminate any disruption to software updates.</td>
<td>Purpose; (ii) any integration, modification, or repair of the Kiosk(s)</td>
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<td>made by any person other than supplier or approved contractor; (iii)</td>
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AND
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<td>Organization agrees to initiate Operating System software updates on each Kiosk when requested by Anthem within 10 business days and critical updates within 2 business days</td>
<td>unusual physical, electrical or electromagnetic stress, fluctuations in electrical power beyond Kiosk(s) specifications, or failure of air conditioning or humidity control; and (iv) accident, misuse, or neglect or causes not attributable to normal wear and tear.</td>
</tr>
<tr>
<td>ANTHEM BRANDING</td>
<td>Organization agrees to keep Anthem branding on Kiosks and allow Anthem to schedule time to update branding as needed</td>
<td>Anthem will place Anthem Blue Cross specific branding and content on Kiosks</td>
</tr>
<tr>
<td>MEMBER ASSISTANCE</td>
<td>Organization and Anthem will develop a plan to address any challenges encountered by Anthem members to be able to connect or register for access to services as outlined in the Purpose of this document.</td>
<td>Organization and Anthem will develop a plan to address any challenges encountered by Anthem members to be able to connect or register for access to services as outlined in the Purpose of this document.</td>
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<tr>
<td>MEMBER COMMUNICATION</td>
<td>Organization can distribute Anthem flyers and communicate to Anthem members any step by step processes to access services as outlined in the Purpose of this document.</td>
<td>Anthem will communicate services as outlined in the Purpose of this document to providers and members via multiple avenues.</td>
</tr>
<tr>
<td>EMERGENCY SITUATIONS</td>
<td>Organization will follow emergency protocols in place if a member is using the Kiosk(s) and has a medical emergency.</td>
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# Kiosk

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<td>Kiosk Malfunction</td>
<td>Organization and Anthem will develop a plan to address any Kiosk(s) system malfunction.</td>
<td>Organization and Anthem will develop a plan to address any Kiosk(s) system malfunction.</td>
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<td>Kiosk Stolen</td>
<td>Organization will be held harmless in the event that the Kiosk is stolen.</td>
<td>Anthem will hold organization harmless in the event that the Kiosk is stolen.</td>
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<tr>
<td>Kiosk Damaged</td>
<td>Organization will be held harmless in the event that the Kiosk is damaged.</td>
<td>Anthem will hold organization harmless in the event that the Kiosk is damaged.</td>
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<td>Termination</td>
<td>Organization may terminate use of the Kiosk(s) by notifying Anthem within 90 days of the date of termination. Removal of Kiosk(s) will occur within the same timeframe.</td>
<td>Anthem may terminate use of the Kiosk(s) by notifying Organization within 90 days of the date of termination. Removal of Kiosk(s) will occur within the same timeframe.</td>
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IDEMNIFICATION

(a) To the fullest extent permitted by law, Organization must indemnify, defend (at Organization's sole cost and expense and with legal counsel approved by Organization, which approval may not be unreasonably withheld), protect and hold harmless Organization, all subsidiaries, divisions and affiliated agencies of Organization, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and Organization general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of Organization with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of Organization, its
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<td>principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). Organization’s obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then Organization’s indemnification obligation shall be reduced in proportion to the established comparative liability.</td>
<td>suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). Anthem’s obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then Anthem’s indemnification obligation shall be reduced in proportion to the established comparative liability.</td>
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<td>(b) The duty to defend is a separate and distinct obligation from Organization’s duty to indemnify. Organization shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to Organization of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to Organization by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party’s rights to indemnification under this Agreement.</td>
<td>(b) The duty to defend is a separate and distinct obligation from Anthem’s duty to indemnify. Anthem shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to Anthem of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to Anthem by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party’s rights to indemnification under this Agreement.</td>
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| Agreement. An allegation or determination that persons other than Organization are responsible for the Claim does not relieve Organization from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Organization asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then Organization may submit a claim to the Organization for reimbursement of reasonable attorneys’ fees and defense costs in proportion to the established comparative liability of the Indemnified Party. Organization’s indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. Organization’s liability for indemnification under this Agreement is in addition to any liability Organization may have to claim does not relieve Anthem from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Anthem asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then Anthem may submit a claim to the Organization for reimbursement of reasonable attorneys’ fees and defense costs in proportion to the established comparative liability of the Indemnified Party. Anthem’s indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. Anthem’s liability for indemnification under this Agreement is in addition to any liability Anthem may have to Organization for a breach by Anthem of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be
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<td>Organization for a breach by Organization of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit Organization's indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties. (c) Organization must indemnify and hold Organization harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Organization, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.</td>
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<td>The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Mariposa County California.</td>
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DISPUTE RESOLUTION

Anthem and Organization agree to meet and confer in good faith to resolve any problems or disputes that may arise under this MOU. Anthem and Organization shall continue with their responsibilities and perform services under this MOU during any dispute.

In the event that any problem or dispute concerning the terms of this MOU is not satisfactorily resolved, Anthem and Organization agree to first try in good faith to settle the dispute by non-binding mediation. Anthem and Organization must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation.

If mediation fails to resolve the dispute within 30 days, Anthem and Organization shall arbitrate such problem or dispute. Such arbitration shall be initiated by either party making a written demand for arbitration on the other party. The arbitration will be conducted under the Commercial Rules of the Judicial Arbitration and Mediation Association, unless otherwise mutually agreed in writing by Anthem and Organization. Organization and Anthem agree that the arbitration results shall be binding on both
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<td>parties in any subsequent litigation or other dispute. The initiation of the arbitration by written demand must be made within two (2) years of the date upon which the problem or dispute arose.</td>
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Blue Cross of California Partnership Plan, Inc.

Date: ____________________________

By ________________________________
Print Name PAUL PAVLOVICH
Title EVP PROVIDER SOLUTIONS

Mariposa County Public Health

Date: 12/9/19

By ________________________________
Print Name Chevon Kothari
Title Interim Director

APPROVED AS TO FORM:

______________________________
STEVEN W. DAHLEM
COUNTY COUNSEL