



Interoffice Memorandum

May 14, 2018

AGENDA ITEM

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

THRU: Lonnie C. Bell, Jr., Director
Family Services Department

FROM: Sonya L. Hill, Manager
Head Start Division
Contact: Khadija Pirzadeh, (407) 836-8912
Sonya Hill, (407) 836-7409

SUBJECT: **Consent Agenda Item – June 5, 2018**
The Nemours Foundation Agreement

A handwritten signature in black ink, appearing to read "Sonya L. Hill", written over the typed name in the "THRU" field.

The Head Start Division requests Board approval of the Agreement and Addendum to Contract No. Y17-331 related to Business Associate Assurance and Accountability Act, Health Insurance Portability and Accountability Act (HIPAA), Privacy, Breach and Security Rules and the Florida Information Protection Act (FIPA). This contract will allow Nemours staff to provide Head Start children with vision and hearing screenings, which is mandated by federal performance standards. The term of the contract is from the date of execution through September 30, 2018.

The County Attorney's Office and Risk Management Division have reviewed this agreement for legality and compliance with County requirements.

ACTION REQUESTED: Approval and execution of (1) Orange County, Florida and The Nemours Foundation Agreement related to Provision of Vision and Hearing Screenings and (2) Orange County, Florida and The Nemours Foundation Addendum to Contract NO. Y17-331 related to Business Associate Assurance of Compliance with the Health Insurance Portability and Accountability Act (HIPPA) Privacy, Breach and Security Rules and the Florida Information Protection Act (FIPA).
(Head Start Division)

SH/kp:jam

Attachment(s)

c: Randy Singh, Assistant County Administrator
Cristina Berrios, Assistant County Attorney, County Attorney's Office
John Petrelli, Director, Risk Management and Professional Standards
Yolanda S. Brown, Manager, Fiscal Division, Family Services Department
Jamilie Clemens, Grants Supervisor, Finance Division
Patria Morales, Grants Coordinator, Office of Management and Budget

ORANGE COUNTY, FLORIDA

and

**THE NEMOURS FOUNDATION
AGREEMENT**

related to

PROVISION OF VISION AND HEARING SCREENINGS

THIS AGREEMENT ("Agreement") is entered into by and between **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida, whose principal address is 201 South Rosalind Avenue, Orlando, Florida 32801 (the "COUNTY") and **THE NEMOURS FOUNDATION**, a not-for-profit corporation organized under the laws of the State of Florida, with offices located at 13535 Nemours Parkway, Orlando, Florida 32827 ("NEMOURS"). The COUNTY and NEMOURS may be referred herein individually as "party" or collectively as "parties".

RECITALS

WHEREAS, the COUNTY, on behalf of its Family Services Department, Head Start Division ("Division"), receives funding from the U.S. Department of Health and Human Services ("HHS") to operate a Head Start Program in Orange County, Florida (the "Program"); and

WHEREAS, the purpose of the Program is to provide high quality comprehensive services to economically disadvantaged children and their diverse families in Orange County, Florida; and

WHEREAS, a key component of the federal Head Start Performance Standard (45 CFR part 1302, subpart D) is the provision of certain screening and support services to determine the health status of enrolled children and to assist families in ensuring that their children are up to date on preventative services and have a regular source of health care; and

WHEREAS, within forty-five (45) days of a child first attending the Program, the COUNTY must either obtain – or perform – evidence-based vision and hearing screenings to assist in determining the health status of the child, as required by 42 CFR §1302.42 (b) (1) (ii); and

WHEREAS, NEMOURS operates one of the nation's largest pediatric health systems and provides innovative patient care, prevention, and advocacy support to children and their families including vision and hearing screening; and

WHEREAS, in an effort to promote healthy bodies and ready minds among the Program's children and to facilitate the COUNTY's compliance with the Head Start Performance Standards, NEMOURS seeks to work in collaboration with the Program to provide several of its children with vision and hearing screenings by piloting NEMOURS' "Our Healthy Development: Vision and Hearing Program" at designated Program locations, as more specifically identified herein (collectively referred to as "Services"); and

WHEREAS, NEMOURS intends to provide the Services as part of its mission as a 501(c)3 health care organization and to do so without any intent to induce referrals; and

WHEREAS, the parties have agreed to enter into this Agreement in order to establish the terms and conditions under which the Services shall be provided by NEMOURS.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein as material part of this Agreement by reference.

Section 2. **Documents.**

A. The documents that are incorporated by either reference or exhibit and thereby form this Agreement are:

1. This Agreement;
2. **Exhibit A:** Scope of Services;
3. **Exhibit B:** Business Associate Addendum; and
4. **Exhibit C:** List of Participating Program Locations.

Section 3. **The Obligations of the Parties.** Both the COUNTY and NEMOURS will meet the obligations as described in the *Scope of Services* that is attached hereto and incorporated as a material part of this Agreement as "**Exhibit A.**"

Section 4. **Background Screening.**

A. All NEMOURS staff, employees, guests, invitees, third party providers, and volunteers providing Services under this Agreement or otherwise present on the COUNTY'S premises with Head Start students present, may be required to complete a background screening in compliance with Section 435.04 (Level 2 screening standards), Florida Statutes. Such screening shall be conducted at NEMOURS' expense.

B. All individuals in positions (paid employment or volunteer) requiring Level 2 screenings shall be subject to – and must complete – such screenings prior to access, supervision, and/or direct care of any children under the Program. Screenings shall include an initial Level 2 background screening with additional Level 2 background screening performed thereafter at five (5) year intervals.

C. Level 2 background screenings shall consist of an employment history check which shall include fingerprinting. Fingerprints shall be used to process the following screenings:

1. Statewide Criminal and Juvenile Records Check through the Florida Department of Law Enforcement;
2. Federal Criminal Records Check through the FBI; and
3. May include Local Criminal Records Check through Local Law Enforcement.

D. Upon request, NEMOURS shall provide the COUNTY's Head Start Manager and/or designee with confirmation that such screenings have been conducted and that the results are acceptable to NEMOURS. Copies of completed screenings performed for services performed under this Agreement shall be made available to the COUNTY upon request.

Section 5. Records Management, Confidentiality, and Public Records.

A. Records Management.

1. NEMOURS shall store and retain all records of any type created by NEMOURS, its employees, or sub-contractors to this Agreement and associated Service recipient(s) according to Health Insurance Portability and Accountability Act ("HIPAA") and other applicable federal and State law requirements.
2. NEMOURS shall ensure that all records are maintained in an organized and orderly manner and in a format reasonably acceptable to the COUNTY.
3. Upon reasonable notice, NEMOURS shall make all such records available to the COUNTY for inspection during normal working hours for a period of five (5) years after the termination of this Agreement.
4. In the event of litigation, claim or audit finding prior to the end of the five (5) year period, records shall be maintained by NEMOURS until such time as the litigation, claim, or audit finding involving such records has been resolved and for a period of five (5) years after that date. Upon reasonable notice, authorized COUNTY and/or Division personnel, as applicable, shall have full access during normal business hours and right to examine any such records during that period.
5. Original or certified copies of records shall be provided to the COUNTY upon request. Failure by NEMOURS to comply with such request on a timely basis shall constitute a breach of this Agreement which may result in termination.
6. NEMOURS shall comply with all applicable HIPAA and Florida "Public Records Law," as set forth in Florida Statutes.

B. Confidentiality.

1. NEMOURS shall comply with all applicable HIPAA requirements and those obligations with respect to Protected Health Information ("PHI") subject to protection under the HIPAA Privacy and Security Rules under 45 CFR Parts 160, 162 and 164.
2. NEMOURS shall comply with the requirements set forth in the Florida Information Protection Act (§501.171, Florida Statutes) in the protection of Personally Identifiable Information ("PII").
3. NEMOURS shall comply with the Breach Notification rules under the HITECH Act found in 42 U.S.C. §17932.
4. NEMOURS shall execute the Business Associate Addendum, attached hereto as **Exhibit "B"**.

C. Public Records. Pursuant to §119.0701, NEMOURS must:

1. Keep and maintain public records required by the COUNTY to perform the Services.
2. Upon request from the COUNTY, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the amount set by the COUNTY.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement's term and following completion of the Agreement if NEMOURS does not transfer the records to the COUNTY.
4. Upon completion of the Agreement, transfer, at no cost, to the COUNTY all public records in possession of NEMOURS or keep and maintain public records required by NEMOURS to perform the service.
5. If NEMOURS transfers all public records to the COUNTY upon completion of the Agreement, NEMOURS shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If NEMOURS keeps and maintains public records upon completion of this Agreement, NEMOURS shall meet all applicable requirements for retaining public records.
6. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY, in a format that is compatible with the information technology systems of the COUNTY.

IF NEMOURS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE PUBLIC RECORDS COORDINATOR AT PROCUREMENT PUBLIC RECORDS LIAISON; 400 E. SOUTH STREET, 2ND FL., ORLANDO, FL 32801; PROCUREMENTRECORDS@OCFL.NET; 407-836-5897.

Section 6. Term and Termination.

A. Term.

1. The term of the Agreement shall be from the date of full execution by the COUNTY, or the last signing party, whichever is later ("Effective Date"), through September 30, 2018, unless otherwise terminated by either party.
2. This Agreement may be renewed for up to six (6) additional one-year terms upon written mutual consent by both parties.
3. Through its execution of this Agreement, the Board of County Commissioners of Orange County, Florida, delegates to the Director of the County's Family Services Division the authority to execute any renewals of this Agreement so long as those renewals are subject to the same terms and conditions set forth herein. This delegation of signature authority includes any necessary amendments to the *List of Participating Program Locations* attached hereto as "**Exhibit C.**"

B. Termination.

1. ***Termination for Convenience.*** Either party may terminate this Agreement at any time for any reason by giving at least thirty (30) days' written notice.
2. ***Termination for Cause.*** Failure by either party to perform its respective obligations, as set forth herein, may result in termination by either party for cause with five (5) days' written notice, if incapable of being cured, or thirty (30) days' written notice if capable of being cured.
3. Notice of termination, either for cause or for convenience, shall be provided in accordance with the notice provision herein.
4. No damages may be assessed against either party for its termination of the Agreement pursuant to this Section.

Section 7. Notices.

- A. Notices to either party provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage prepaid, addressed to the following addressees

or to such other addressees as the parties may designate to each other in writing from time to time:

To the COUNTY: Manager, Head Start Division
2100 E. Michigan Street
Orlando, FL 32806

AND

Orange County Administrator
Administration Building, 5th Floor
201 S Rosalind Avenue
Orlando, Florida 32801

To NEMOURS: Director/Division Chief, General Academic Pediatrics
Nemours Florida Prevention Initiative
13535 Nemours Parkway
Orlando, FL 32827

AND

Office of Contract Administration
The Nemours Foundation
10140 Centurion Parkway North
Jacksonville, FL 32256
Fax: (904) 697-4070
Email: oca@nemours.org

Section 8. Indemnification and Insurance.

A. **Indemnification.** To the fullest extent permitted by law, NEMOURS shall defend, indemnify, and hold harmless the COUNTY, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) to the extent arising out of any negligent act or omission of NEMOURS or its subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable.

B. **Liability.** Excluding obligations under any business associate agreement between the parties, indemnification obligations, willful misconduct, gross negligence, fraud, or violations of law, neither party will be liable to the other whatsoever for any special, consequential, exemplary, or punitive damages, including any damages on account of lost profits or lost opportunity, whether or not placed on notice of any such alleged damages and regardless of the form of action in which such excluded damages may be sought. Nothing contained herein shall constitute as a waiver by the COUNTY of sovereign immunity or the provisions of Section 768.28, Florida Statutes.

C. Protection of Persons and Property (for providing services on COUNTY property).

While working or providing services at COUNTY facilities, NEMOURS shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with its services or performance of its operations under this Agreement. NEMOURS shall take all reasonable precautions for the safety and protection of:

1. All employees and all persons who NEMOURS suffers to be on the premises and other persons who may be affected thereby;
2. All property, material and equipment on the premises under the care, custody, or control of NEMOURS. The parties agree that NEMOURS will only be using its own property, material and equipment; and
3. NEMOURS shall comply with, and ensure that its contractors comply with, all applicable safety laws, ordinances, rules, regulations, standards. This includes, but is not limited to, the following:
 - a. Occupational Safety & Health (OSHA)
 - b. National Institute for Occupational Safety & Health (NIOSH)
 - c. National Fire Protection Association (NFPA)

D. NEMOURS must also comply with the guidelines set forth in Orange County Safety & Health Manual. The Manual can be accessed only at the address below:

<http://www.ocfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>

E. Insurance.

1. NEMOURS agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this Agreement, the following types of insurance coverage with limits and on forms (including endorsements) as described herein.
2. These requirements, as well as COUNTY's review and acceptance of insurance maintained by NEMOURS, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by NEMOURS under this Agreement. NEMOURS is required to maintain any coverage required by federal and State Worker's Compensation or financial responsibility laws including, but not limited to, Chapters 324 and 400, Florida Statutes, as may be amended from time to time.
3. NEMOURS shall require and ensure that all providers and sub-consultants providing services under this Agreement (if any) procure and maintain, for the duration of their involvement in this Agreement, insurance coverage in such types and with limits sufficient to protect the interests of NEMOURS and COUNTY.

4. Insurance carriers providing coverage required herein must be authorized to conduct business in the State of Florida and must possess a current A.M. Best Financial Strength of A-Class VIII or better. State authorization can be checked via www.flori/companysearch/ and A.M. Best Ratings are available at www.ambest.com.
5. **Required Coverage:** NEMOURS shall have in full force the following coverage, if applicable, and will provide a Certificate of Insurance to COUNTY prior to commencing operations under this Agreement to verify such coverage.

Commercial General Liability- NEMOURS will provide coverage issued on the most recent version of the ISO form as filed for use in Florida, or its equivalent, with a limit of not less than \$1,000,000 (One Million Dollars) per occurrence. Coverage shall not include any exclusion for contractual liability or separation of insureds provisions and the aggregate limit shall either apply separately to this Agreement or shall be at least twice the required occurrence limit.

Sexual Abuse and Molestation Coverage with limits of not less than \$100,000 (One Hundred Thousand Dollars) per occurrence shall be included for any NEMOUR provider that provides service directly to minors.

Workers' Compensation - NEMOURS shall maintain coverage for its employees within statutory workers compensation limits and no less than \$100,000 (One Hundred Thousand Dollars) each incident of bodily injury or disease for Employer's Liability. Said coverage shall include a waiver of subrogation in favor of the COUNTY. Elective exemptions, as defined in Chapter 44, Florida Statutes, will be considered on a case by case basis. Any NEMOURS using an employee leasing company shall complete the Leased Employee Affidavit.

Professional Liability- NEMOURS shall maintain professional liability with a limit of not less than \$1,000,000 (One Million Dollars) per occurrence per claim.

6. **Required Endorsements:**

Additional insured - CG 20 26 or CG 20 10/CG 20-37 or their equivalent. (Note: If blanket endorsements are being submitted, include the entire endorsement and applicable policy number.)

Waiver of Transfer of Rights or Recovery - CG24 04 or its equivalent. (Note: If blanket endorsements are being submitted, include the entire endorsement and the applicable policy number)

7. Prior to the execution and commencement of any operations/services provided under this Agreement, NEMOURS shall provide the COUNTY with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance, NEMOURS shall also provide endorsements for each policy as specified above. All specific policy endorsements shall be in the name of Orange County Board of County Commissioners.
8. For continuing services, contract renewal certificates shall be submitted upon request by either the COUNTY or the COUNTY's contracted certificate compliance management firm. The certificates shall clearly indicate that NEMOURS has obtained insurance of the type, amount and classified as required for strict compliance with this insurance section. NEMOURS shall notify the COUNTY not less than thirty (30) business days (ten (10) business days for non-payment of premiums) of any material change in or cancellation/non-renewal of insurance coverage. NEMOURS shall provide evidence of replacement coverage to maintain compliance with aforementioned insurance requirements to the COUNTY or its certificates management representative thirty (30) calendar days prior to the effective date of the replacement policy(ies). The certificate shall read:

**Orange County Board of County Commissioners
Attn: Procurement Division
400 East South Street
Orlando, FL 32801**

9. NEMOURS may satisfy these insurance requirements through an actuarially sound plan of self-insurance.

Section 9. Civil Rights. The parties agree that they shall perform their respective obligations hereunder without discrimination toward any patients, employees or other persons regardless of race, creed, color, ethnic background, religion, gender disability or ability to pay. All parties are equal opportunity employers. All parties shall comply with all applicable requirements and provision of the Civil Rights Acts of 1964 and 1991 and Florida law.

Section 10. Equal Employment Opportunity. The COUNTY's policies of equal opportunity and nondiscrimination are intended to assure equal opportunities to every person, regardless of race, religion, sex, sexual orientation, gender expression/identity, color, age, disability or national origin, in securing or holding employment in a field of work or labor for which the person is qualified, as provided by Section 17-314 of the Orange County Code and the County Administrative Regulations. Accordingly, NEMOURS shall abide by the following provisions:

- A. NEMOURS will adopt and maintain, or provide evidence to the COUNTY that NEMOURS has adopted and maintains, a policy of nondiscrimination as defined by applicable COUNTY ordinance throughout the term of this Agreement.

B. NEMOURS shall allow the COUNTY reasonable access to those business and employment records showing compliance with the non-discrimination provisions of this Agreement.

C. Provisions 10. A. and 10.B. above will be incorporated by NEMOURS into the contracts of any applicable Subcontractors.

Section 11. General Terms.

A. **Independent Contractor.** NEMOURS is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to NEMOURS' sole direction, supervision, and control. NEMOURS shall exercise control over the means and manner in which it and its employees perform the work, and in all respects NEMOURS' relationship and the relationship of its employees to the COUNTY shall be that of an independent contractor and not as employees or agents of the COUNTY. Neither party shall have the power or authority to bind the other in any promise, agreement or representation other than as specifically provided for in this Agreement. Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between NEMOURS and COUNTY.

B. **No Waiver of Sovereign Immunity.** Nothing contained herein shall constitute, or be in any way construed to be, a waiver of the COUNTY's sovereign immunity or the protections and provisions of Section 768.28, Florida Statutes.

C. **Assignments and Successors.** Each party binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Neither party shall assign, sublet, convey, or transfer its interest in this Agreement without the written consent of the other, which consent shall be in the sole determination of the party with the right to consent.

D. **Governing Law.** This Agreement, and any and all actions directly or indirectly associated herewith, will be governed by and construed in accordance with the internal laws of the State of Florida, without reference to any conflicts of law provisions.

E. **Venue.** For any legal proceeding arising out of or relating to this Agreement, each party hereby submits to the exclusive jurisdiction of, and waives any venue or other objection against, the Ninth Circuit Court in and for Orange County, Florida. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions will be in the Orlando Division of the U.S. Middle District of Florida.

F. **Jury Waiver.** Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement.

G. **Attorneys' Fees and Costs.** The parties shall each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this Agreement and any litigation that arises either directly, or indirectly, herefrom.

H. **No Financial Commitment.** NEMOURS and COUNTY agree that all Services performed under this Agreement shall be without any form of payment or other financial compensation from the COUNTY. Any costs or expenses incurred by either party shall be the sole responsibility of that respective party.

I. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

J. **Headings and Captions.** The headings or captions of articles, sections, or subsections used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

K. **Advertising and Publicity.** Neither party shall use the name, logo or trademark of the other in any form or publicity or promotional or advertising material, or in any communications with the media without the other's prior written consent to the specific contemplated use. Either party may terminate this Agreement and seek injunctive relief immediately if the other violates this provision. Except for those circumstances expressly permitted herein, requests for permission to use NEMOURS' name or marks must be directed to the Managing Director of Marketing and Communications, The Nemours Foundation, 10140 Centurion Parkway North, Jacksonville, FL 32256. As to the COUNTY, requests shall be made pursuant to Section 2-3, Orange County Code.

L. **Counterparts and Facsimile.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses set forth herein, and delivery shall be effective and complete upon completion of such transmission; manually signed copies of signature pages shall nonetheless be delivered promptly after any such facsimile delivery.

M. **Waiver.** No delay or failure on the part of any party hereto to exercise any right or remedy accruing to such party upon the occurrence of an event of violation shall affect any such right or remedy, be held to be an abandonment thereof, or preclude such party from the exercise thereof at any time during the continuance of any event of violation. No waiver of a single event of violation shall be deemed to be a waiver of any subsequent event of violation.

N. **Survivorship.** Those provisions which by their nature are intended to survive the expiration, cancellation, or termination of this Agreement, including, by way of example only, the indemnification and public records provisions, shall survive the expiration, cancellation, or termination of this Agreement.

O. **Entire Agreement.** This Agreement, and any documents incorporated herein, set forth and constitute the entire agreement and understanding of the parties with respect to the subject matter hereof. This Agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this agreement.

P. **No Representations.** Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

Q. **Construction of Agreement.** The parties hereby agree that they have reviewed this Agreement, have consulted with legal counsel of their choice, have participated in the drafting of this Agreement, and that this Agreement is not to be construed against any party as if it were the drafter of this Agreement.

R. **Remedies.** No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any rights, power, or remedy hereunder shall preclude any other or further exercise thereof.

S. **Written Modification.** No modification of this Agreement shall be binding upon any party to this Agreement unless reduced to writing and signed by a duly authorized representative of each party to this Agreement.

T. **Authority of Signatory.** Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform this Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Agreement as stated.

U. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to, or shall confer, upon any person, other than the parties and their respective successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

V. **Compliance with Laws.** It shall be each party's responsibility to be aware of federal, state, and local laws relevant to this Agreement. Each party shall comply in all respects with all applicable legal requirements governing the duties, obligations, and business practices of that party and shall obtain any permits or licenses necessary for its operations. Neither party shall take any action in violation of any applicable legal requirement that could result in liability being imposed on the other party.

W. **Authority to Practice.** NEMOURS hereby represents and warrants that it has and will continue to maintain all licenses, permits, and approvals required to conduct its business, and

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that it will at all times conduct its business activities in a reputable manner. Proof of such licenses, permits, and approvals shall be submitted to the COUNTY upon request.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

Date: 6.5.18

ATTEST: Phil Diamond, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*

THE NEMOURS FOUNDATION

By: *Lloyd Werk*
Lloyd Werk, MD, MPH
Director, Nemours Florida
Prevention Initiative

Date: 4/30/18

ATTEST:
By: *Reilly Rogers*

EXHIBIT "A"
SCOPE OF SERVICES

A. The COUNTY agrees to:

1. Designate the Senior Program Manager, Childhood Health and Developmental Services, to serve as the COUNTY liaison ("County Liaison") for NEMOURS' "Our Healthy Development: Vision and Hearing Program."
2. Provide sufficient facility space that can minimize noise interference for hearing screenings, ability to control lighting for vision screenings and a minimum of two electrical outlets for screening equipment for NEMOURS at selected centers.
3. Provide sufficient facility space at Orange County Facilities Management Training Room (2008 E. Michigan Street, Orlando) for training. NEMOURS staff will have access to space at least 30 minutes prior to training and 30 minutes after training to set up/clean up.
4. Secure parking area (three parking spaces used for parallel parking) for NEMOURS mobile unit to park. The parking area should be located in an area large enough to accommodate NEMOURS mobile unit and be convenient to the designated Program locations, should the COUNTY be unable to secure quiet space within the schools that is conducive to provide hearing screenings.
5. Notify Head Start teachers about NEMOURS' pilot project: "Our Healthy Development: Vision and Hearing Program" and encourage participation in all training sessions.
6. The County Liaison will accept and distribute educational materials related to the "Our Healthy Development: Vision and Hearing Program" and have each pilot test site present the educational component and secure parental consent for screenings preferably one week prior to the site's scheduled screening date(s), or at the minimum one to two days prior depending on scheduled screening date.
7. Share with NEMOURS the names and ages for each classroom within the Head Start Center prior to scheduled screenings to allow NEMOURS to prepopulate the names of the children into secured screening devices in order to reduce delay in data entry on the actual screening day.
8. Provide copies of completed vision and hearing screening results for each child obtained from NEMOURS to respective parents or caregivers and assist parents or caregivers arrange for follow up care.

B. NEMOURS agrees to:

1. Designate a NEMOURS Liaison (“Nemours Liaison”) for oversight of its “Our Healthy Development: Vision and Hearing Program”. This program has a primary prevention component that includes two, one-day health education lesson plans on vision and hearing for Head Start teachers to implement in the classroom and a secondary prevention component for early detection of potential vision/hearing conditions using validated screening equipment for vision and hearing.
2. Implement pilot project: “Our Healthy Development: Vision and Hearing Program” to serve selected children on the dates to be scheduled with locations designated in “**Exhibit C**”.
3. Provide educational materials to the COUNTY related to “Our Healthy Development: Vision and Hearing Program”. Educational materials include two, one-day lesson plans on vision and hearing with age-appropriate children’s books that coincide with lesson plan activities aligned with early learning standards.
4. Provide training for the Program’s teachers on implementing educational lessons prior to vision and hearing screenings being performed, based on scheduled dates provided by the County Liaison. A one-hour training would review with Program teachers the content and format of the lesson activities, books that coincide with the activities, implementation timeline for each site, feedback and evaluation, and provide teachers the opportunity to ask questions.
5. Provide the County Liaison with the results obtained for each child from the completed vision and hearing screenings. The COUNTY is solely responsible for sharing the test results with the respective parents or guardians of the children tested and assisting in obtaining any follow-up care as provided for in 45 CFR §1302.42 (b) (1) (ii).

EXHIBIT "C"
LIST OF PARTICIPATING PROGRAM LOCATIONS

HEAD START CENTER	# CLASSROOMS	# CHILDREN
BITHLO 18501 Washington Avenue, Orlando, FL 32820	2	30
DOVER SHORES 900 Engel Drive, Orlando, FL 32807	4	68
EAST ORANGE 12050 E Colonial Drive, Orlando, FL 32826	7	140
ENGELWOOD 5985 La Costa Drive, Orlando, FL 32807	3	54
MCCOY 5225 S Semoran Boulevard, Orlando, FL 32822	2	35
TOTAL	18	327

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/09/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER J Smith Lanier Tallahassee Marsh & McLennan Agency, LLC 1500 Mahan Drive, Suite 111 Tallahassee, FL 32308	CONTACT NAME: PHONE (A/C, No, Ext): 850 877-8181 FAX (A/C, No): 850 942-4928 E-MAIL ADDRESS:														
INSURED The Nemours Foundation Attn: Bill Higginbotham 10140 Centurion Parkway North Jacksonville, FL 32256-0532	<table border="1"> <thead> <tr> <th data-bbox="817 441 1412 472">INSURER(S) AFFORDING COVERAGE</th> <th data-bbox="1412 441 1542 472">NAIC #</th> </tr> </thead> <tbody> <tr> <td data-bbox="817 472 1412 504">INSURER A: Hartford Fire Insurance Co.</td> <td data-bbox="1412 472 1542 504">19682</td> </tr> <tr> <td data-bbox="817 504 1412 535">INSURER B:</td> <td data-bbox="1412 504 1542 535"></td> </tr> <tr> <td data-bbox="817 535 1412 567">INSURER C:</td> <td data-bbox="1412 535 1542 567"></td> </tr> <tr> <td data-bbox="817 567 1412 598">INSURER D:</td> <td data-bbox="1412 567 1542 598"></td> </tr> <tr> <td data-bbox="817 598 1412 630">INSURER E:</td> <td data-bbox="1412 598 1542 630"></td> </tr> <tr> <td data-bbox="817 630 1412 653">INSURER F:</td> <td data-bbox="1412 630 1542 653"></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Hartford Fire Insurance Co.	19682	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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INSURER E:															
INSURER F:															

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

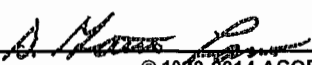
INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			21ABS24402	02/17/2017	02/17/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		21WNS24400 Deductible:\$500,000	12/31/2017	12/31/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Waiver of Subrogation applies to Workers' Compensation as per written contract and subject to the provisions and limitations of the policy.

CERTIFICATE HOLDER

CANCELLATION

Orange County Board of County Commissioners Procurement Division 400 E. South Street Orlando, FL 32801	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER The Nemours Foundation 10140 Centurion Parkway North Jacksonville, FL 32256-0532	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE NAIC # INSURER A: Self-Insured Trust
INSURED The Nemours Foundation Nemours Children's Hospital 13535 Nemours Parkway Orlando, FL 32827	INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

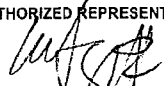
INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		#39	12/31/17	12/31/18	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$No Aggregate
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Hospital Professional		#39	12/31/17	12/31/18	\$2,000,000 Per Occ \$30,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

General Liability includes sexual molestation

CERTIFICATE HOLDER

CANCELLATION

Orange County Board of County Commissioners Attn: Procurement Division 400 East South Street Orlando, FL 32802	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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Orange County and the Nemours Foundation
Business Associate Addendum to Contract Y17-331
Regarding HIPAA and FIPA
Page 1 of 2

ORANGE COUNTY, FLORIDA
and
THE NEMOURS FOUNDATION
ADDENDUM TO CONTRACT NO. Y17-331
related to

**BUSINESS ASSOCIATE ASSURANCE OF COMPLIANCE WITH THE
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
PRIVACY, BREACH AND SECURITY RULES AND THE
FLORIDA INFORMATION PROTECTION ACT (FIPA)**

THIS ADDENDUM is by and between, **ORANGE COUNTY, FLORIDA** (the "County"), a charter county and political subdivision of the State of Florida, located at 201 South Rosalind Avenue, Orlando, Florida 32801, on behalf of its Head Start Division (the "Covered Healthcare Component"), and **THE NEMOURS FOUNDATION** ("Business Associate"), located at 13535 Nemours Parkway, Orlando, Florida 32827. The County and Business Associate may be referred to herein individually as "party" or collectively as "parties".

RECITALS

WHEREAS, the County has been designated as a "Hybrid Entity" under the HIPAA Privacy and Security Rules, 45 CFR §164.105; and

WHEREAS, pursuant to 45 CFR §164.105(a)(2)(iii)(D), the County, as a Hybrid Entity, has documented that its Head Start Division is a "Covered Healthcare Component" of the County and, as such, when the County is acting through its Head Start Division, it must be treated as a "Covered Entity"; and

WHEREAS, in connection with the provision of services to the County (collectively referenced to as "Services") by the Business Associate, the County, through its Covered Healthcare Component, may disclose to the Business Associate certain Protected Health Information ("PHI") that is subject to protection under the HIPAA Privacy and Security Rules, 45 CFR Parts 160, 162, and 164; and

WHEREAS, the HIPAA Privacy and Security Rules require that a Covered Entity, as well as a Hybrid Covered Entity when it is acting through one of its Covered Healthcare Components, receives adequate assurances that the Business Associate will comply with certain obligations with respect to the PHI received in the course of providing Services to, or on behalf of, the Covered Entity or Hybrid Covered Entity; and

*Orange County and the Nemours Foundation
Business Associate Addendum to Contract Y17-331
Regarding HIPAA and FIPA
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WHEREAS, the purpose of this Addendum is to comply with the requirements of the HIPAA Privacy and Security Rules, 45 CFR Parts 160, 162, and 164, and the Florida Information Protection Act ("FIPA"), §501.171, Florida Statutes, and 42 CFR Part 2, where applicable, and as amended; and

WHEREAS, the County and Business Associate have entered, or will be entering into, a contract for services known as Contract No. Y17-329 (the "Agreement") and the parties wish to adopt this Addendum to the Agreement in order to ensure that the Services provided by the Business Associate pursuant to the Agreement are provided in compliance with the requirements of the HIPAA Privacy and Security Rules, 45 CFR Parts 160, 162, and 164, and the Florida Information Protection Act, §501.171, Florida Statutes, and 42 CFR Part 2, where applicable, and as amended.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, agreements and obligations herein stated, the parties agree as follows:

Section 1. Incorporation

A. **Recitals Incorporated.** The above recitals are true and correct and are hereby incorporated as a material part of this Addendum.

B. HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164, and the Florida Information Protection Act, §501.171, Florida Statutes, and 42 CFR Part 2, where applicable and as amended, are hereby incorporated into this Addendum.

C. To the extent that this Addendum, or the Agreement, imposes more stringent requirements than those contained in HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164, the Florida Information Protection Act, §501.171, Florida Statutes, and 42 CFR Part 2, where applicable and as amended, those more stringent requirements of this Addendum, or the Agreement, will control.

Section 2. Definitions.

A. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in 45 CFR §§160.103, 162.103, 164.103, 164.402, and 164.501, and §501.171, Florida Statutes.

1. ***Breach*** shall have the meaning given to such term as found in 45 CFR §164.402, and the Florida Information Protection Act, §501.171, Florida Statutes.
2. ***Designated Record Set*** shall mean a group of records maintained by or for a covered entity that is: (a) the medical records and billing records about individuals maintained by or for a covered health care provider; (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained

by or for a health plan; or (c) used, in whole or in part, by or for the covered entity to make decisions about individuals. For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.

3. **Disclosure** shall mean the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
4. **Florida Information Protection Act** shall mean the Florida Information Protection Act ("FIPA") codified at §501.171, Florida Statutes.
5. **HIPAA Privacy and Security Rules** shall mean the Standards for Privacy, Security, Breach, Notification, and Enforcement at 45 CFR Parts 160, 162 and 164.
6. **Individual** shall mean the person who is the subject of PHI, and shall include a person who qualifies as a personal representative, in accordance with 45 CFR §164.502(g).
7. **Individually Identifiable Health Information** shall mean information that is a subset of health information, including demographic information collected from an individual, and: (a) is created or received by a health care provider, health plan, employer, or health care clearinghouse; (b) relates to the past, present, or future physical or mental health or 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 (c) 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.
8. **Privacy Officer** shall mean the individual designated by the County pursuant to 45 CFR §164.530, who is responsible for the development and implementation of the County's policies and procedures as they relate to its, and its Covered Healthcare Component's, compliance with HIPAA Privacy and Security Rules, Breach Notification rules (HITECH Act).
9. **Personally Identifiable Information ("PII")** shall mean the following:
 - a. An individual's social security number; and/or
 - b. An individual's initials, first name, or first initial and last name in combination with any one or more of the following data elements for that individual:

Exhibit B

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- i. A driver's license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
 - ii. A financial account number or credit or debit card number in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;
 - iii. Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or
 - iv. An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.
 - v. Any other identifier, as referenced in the Department of Health & Human Services "Safe Harbor Standards."
 - vi. The term "Personally Identifiable Information" does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable.
- c. A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.
- d. The PII provided pursuant to the Agreement shall be limited to what is necessary for the Business Associate to meet its obligations thereunder.
10. ***Protected Health Information ("PHI")*** shall mean an individual's identifiable health information that is – or has been – created, received, transmitted, or maintained in any form or medium, on or behalf of the County, with the exception of education records covered by the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, as amended, and the health care records of students at post-secondary educational institutions or of students eighteen (18) years of age or older, used exclusively for their health care treatment which have not been disclosed to anyone other than a health care provider at the student's request. The

PHI provided pursuant to the Agreement shall be limited to what is necessary for the Business Associate to meet its obligations thereunder.

11. ***Required by Law*** shall have the same meaning as the term “required by law” in 45 CFR §164.103.
12. ***Secretary of Health and Human Services*** shall mean the Secretary of the Health and Human Services (“HHS”) or any other officer or employee of HHS to whom the authority involved has been delegated.
13. ***Security Incident or Incident*** shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PII contained in any form or interference with system operations in an information system that contains PHI or PII.
14. ***Unsuccessful Security Incidents*** shall include, but are not limited to, pings and other broadcast attacks on the Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.
15. ***Use*** shall mean the sharing, employment, application, utilization, examination, or analysis of PII or PHI within an entity that maintains such information.

Section 3. Scope of Agreement

A. **Independent Status of Parties.** The parties agree that they are, and shall be, independently responsible for complying, and shall independently comply, with the HIPAA Privacy and Security Rules and FIPA, as it may be amended from time to time. The parties further agree that they are, and shall be, responsible for their own actions and conduct and shall not assume responsibility for the actions and conduct of one another. Additionally, the parties agree that they shall maintain all corporate formalities establishing separate and individual control by each organization's board of directors, as applicable.

B. The Business Associate acknowledges that the confidentiality requirements set forth herein shall apply to all of its employees, agents, and representatives. The Business Associate assumes responsibility and liability for any damages or claims, including state and federal administrative proceedings and sanctions brought against the County, including costs and attorneys' fees, resulting from the breach by the Business Associate of the confidentiality requirements of this Addendum.

Section 4. Privacy of Protected Health Information and Confidentiality of Personal Information.

A. **Permitted Uses and Disclosures of PHI and PII by Business Associate.** The Business Associate may use, or disclose, PHI and PII received from the County to its officers and employees. The Business Associate may disclose PHI and PII to a business associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit PHI and PII on its behalf if the Business Associate obtains satisfactory assurances, in accordance with 45 CFR §164.504(e)(1)(i) and §501.171(2), that the subcontractor will appropriately safeguard the information. All other uses or disclosures, not otherwise authorized by this Addendum or otherwise governed by law, are prohibited.

B. **Responsibilities of the Business Associate.** Regarding the use or disclosure of PHI and PII, the Business Associate agrees to:

1. Only use or disclose the PHI and PII as allowed under this Addendum or otherwise by applicable law.
2. Only use or disclosure PHI and PII in a manner that would not violate the HIPAA Privacy and Security Rules, Breach Notification rules (under the HITECH Act), or FIPA, if done so by a Covered Entity.
3. Establish and implement appropriate procedures, physical, and technical safeguards to prevent improper access, uses, transmissions, or disclosures of PHI and PII for mitigating, to the greatest extents possible under the circumstances, any deleterious effects from any improper access, use, or disclosure of PHI and PII that the Business Associate reports to the County. Safeguards shall include, but are not limited to: (a) the implementation and use of electronic security measures to safeguard electronic data; (b) requiring employees to agree to access, use, or disclose PHI and PII only as permitted or required by this Addendum; and (c) taking related disciplinary action for inappropriate access, use or disclosure as necessary.
4. Ensure that the Business Associate's subcontractors or agents to whom the Business Associate provides PHI or PII, created received, maintained, or transmitted on behalf County agree to the same restrictions and conditions that apply to the Business Associate with respect to PHI and PII, and ensure that its subcontractors or agents agree to establish and implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of all PHI and PII that it creates receives, maintains, or transmits on behalf of the County.

Exhibit B

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5. Make the Business Associate's records, books, accounts, agreements, policies, and procedures available to the Secretary of HHS for determining the County's compliance with the HIPAA Privacy and Security Rules, the Breach Notification rules (under the HITECH Act), and also, with the State of Florida's Department of Legal Affairs to determine the County's compliance with FIPA.
6. Limit use by, or disclosure to, its subcontractors, agents, and other third parties, to the minimum PHI and PII necessary to perform or fulfill a specific function required or permitted hereunder.
7. Provide information to the County to permit the County to respond to a request by an individual for an accounting of disclosures within seven (7) business days of receiving a written request from the County, if the Business Associate maintains a Designated Records Set on behalf of the County.
8. At the request of, and in the manner designated by, the County, and within five (5) business days, provide access to the PHI and PII maintained by the Business Associate to the County or individual, if the Business Associate maintains a Designated Records Set on behalf of the County.
9. At the request of and in the manner designated by, the County, and within five (5) business days, make any amendment(s) to the PHI and PII when directed by the County, if the Business Associate maintains a Designated Record Set on behalf of the County.
10. Establish and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI and PII the Business Associate creates, receives, maintains, or transmits on behalf of the County.
11. Report to the County any Security Incident involving PHI and PII that the Business Associate discovers in the manner detailed in Section 7 below.

C. **Compliance with the County's Policies.** The Business Associate hereby agrees to abide by the County's policies and practices for its Covered Healthcare Component that relate to the confidentiality, privacy, and security of PHI and PII.

D. **Use of PHI and PII for Management and Administration or Legal Responsibilities of the Business Associate.** The Business Associate may use PHI and PII received by the County pursuant to the Agreement for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. However, the Business Associate will only be allowed to use PHI and PII for the aforementioned uses if:

1. the disclosure is required by law; or
2. the Business Associate obtains reasonable assurances from the person to whom the PHI and PII is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notified the Business Associate of any instances in which the person is aware of a confidentiality breach of PHI or PII.

E. **Data Aggregation Services.** With respect to PHI and PII created or received by the Business Associate in its capacity as the Business Associate of the County, the Business Associate may combine such PHI and PII it has received from the County with the PHI and PII received by the Business Associate in its capacity as a Business Associate of another Covered Entity, or Hybrid Covered Entity, to permit data analysis that relates to the health care operation of the respective Covered Entity, or Hybrid Covered Entity, if data analyses is part of the Services that Business Associate is to provide to the County pursuant to the Agreement.

F. **Compliance.** The Business Associate agrees to keep all PHI and PII confidential and secure in compliance with the provisions of this Addendum and according to current state and federal laws.

Section 5. Confidentiality

A. In the course of performing under this Addendum, each party may receive, be exposed to, or acquire the confidential information including, but not limited to, all information, data, reports, records, summaries, tables, and studies, whether written or oral, fixed in hard copy or contained in any computer database or computer readable form, as well as any information identifiable as confidential ("Confidential Information") of the other party.

B. For purposes of this Addendum, Confidential Information shall **not** include PHI, the security and privacy of which is the subject of this Addendum. The parties, including their employees, agents, or representatives shall:

1. not disclose to any third party the Confidential Information of the other party except as otherwise permitted by this Addendum, or as mandated by the State of Florida's Public Records Laws;
2. only permit use of such Confidential Information by employees, agents, and representatives having a need to know in connection with performance under the Agreement; and
3. advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential.

C. This provision shall not apply to Confidential Information:

1. after it becomes publicly available through **no fault** of either party;
2. which is later publically released by either party in writing;
3. which is lawfully obtained from third parties without restrictions; or
4. which can be shown to be previously known or developed by either party independently of the other party.

Section 6. Security

A. **Security of Electronic Protected Health Information and Personal Information.** The Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI (as defined in 45 C.F.R. §160.103) and PII (as defined by §501.171, Florida Statutes) that the Business Associate creates, receives, maintains, or transmits on behalf of the County consistent with the HIPAA Privacy and Security Rules, Breach Notification Rules (under the HITECH Act), and FIPA.

B. **Reporting Security Incidents.** The Business Associate will report to the County any Incident of which the Business Associate becomes aware that is:

1. a successful unauthorized access, use or disclosure of Electronic PHI or PII;
2. a modification or destruction of electronic PHI or PII; or
3. interference with system operations in an information system containing electronic PHI or PII.

Section 7. Reporting Requirements

A. **Reporting.** The Business Associate shall make a good faith effort to identify any use or disclosure of protected information not provided for in this Addendum.

B. **Reporting to the County.**

1. The Business Associate will report to the County within:
 - a. five (5) calendar days of any suspected – or confirmed – access, use, or disclosure of PHI or PII, regardless of form, not permitted or required by this Addendum of which the Business Associate becomes aware; and

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- b. twenty-four (24) hours of discovery, any Security Incident of which the Business Associate becomes aware. However, this section constitutes notice by the Business Associate to the County of the ongoing existence and occurrence of attempted but Unsuccessful Incidents (as defined in Section 2 above) for which no notice to the County shall be required.
2. Such report shall include the identification of each individual whose unsecured PHI and PII has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
3. Reports of Security Incidents shall include a detailed description of each Incident, at a minimum, to include: (a) the date of the Incident; (b) the nature of the Incident; (c) the information involved, whether the information was accessed, disclosed, used, modified, destroyed, etc.; (d) the identities of the individual(s) and their relationship to the Business Associate; (e) a description of the Business Associate's response to each Incident; (f) and the name and title of the individual the County should contact for additional information.
4. The Business Associate will conduct such further investigation as is reasonably required by the County and promptly advise the County of additional information pertinent to the Incident.
5. The Business Associate will cooperate with the County in conducting any required risk analysis related to such Security Incident(s).
6. The Business Associate will cooperate with the County in complying with any applicable notification requirements pursuant to the Breach Notification Rule and/or pursuant to Florida law (including but not limited to, §§501.171 and 817.5681, Florida Statutes), and in taking steps determined by the County to be necessary to mitigate any potential harm caused by a Security Incident. The Business Associate will pay and/or reimburse the County for any reasonable expenses the County incurs in notifying individuals of, and /or mitigating potential harm caused by, a Security Incident caused by the Business Associate and/or its subcontractors or agents.

C. **Reporting to Individuals.** In the case of a breach of PHI or PII discovered by the Business Associate, the Business Associate shall first notify the County of the pertinent details of the breach and, upon prior approval of the County's Privacy Officer, shall notify each individual whose unsecured PHI or PII has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed as a result of such breach. Such notification shall be in writing by first-class mail to the individual (or the next of kin if the individual is deceased) at the last known address of the individual or next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. Where there is insufficient or out-of-date

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contact information (including a phone number, email address, or any other form of appropriate communication) that precludes written (or, if specifically requested, electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are ten (10) or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting on the web site of the Business Associate involved or notice in major print of broadcast media, including major media in the geographic areas where the individuals affected by the breach are likely to reside. In any case deemed by the Business Associate to require urgency because of possible imminent misuse of unsecured PHI or PII, the Business Associate may also provide information to individuals by telephone or other means, as appropriate.

D. **Reporting to Media.** In the case of a breach of PHI discovered by the Business Associate where the unsecured PHI of more than five hundred (500) persons or unsecured PII of more than five hundred (500) persons is reasonably believed to have been, accessed, acquired, or disclosed, after prior approval by the County, the Business Associate shall provide notice to prominent media outlets serving the state or relevant portion of the state involved.

E. **Reporting to HHS and the State of Florida Department of Legal Affairs.** The Business Associate shall cooperate with the County to provide notice to the Secretary of HHS of unsecured PHI and to the State of Florida, Department of Legal Affairs, of unsecured PII that has been acquired or disclosed in a breach. If the breach was with respect to five hundred (500) or more individuals, such notice must be provided immediately. If the breach was with respect to less than five hundred (500) individuals, the Business Associate may maintain a log of such breach occurring and annually submit such log to the County so that it may satisfy its obligation to notify the Secretary of HHS documenting such breaches occurring in the year involved.

F. **Content of Notices.** All notices and reports required under this Addendum shall include the content set forth 45 C.F.R §164.404 and FIPA. Notification to individuals, except that references therein to a "Covered Entity," shall be read as references to the Business Associate.

1. Regardless of the method by which notice is provided to individuals under this section, notice of a breach shall include, to the extent possible, the following: (a) a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known; (b) a description of the types of unsecured PHI and PII that were involved in the breach (such as full name, social security number, date of birth, home address, account number, or disability code); (c) the steps individuals should take to protect themselves from potential harm resulting from the breach, if applicable; (d) a brief description of what the covered entity involved is doing to investigate the breach, to mitigate losses, and to protect against any further breaches; and (e) contact procedures for individuals to ask questions or learn additional information, which shall include a toll free telephone number, an e-mail address, web site, or postal address.

G. **Notice to Credit Reporting Agencies.** In the case of a breach of PII discovered by the Business Associate where the unsecured PII of more than one thousand (1000) individuals has

reasonably believed to have been, accessed, acquired, or disclosed, after prior approval by the County, the Business Associate shall notify all consumer reporting agencies nationwide, that complete and maintain files in accordance with the provisions of §501.171(5), Florida Statutes.

H. **Financial Responsibility.** The Business Associate shall be responsible for all reasonable costs related to the notice required by this Section.

I. **Mitigation.** The Business Associate shall mitigate, to the extent practicable, any harmful effects that are known to the Business Associate of use or disclosure of PHI or PII in violation of this Addendum, the HIPAA Privacy and Security Rules, the Breach Notification Rules (under the HITECH Act), and FIPA.

J. A violation of this Section shall be a material violation of this Addendum.

Section 8. Termination

A. **Immediate Termination.** The County is authorized to immediately terminate the Agreement if it determines – based on its own discretion – that the Business Associate has violated a material term of this Addendum.

B. **Opportunity to Cure or Terminate.** At the County's sole discretion, the County may either:

1. provide notice of breach and an opportunity for the Business Associate to reasonably and promptly cure the breach or end the violation and terminate the Agreement if the Business Associate does not cure the breach, or end the violation within the reasonable time specified by the County; or
2. immediately terminate the Agreement if the Business Associate has breached a material term of this Addendum and cure is not possible.

C. **Effects of Termination.** Termination of the Agreement shall not affect any claim or rights that may arise based on the acts or omissions of the parties prior to the effective date of termination.

D. **Duties of Business Associate Upon Termination of the Agreement.**

1. When the Agreement is terminated, the PHI and PII that the Business Associate received from, created, or received on behalf of the County must be destroyed after being returned to the County, at the Business Associate's expense, including all PHI and PII in the possession of the Business Associate's subcontractors or agents. However, if the Business Associate determines that returning or destroying PHI and PII is not feasible, the Business Associate must maintain the

privacy protections under this Addendum, and according to applicable law, for as long as the Business Associate retains the PHI and PII, and the Business Associate may only use or disclose the PHI and PII for specific uses or disclosures that make it necessary for the Business Associate to retain the PHI and PII.

2. If the Business Associate determines that it is not feasible for the Business Associate to return PHI or PII in the subcontractor's or agent's possession, the Business Associate must provide a written explanation to the County of such reasons and require the subcontractors and agents to agree to extend any and all protections, limitations, and restrictions contained in this Addendum to the subcontractor's or agent's use or disclosure of any PHI and PII retained after the termination of the Agreement, and to limit any further uses or disclosures for the purposes that make the return or destruction of the PHI or PII not feasible.

Section 9. Miscellaneous

- A. **Agreement Subject to All Applicable Laws.** The parties recognize and agree that the Agreement, and any and all activities performed thereunder, is governed by federal, state, and local laws, including the regulations, rules, and policies of the U.S. Department of Health and Human Services including, but not limited to, HIPAA Privacy and Security Rules, FIPA, and their accompanying regulations. The parties further recognize and agree that the Agreement is subject to new legislation as well as amendments to government regulations, rules, and police, and agree to amend this Addendum accordingly.
- B. **No Third Party Beneficiaries.** Nothing expressed or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties any rights, remedies, obligations, or liabilities whatsoever.
- C. **Survival.** The rights and obligations of the parties in Sections 4, 5, 6, 7 in their entirety, as well as subsections 8D., 9E., 9G., and 9H., shall survive termination of the Agreement indefinitely.
- D. **Amendment.** This Addendum may only be revoked, amended, changed, or modified by a written amendment that is executed by both parties.
- E. **Enforcement Costs and Attorneys Fees.** If any legal action or other proceedings, including arbitration, is brought for the enforcement of this Addendum, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this Addendum, each party will hereby be responsible for its own costs and attorneys' fees.
- F. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the County to comply with the Privacy and Security Rules.

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G. **Indemnification.** To the fullest extent permitted by law, the Business Associate shall defend, indemnify, and hold harmless the County, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, costs, and expenses (including attorney's fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or part by any act or omission of the Business Associate, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the County. In the event the Business Associate is a state department or division, or a political subdivision of the State of Florida, indemnification shall follow the provisions of §768.28, Florida Statutes.

H. **Signatory Authority.** Each signatory to this Addendum represents and warrants that he or she possesses all necessary capacity and authority to act for, sign, and bind the respective entity or person on whose behalf he or she is signing.

I. **Governing Law.** This Addendum shall be governed by and construed in accordance with the laws of the State of Florida to the extent not preempted by the HIPPA Privacy Rules or other applicable federal law.

J. **Notice.** All notices and other communications under this Addendum shall be in writing and shall be deemed received when delivered personally or when deposited in the U.S. mail, postage prepaid, sent registered, or certified mail, return receipt requested, or sent via nationally recognized and receipted overnight courier service, to the parties at their respective principal office or record as set forth below or as designed in writing from time-to-time. No notice of a change of address shall be effective until received by the other party(ies).

To the County:

Orange County HIPAA Privacy Officer
2002-A East Michigan Street
Orlando, FL 32806
(407) 836-9214

AND

Orange County Administrator
Administration Building, 5th Floor
201 S Rosalind Avenue
Orlando, FL 32801

To the Business Associate:

The Nemours Foundation
Attention: Privacy Officer
10140 Centurion Parkway North
Jacksonville, FL 32256
Email: Privacy@nemours.org

Facsimile Number: (904) 697-5989

K. **Severability.** If any provision of this Addendum, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Addendum, or the application of such affected provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Addendum shall be valid and shall be enforced to the fullest extent permitted by law. It is further the intention of the parties that if any provision of this Addendum were capable of two constructions, one that rendered the provision void and one that renders the provision valid, then the provision shall have the meaning that renders it valid.

L. **Successors and Assigns.** The Business Associate shall not assign either its obligations or benefits under this Addendum without the expressed written consent of the County, which shall be at the sole discretion of the County. Given the nature of this Agreement, neither subcontracting nor assignment by the Business Associate is anticipated and the use of those terms herein does not indicate that permission to assign or subcontract has been granted.

M. **Venue and Waiver of Jury Trial.** Any action or proceeding seeking to enforce any provision, or based on any right arising out of this Addendum shall be brought in the federal or state courts located in Orange County, Florida, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue therein. Any and all rights to a trial by jury are hereby waived.

N. **Waiver and Breach.** No failure by a party to insist upon the strict performance of any covenant, agreement, term, or condition of this Addendum shall constitute a waiver of any such breach or such covenant, agreement, term, or condition. Any party may waive compliance by the other party with any of the provisions of this Addendum if done so in writing. No waiver of any provision shall be construed as a waiver of any other provision or any subsequent waiver of the same provision.

O. **Entire Agreement.** The Agreement, this Addendum and/or any additional addenda or amendments to the Agreement, any documents incorporated herein by reference, and/or attachments hereto, shall construe the entire understanding between the parties as to the rights, obligations, duties, and services to be performed hereunder.

[SIGNATURES ON FOLLOWING PAGE]

Exhibit B

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IN WITNESS HEREOF, the parties, attesting that they are duly authorized to enter into this Agreement, have executed this Agreement on the dates indicated below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
for Orange County Mayor

Date: 6.5.18

ATTEST: Phil Diamond, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Sweet*

THE NEMOURS FOUNDATION

By: *Lloyd Werk*
Lloyd Werk, MD, MPH
Director, Nemours Florida
Prevention Initiative

Date: 4/30/18

ATTEST:

By: *Kelly Logue*