

MODIFICATION AGREEMENT BETWEEN NEW YORK CITY HUMAN RESOURCES  
ADMINISTRATION/DEPARTMENT OF SOCIAL SERVICES AND THE KINGS COUNTY  
DISTRICT ATTORNEY'S OFFICE

This MODIFICATION AGREEMENT ("Modification Agreement") is dated  
9-24, 2018, and is between the New York Human Resources  
Administration/Department of Social Services ("Department" or "HRA"), with offices at 150  
Greenwich Street, New York, New York 10007 and the Kings County District Attorney's Office,  
("Kings County DA" or "DA"), with offices at Renaissance Plaza, 350 Jay Street, Brooklyn, NY  
11201 (hereinafter "the Parties").

WITNESSETH

WHEREAS, the Department, as the local social services district ("District"), is required,  
pursuant to Section 145 of the Social Services Law of the State of New York, to refer to the district  
attorney's ("DA's") office all cases where the District has reason to believe that a willful act designed  
to interfere with the proper administration of public assistance and care has been committed; and

WHEREAS, Section 348.2 of the New York State Code of Rules and Regulations requires that  
the District enter into agreements with appropriate DA's offices to establish referral procedures for  
all cases in which reasonable grounds exist to believe that an act of welfare fraud has been  
committed; and

WHEREAS, the Parties have entered into a Cooperative Agreement (the "Agreement") for  
the above-referenced services for the period from July 1, 2017 through June 30, 2018 with two (2)  
one (1) year automatic renewal terms commencing July 1, 2018 and ending June 30, 2020, subject  
to the availability of funds; and

WHEREAS, the Parties wish to modify the Confidentiality provisions to account for  
required referrals and permitted disclosure of client identifiable Medicaid data in accordance with  
both the applicable Federal Regulations and the New York State Social Services Law and  
applicable New York State Regulations; and

NOW, THEREFORE, the Parties hereto agree as follows:

1. Except as modified herein or modified previously, all of the covenants, terms and  
conditions of the Agreement shall remain unchanged, and are hereby ratified and  
confirmed as in full force and effect.
2. Paragraph "G" of Article 10 titled "CONFIDENTIALITY" of the Agreement is hereby  
modified:

From:

G. In accordance with 45 C.F.R. §164.512 and §164.512 (f), HRA is permitted to  
disclose to the Kings County DA's office confidential client identifiable Medicaid data,  
without individual consent, for a law enforcement purpose to a law enforcement official  
pursuant to a civil or authorized investigative demand, or similar process under law  
provided that (1) the information sought is relevant and material to a legitimate law  
enforcement inquiry, (2) the request is specific and limited in scope to the extent

reasonably practicable in light of the purpose for which the information is sought and (3) de-identified information could not be reasonably used.

To:

G. In accordance with 45 C.F.R. §164.512 and §164.512 (a), HRA is permitted to disclose to the Kings County DA's office confidential client identifiable Medicaid data, without individual consent and/or without certification of documents, to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. Pursuant to NY Social Services Law §145(1) and 18 NYCRR § 348.2, HRA is required to refer to the DA's office all cases where it has reason to believe that a willful act designed to interfere with the proper administration of public assistance and care has been committed.

3. The remaining paragraphs, subsequent to paragraph "G" as they appeared in Article 10 of the Agreement, shall remain the same except they shall be re-lettered starting with letter H and ending with letter W as follows:

- H. In the event that Medicaid data obtained from HRA without individual consent and for the purpose of investigating welfare fraud is to be re-disclosed at a judicial or administrative proceeding, such information may only be disclosed if (1) the disclosure is required by law, (2) the disclosure is pursuant to a court order, (3) (a) valid HIPAA authorization is obtained from the individual who is the subject of the records or (b) there is an appropriate statutory or regulatory exception that eliminates the need for valid consent. 45 C.F.R. § 164.512(e). Absent these exceptions, permission must be obtained from the Medicaid recipient prior to responding to the request for information from an outside source. 42 C.F.R. § 431.306(d). HRA's Office of Legal Affairs should be consulted prior to any re-disclosure of Medicaid data to a Court or judicial tribunal.
- I. The federal Medicaid regulations require the state Medicaid agency to establish specific conditions for the disclosure of protected health information to third parties, including governmental bodies, the courts, or law enforcement officials. 42 C.F.R. § 431.306(e).
- J. All information obtained, learned, developed, or filed in connection with this Agreement, including data contained in official HRA and DA files or records, shall be used only for its intended purposes under this Agreement and shall be held confidential pursuant to the provisions of all applicable federal, state, and local laws and codes, and shall not be disclosed to any persons, organization, agency, or other entity except as authorized or required by applicable law, rule or regulation promulgated by a governmental authority having jurisdiction.
- K. All of the reports, information or data furnished to, or prepared, assembled, or used under this Agreement are to be held confidential, and the same shall not be made available to any individual or organization without the prior written approval of HRA and/or the DA as appropriate, except as authorized or required by applicable law, rule or regulation promulgated by a governmental authority having jurisdiction.
- L. Subject to the representations herein, the DA will be responsible for complying with

all confidentiality restrictions, as specified herein and as required by law, when using and transmitting information provided by HRA. The DA shall also bear the responsibility of the compliance of its agents, contractors, subcontractors and any agents thereof with the confidentiality requirements stated herein, in the performance of this Agreement. Where any agent performs a function under this Agreement in lieu of the DA, that agent shall abide by all provisions that apply to the DA.

- M. The DA agrees to treat all HRA records as confidential and to protect all HRA records or data received under this Agreement from unauthorized disclosure or redisclosure and to use such confidential information in a manner consistent with the confidentiality requirements of all applicable federal, state and local laws and regulations as may now be, or in the future may become, applicable.
- N. The DA agrees to use and ensure the use of appropriate safeguards to prevent misuse or unauthorized disclosure of any confidential information, and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect and secure the confidentiality, integrity, and availability of any electronic or hard copy individually identifiable information that it creates, receives, maintains, or transmits pursuant to this Agreement.
- O. In the event that the DA, its contractors, subcontractors of any agent thereof provides any confidential data and/or individually identifiable HRA data to anyone for any purpose, the DA agrees to ensure that such recipient of HRA data agrees to, complies with, and is bound by an agreement that contains confidentiality restrictions and conditions that are at least as restrictive as those contained in this Agreement.
- P. Effect of unauthorized disclosure. The DA agrees to report to HRA any unauthorized use or disclosure of confidential or protected data, not provided for by this Agreement of which it becomes aware. Further, the DA agrees to immediately report to HRA any data security incident of which it becomes aware; including a breach of unsecured protected data.
- Q. In the event of any unauthorized disclosure of HRA Medicaid data, the DA shall immediately commence an investigation to determine the scope of the disclosure and immediately inform HRA following discovery of such incident. The DA will be responsible for providing HRA with a written incident report, within 48 hours after the incident is discovered, that details the circumstances surrounding the unauthorized disclosure and the names of the individuals involved, if known. A breach is considered discovered on the first day on which the DA, its contractors, subcontractors or any agent thereof, knows or should have known of such breach.
- R. In the event of a data breach, the DA is responsible for notifying the affected individuals within a reasonable amount of time, but no later than 60 calendar days after the discovery of the breach or earlier if so required by law, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Notification shall be in a form and format prescribed by HRA and shall meet the requirements of applicable local, state and federal law. The DA shall be responsible for all costs associated with providing breach notification to all affected individuals when notification is required by law.

- S. An unauthorized disclosure or use of confidential data may be considered a data breach in accordance with the terms set forth in this Cooperative Agreement. HRA reserves any and all other rights and remedies in the event of unauthorized disclosure.
- T. In case of a breach of confidentiality, the DA shall indemnify HRA and hold HRA, its officers, and employees from any claims, suits, actions damages, and costs of any nature arising out of the breach of confidentiality.
- U. A breach of this Article shall constitute a material breach of this Agreement for which HRA may terminate this Agreement as indicated herein. If for any reason, one of the terms of this agreement is violated, all HRA data shall be either destroyed or returned to HRA, unless otherwise authorized by HRA.
- V. Any disclosure of confidential HIV-related information shall be accompanied by the following written:

This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure.
- W. The provisions of this Article 10 shall remain in full force and effect following termination of, or cessation of the services required by this Agreement.

U-Kings County DA  
Cooperative Agreement  
Modification  
Fraud Prosecution  
09/18/18

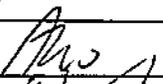
WITNESS WHEREOF, the Parties hereto have executed this Modification Agreement on the dates appearing below their respective signatures.

THE NEW YORK CITY HUMAN  
RESOURCES ADMINISTRATION/  
DEPARTMENT OF SOCIAL SERVICES

THE CITY OF NEW YORK  
OFFICE OF THE DISTRICT ATTORNEY  
KINGS COUNTY

BY: 

BY: 

TITLE: 

TITLE: District Attorney

DATE: 10/25/14

DATE: 9-24-14

ACKNOWLEDGEMENTS:

STATE OF NEW YORK )  
:ss:  
COUNTY OF NEW YORK)

On this 25<sup>th</sup> day of Oct 2019, before me personally came Vincent Pullo known to me and known by to be the NCCO of the NEW YORK CITY HUMAN RESOURCES ADMINISTRATION/DEPARTMENT OF SOCIAL SERVICES, the person described in and who executed the foregoing instrument, and acknowledged to me that s/he executed the same for the purposes therein mentioned.

SHARON JAMES-LEONCE  
Commissioner of Deeds  
City of New York No. 2-13026  
Certificate Filed in New York County  
Commission Expires May 01, 2020

Sharon James Leonce  
NOTARY PUBLIC

STATE OF NEW YORK )  
:ss:  
COUNTY OF NEW YORK)

On this 24<sup>th</sup> day of Sept 2019, before me personally came Eric Gonzalez known to me and known by to be the District Attorney of the OFFICE OF THE DISTRICT ATTORNEY, KINGS COUNTY in the City of New York, the person described in and who executed the foregoing instrument, and acknowledged to me that s/he executed the same for the purposes therein mentioned.

Franklin J. Arias  
NOTARY PUBLIC

FRANKLIN J. ARIAS  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01AR6348873  
Qualified in Kings County  
My Commission Expires 10-11-2020