



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 10/15/2024

* = Mandatory, information must be provided

or Procurement Director Award: ☐

***Contractor/Vendor Name/Grantor (DBA):**

NaphCare Arizona, LLC

***Project Title/Description:**

Opioid Abatement Funding Coordinated Reentry Planning Services Programs -- Release Planning Staffing

***Purpose:**

The Detainee and Crisis Systems Department formally known as the Behavioral Health Department was awarded the Opioid Abatement Funding-Coordinated Reentry Planning Services Grant from the State of Arizona, Office of the Attorney General on February 12, 2024. This grant will allow the Detainee and Crisis Systems Department to continue to work with NaphCare to expand and enhance release planning services at the Pima County Adult Detention Center (PCADC) for INVEST program participants and other high need populations participating in the Community Reentry Program (CRP). Currently, NaphCare has three release planning staff working with the detainees on its evidence-informed Release Planning program through the evidence-based INVEST program. The Opioid Abatement Grant will fund the addition of five release planners and one release planner Supervisor, who will engage with the increase in INVEST program participants and CRP participants preparing them for release and connection to care.

***Procurement Method:**

Board of Supervisors Policy D29.7, I-4. c

***Program Goals/Predicted Outcomes:**

Increase the number of detainees served by providing release planning services which includes identification of a support network, instructions for future care and follow-up, assist detainees with a specific plan for medication management, if applicable, and coordinate care with community organizations, shelters, employment agencies, and drug and alcohol counselors. Connect people who need help to the help they need we define as "connections to care".

***Public Benefit:**

The INVEST Program and the Community Reentry Program will continue to significantly reduce recidivism to jail, use of emergency rooms and crisis services, expand access to care, social services and reentry resources for justice-involved individuals with co-occurring mental health and substance use disorders. Reduce taxpayer costs to the justice, hospital and crisis system of care.

***Metrics Available to Measure Performance:**

The Opioid Abatement Grant requires program performance measurements through data collection in collaboration with a third-party evaluator. Program measurements include the release planner connection to the detainee and services referred to such as discharge to health home, and outcomes measuring recidivism and quality of life for program participants as examples.

***Retroactive:**

This contract is retro-active to October 1, 2024, due to contract negotiations. If the contract is not accepted retroactively, as approved by the Grantor, Pima County will not be able to utilize awarded grant funding for their designated purpose and will be required to return the funds.

TO: BOB, 10-2-2024 (1)
Vers: 1.0 Pgs. 36
GMI appn's
(Ret) 9/27/24

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: PO Department Code: DCS Contract Number (i.e., 15-123): PO2400005135
Commencement Date: 10/01/2024 Termination Date: 09/30/2025 Prior Contract Number (Synergen/CMS): N/A
☒ Expense Amount \$ 685,550.40 * ☐ Revenue Amount: \$ _____

***Funding Source(s) required:** Attorney General State of Arizona Opioid Abatement Grant

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? ☒ Yes ☐ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Commencement Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease

Amount This Amendment: \$ _____

Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

***Funding Source(s) required:** _____

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards)

☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

Commencement Date: _____ Termination Date: _____ Amendment Number: _____

☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required:** _____

***Match funding from General Fund?** ☐ Yes ☐ No If Yes \$ _____ % _____

***Match funding from other sources?** ☐ Yes ☐ No If Yes \$ _____ % _____

***Funding Source:** _____

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: Paige Knott

Department: Detainee and Crisis Systems

Telephone: 520-724-7515

Department Director Signature: _____

Date: 9-24-2024

Deputy County Administrator Signature: _____

Date: 27 Sept 24

County Administrator Signature: _____

Date: 9/30/24



PIMA COUNTY

FINANCE & RISK MANAGEMENT

Modification to Insurance or Indemnity Clause

Date: 9/13/2024

Requestor Name: Paige Knott

Department: Detainee and Crisis Systems formerly know as BH



Change to Insurance



Change to Indemnity

Supplier Name: NaphCare, Inc.

Contract No: PO2400005135

Project Title/Description:

Opioid Abatement Funding Coordinated Reentry Planning Services Programs-Release
Planning Staffing



Requested Change:

Actions taken:

Removed Professional Liability.

Added Sexual Abuse and Molestation Coverage per Grant requirements.

Revised Indemnification Language.



Approved



Denied

Risk Management:

Christina Garcia

Comments:

Approved with above changes.

2/6/2024

Pima County Department of Detainee and Crisis Systems

Project: Opioid Abatement Funding Coordinated Reentry Planning Services Programs-Release Planning Staffing

Contractor: NaphCare Arizona, LLC

Amount: \$685,550.40

Contract No.: PO2400005135

Funding: Attorney General State of Arizona Opioid Abatement Grant

PROFESSIONAL SERVICES CONTRACT

1. Parties and Background.

1.1. Parties. This Contract is between Pima County, a body politic and corporate of the State of Arizona ("County"), and NaphCare Arizona, LLC ("Contractor").

1.2. Authority.

1.2.1. County selected Contractor pursuant to and consistent with Board of Supervisors Policy D29.7.

1.2.2. County is entering into this Contract with NaphCare Arizona, LLC. based on prior approval granted by the State of Arizona, Office of the Attorney General on February 12, 2024.

1.3. Background and Purpose.

1.3.1. As of August 2023, Attorney General Kris Mayes reports that her office has secured consent judgements finalizing multiple historic multistate settlements with pharmaceutical companies for their roles in the opioids crisis. The Attorney General's Office ("AGO") previously reached an agreement with 91 Arizona cities and towns and all 15 counties, providing the framework of the One Arizona Distribution of Opioid Settlement Funds Agreement (the "One Arizona Agreement") to expeditiously distribute funds from future opioid settlements across Arizona. As part of the One Arizona Agreement, the Arizona Legislature appropriated a portion of the settlement funds to the AGO during the 2023 legislative session for purposes of providing funding for grant programs to address and ameliorate opioid abuse across the state during FY2024.

1.3.2. The State of Arizona, Office of the Attorney General, awarded funds to Pima County Department of Detainee and Crisis Systems under the Opioid Abatement Funding – Coordinated Reentry Planning Services Programs to provide for extension and expansion of the INVEST program which provides reentry services and programs for offenders with co-occurring substance abuse and mental illness returning from incarceration.

1.3.3. Pursuant to State of Arizona, Office of the Attorney General guidelines, NaphCare Arizona, LLC. "Contractor" of these grant program funds and will conduct all activities under this Contract accordingly.

2. Term.

2.1. Initial Term. The term of this Contract commences on October 1, 2024 and will terminate on September 30, 2025 ("Initial Term"). If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.

3. **Scope of Services**. Contractor will provide County with the services described in **Exhibit A (3 pages)**, at the dates and times described on **Exhibit A** or, if **Exhibit A** contains no dates or time frames, then upon demand. The Services must comply with all requirements and specifications in the Solicitation.

4. **Key Personnel**. Contractor will employ suitably trained and skilled professional personnel to perform all consultant services under this Contract. Prior to changing any key personnel, especially those key personnel County relied upon in making this Contract, Contractor will obtain the approval of County.

5. Compensation and Payment.

5.1. Rates Adjustment. County will pay Contractor at the rates set forth in **Exhibit B (2 pages)**. Those rates will remain in effect during the twelve-month term of the contract. This contract does not have an option for renewals.

5.2. Maximum Payment Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$685,550.40 (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.

5.3. Sales Taxes. The payment amounts or rates in **Exhibit B** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.

5.4. Timing of Invoices. Contractor will invoice County on a monthly basis unless a different billing period is set forth in **Exhibit B**. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.

5.5. Content of Invoices. Contractor will use the invoice form included in **Attachment B.1(1 page)**. Monthly invoice forms are to be submitted with all fields completed and to the Detainee and Crisis Systems staff as set forth in **Exhibit B**.

- 5.6. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 22 below, question any payment under this Contract. If County raises a question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.
6. **Insurance**. Contractor will procure and maintain at its own expense insurance policies (the "**Required Insurance**") satisfying the below requirements (the "**Insurance Requirements**") until all its obligations under this Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Contractor's indemnity obligations under this Contract. The County in no way warrants that the required insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.
- 6.1. Insurance Coverages and Limits: Contractor will procure and maintain, until all its obligations have been discharged, coverage with limits of liability not less than those stated below. Coverage must be placed with insurers acceptable to the County with A.M. Best rating of not less than A-VII, unless otherwise approved by the County.
- 6.1.1. Commercial General Liability (CGL) – Occurrence Form with limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include coverage for liability arising from premises, operations, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations. Any standard coverages excluded from the CGL policy, such as products/completed operations, etc. shall be covered by endorsement or separate policy and documented on the Certificates of Insurance.
- 6.1.2. Sexual Abuse and Molestation Coverage. The policy shall include coverage for Sexual Abuse and Molestation. This coverage may be sub-limited to no less than \$500,000. The limits may be included within the General Liability limit, provided by separate endorsement with its own limits, or provided as separate coverage included with the Professional Liability.
- 6.1.3. Business Automobile Liability – Coverage for bodily injury and property damage on any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract with minimum limits not less than \$1,000,000 Each Accident.
- 6.1.4. Workers' Compensation and Employers' Liability – Statutory coverage for Workers' Compensation. Workers' Compensation statutory coverage is compulsory for employers of one or more employees. Employers Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each employee – disease.

6.2. Additional Coverage Requirements:

6.2.1. Claims Made Coverage: If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

6.2.2. Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

6.2.3. Subrogation Endorsement: The General Liability, Business Automobile Liability, and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

6.2.4. Primary Insurance Endorsement: The Required Insurance policies must stipulate that they are primary, and that any insurance carried by County, or its agents, officials, or employees, is excess and not contributory insurance.

6.2.5. The Required Insurance policies may not obligate County to pay any portion of Contractor's deductible or Self Insurance Retention (SIR).

6.2.6. Subcontractors: Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

6.3. Notice of Cancellation:

Contractor must notify County, within two (2) business days of Contractor's receipt of notice from an insurer, if any Required Insurance policy is suspended, voided, or cancelled for any reason. Notice must include the Pima County project or contract number and project description.

6.4. Verification of Coverage:

6.4.1. Contractor must furnish County with a certificate of insurance (valid ACORD form or equivalent approved by Pima County) for each Required Insurance policy, which must specify that the policy has all the required endorsements and must include the Pima County project or contract number and project description. Each certificate must be signed by an authorized representative of the insurer.

6.4.2. County may at any time require Contractor to provide a complete copy of any Required Insurance policy or endorsement. Note: Contractors for larger projects must provide actual copies of the additional insured and subrogation endorsements.

6.4.3. Contractor must provide the certificates to County before work commences. Each Required Insurance policy must be in effect at least 10 days before work under this Contract commences. Contractor must provide County a renewal certificate not less than 15 days prior to a Required Insurance policy's expiration date. Failure to maintain the Required Insurance policies, or to provide evidence of renewal, is a material breach of this Contract.

6.4.4. All insurance certificates must be sent directly to the appropriate County Department.

6.5. Approval and Modifications:

The Pima County Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager and does not require a formal Contract amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

7. Indemnification. To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnatee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnatee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all Claims. Provided, however, that Contractor shall have no obligation to indemnify the County and/or County agencies, including any employees, agents or contractors, for any losses, damages and/or injury arising out of or resulting from a wrongful, intentional, malicious, willful, wanton or deliberately indifferently act caused by the negligence, or omission attributable to the County or its agents, or for any claims arising out of: (1) the County, its employees or agents affirmatively preventing an Inmate from receiving Services ordered by Contractor or its agents; or (2) any failure by the County, its employees or agents to promptly present an Inmate to Contractor for Services in any situation where it is actually known by a person with no medical training that Services are needed to be provided by Contractor (i.e. after a physical altercation between persons and an Inmate). Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

8. **Laws and Regulations.**
- 8.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.
 - 8.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.
 - 8.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.
 - 8.4. Compliance with Funding Agency. Contractor will comply with all applicable grant conditions set forth in the **Exhibit C (12 pages)**.
9. **Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of Pima County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under the Pima County Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.
10. **Subcontractors.** Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
11. **Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.
12. **Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
13. **Americans with Disabilities Act.** Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).
14. **Authority to Contract.** Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

15. **Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
16. **Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
17. **Termination by County.**
- 17.1. Without Cause. County may terminate this Contract at any time without cause by notifying Contractor, in writing, at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of termination.
- 17.2. With Cause. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.
- 17.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.
18. **Notice.** Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:

Paula Perrera, Director
Detainee and Crisis Systems
3950 S. Country Club Rd, Suite 3240
Tucson, AZ 85714

Contractor:

NaphCare Arizona, LLC
Attn: CEO
111 W. Monroe, Suite 300
Phoenix, AZ 85003

Bradford T. McLane, Secretary
NaphCare Arizona, LLC
2090 Columbiana Road, Suite 4000
Birmingham, AL 35216

With a copy to:
Legal Department
NaphCare, Inc.
2090 Columbiana Road, Suite 4000
Birmingham, AL 35216

19. **Non-Exclusive Contract.** Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.
20. **Remedies.** Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.
21. **Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.
22. **Books and Records.** Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
23. **Public Records.**
 - 23.1. **Disclosure.** Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in award of this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
 - 23.2. **Records Marked Confidential; Notice and Protective Order.** If Contractor reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.
24. **Legal Arizona Workers Act Compliance.**
 - 24.1. **Compliance with Immigration Laws.** Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.

24.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

24.3. Remedies for Breach of Warranty. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.

24.4. Subcontractors. Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 24 by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

25. **Grant Compliance**. Contractor will comply with all applicable requirements outlined in **Exhibit C – State of Arizona, Office of the Attorney General's Grant Conditions, Scope of Work (12 pages)**.

26. **Health Insurance Portability and Accountability Act (HIPAA)**. The parties acknowledge that the County is a hybrid covered entity as described in 45 C.F.R. §160.103 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and is required to comply with the provisions of HIPAA with respect to safeguarding the privacy, confidentiality, and security of protected health information. Contractor acknowledges that it may obtain confidential personal health information in the course of its performance under the terms of this Agreement. "Confidential personal health information" includes information that could be used to identify a participant, information pertaining to the participant's care, treatment or experience in County's program, and information pertaining to the cost of, payment for, or collections activities related to participant's care, treatment, and experience in County's program. Contractor agrees to maintain the privacy, confidentiality, and security of information it may obtain in the course of its performance under this Agreement. In particular, Contractor agrees that it is County's Business Associate and agrees to be bound by the Business Associate Agreement in **Exhibit D (7 pages)**, which is incorporated into this agreement, and further specifically agrees that:

26.1. Any confidential personal health information that Contractor may obtain shall remain the sole property of the County; and

- 26.2. Contractor shall establish and maintain procedures and controls that are acceptable to County to assure that no confidential personal health information contained in its records or obtained from County or from others in carrying out its functions under this Agreement shall be used by or disclosed by Contractor, its agents, officers, employees, or sub-contractors, except as required in the performance of its obligations under the terms of this Agreement; and
- 26.3. Contractor shall not remove any confidential personal health information from County premises, if applicable; and
- 26.4. Any other information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of its duties under this Agreement, or to County.
27. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
28. **Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394, if Contractor engages in for-profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of the Contract that the Company is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.
29. **Amendment.** The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.
30. **Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

This agreement will become effective when all parties have signed it. The effective date of the agreement will be the date this agreement is signed by the last party (as indicated by the date associated with that party's signature).

PIMA COUNTY

CONTRACTOR

Chair, Board of Supervisors



Authorized Officer Signature

Date

Bradford T. McLane, Secretary

Printed Name and Title

9/18/24

Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO FORM

Deputy County Attorney

Jonathan Pinkney

Print DCA Name

9/17/24

Date

APPROVED AS TO CONTENT



Department Head

Exhibit A (3 pages)
Scope of Services

Introduction

The Opioid Abatement Grant Funding is being used to expand and enhance Pima County's Detainee and Crisis Systems current discharge planning model and the Inmate Navigation, Engagement, Support and Treatment (INVEST) program which together provide a continuum of care from detention to community systems to address substance use disorders and co-occurring mental health conditions(SUD/MH) among jail inmates. Both models ensure that individuals with SUD/MH receive personalized treatment plans, which include medication-assisted treatment, behavioral therapies, continuous support systems and coordination with law enforcement. Both models employ evidence-based strategies to address co-usage and co-addiction. The grant funding will allow for increased capacity in addresses individuals who have been booked into the PCADC and will reenter the community countywide.

The Release Planner Supervisor and Release Planners will support successful reentry into society of criminal justice involved individuals suffering from Opioid Use Disorder and any co-occurring SUD or MH conditions, co-usage, and or co-addiction though evidence-based programs or strategies.

The PCADC healthcare program is managed by the Pima County Detainee and Crisis Systems Department which partners with NaphCare Arizona, LLC to provide medical and mental health services to detainees at PCADC.

The Release Planning staff will report to work and provide support services on site at the Pima County Adult Detention Complex (PCADC) located at 1270 W Silverlake Rd, Tucson, AZ 85713.

1. Release Planner Staff Responsibilities

1.1. The Release Planner staff will:

- 1.1.1. Assist patients with a specific plan for medication management that includes involvement of the patient in discharge planning.
- 1.2.1. Assist patients with the Identification of a support network and provide instructions for future care and follow-up.
- 1.3.1. Coordinate care with community agencies, shelters, employment agencies, and drug and alcohol counselors.
- 1.4.1. Participate in the Collaborative Comprehensive Care Planning meetings, to be convened either in-person or remotely via telephone or video conference on a regular basis at the request of the INVEST Program Manager.
- 1.5.1. Release Planner Supervisor will report to the Special Population Clinical Navigator.

- 1.6.1. Release Planner Supervisor will work closely with Detainee and Crisis Systems Correctional Health Program Manager and team and INVEST Program Manager and team to develop roles and responsibilities for Release Planning team.
- 1.7.1. Release Planner Supervisor must be in attendance at the Medical Administrative Committee (MAC) monthly meeting to provide program updates including lessons learned, service gaps, outcomes, successes and barriers.
- 1.8.1. Contractor will notify the Detainee and Crisis System Department if the Release Planner Supervisor is released from NaphCare Arizona, LLC employment.
- 1.9.1. Release Planners will report to the Release Planner Supervisor.

2. Staffing Commitment – PCADC

2.1. Staffing Commitment - PCADC Table:

Opioild Abatement Grant Release Planner Supervisor & Planners Staff Plan		Total Hours Per Day									
	Shift Hours	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hrs./ Wk.	Annual Hours Committed	# FTEs (weekly / 40)
Release Planning Staff Specific Position Title:											
Release Planning Supervisor	1st Shift		8	8	8	8	8		40	2080	1.0
Release Planner	1st Shift	10	10				10	10	40	2080	1.0
Release Planner - Welcome to Jail Pods	1st Shift		8	8	8	8	8		40	2080	1.0
Release Planner - Welcome to Jail Pods	2nd Shift		8	8	8	8	8		40	2080	1.0
Booking/Transport/Property Release Planner	1st Shift		8	8	8	8	8		40	2080	1.0
Booking/Transport/Property Release Planner	2nd Shift		8	8	8	8	8		40	2080	1.0
Sub Total for this Functional Area		10	50	40	40	40	50	10	240	12,480	6.0

- 2.2. The Staffing Commitment- PCADC outlines the shifts, hours and days of the week Contractor will provide Release Planning staffing to support the Coordinated Reentry Planning Services Programs through the Opioid Abatement Grant program.

- 2.3. Any change to the Contractor Onsite Staffing Commitment for Release Planner Supervisor and Planners Staff Plan must be reviewed and approved by the Detainee and Crisis Systems Correctional Health Program Manager prior to any staffing commitment changes can be made to the schedule.

3. **Staffing Reports**

- 3.1. A staffing report will be completed based on the payrolls paid within the month. Reports must coincide with and otherwise match the monthly Staffing Commitment and period being invoiced.
- 3.2. Each daily report must list each Release Planner staff for the shift and hours to be worked and by whom for each Release Planner position by day of the week.
- 3.3. Contractor will submit a report showing actual hours worked for each Release Planner by week, based on an electronic timekeeping system that tracks hours worked for each staff member. The report must reflect the time period being invoiced.

End of Exhibit A

Exhibit B (2 pages)
Compensation & Payment

1. Compensation & Payment

- 1.1. The allowable compensation for one (1) Release Planner Supervisor and five (5) Release Planners is reflected in the PCADC Release Planner Staffing Rate Table referenced below.

PCADC Release Planner Staffing Rate Table						
Position Title	Salary/Benefits Grant Program Period 10/1/2024 – 09/30/2025			Relief Compensation Grant Program Period 10/1/2024 – 09/30/2025		
	Hourly Budgeted Rate by Position, including wages, benefits or contracted amount		Budgeted Compensation (hourly rate x 2080)	Release Planning staff are not defined as Exempt Staff.		
				Hourly Rate	Annual Hours	Annual Budgeted Compensation
Release Planner Supervisor	\$55.58	1.00	\$115,606.40	\$55.58	200	\$11,116.00
Release Planners	\$49.02	5.00	\$509,808.00	\$49.02	1000	\$49,020.00
TOTALS		6.00	\$625,414.40		1200	\$60,136.00

Contracted Release Planner Staff Pricing for Program Period - 10/01/2024-09/30/2025	
Price of Release Planner Supervisor	\$ 126,722.40
Price of Release Planners	\$ 558,828.00
Total Price for Discharge Planners Services	\$ 685,550.40

- 1.2. Contractor's compensation Not-to-Exceed (NTE) dollar amount for Release Planner staffing services provided to program participants for the grant program period of October 1, 2024 through September 30, 2025 will not exceed \$685,550.40.
- 1.3. Relief funding will be included in the contracted amount. Contractor agrees to ensure the relief funding in the Release Planning Staffing Rate Table is utilized to ensure relief personnel are provided for the positions listed in the table.
- 1.4. The County will pay the Contractor following the submission of an invoice, see **Attachment B.1 - Invoice for Release Planner Staffing - PCADC (1 page)** for Release Planner staffing services rendered. No payment will be made prior to receipt of service and accurate invoice.

- 1.5. Contractor will include the Release Planner staffing report and timecards when submitting the monthly invoice to the Detainee and Crisis Systems Department for payment. Payment will not be made to Contractor until all three items are submitted.
- 1.6. Overtime for Release Planner staff is not covered under this agreement and will be denied if invoiced for payment.
- 1.7. Deadline for submission of monthly invoice, staffing report and timecards is referenced in Section 5. Compensation and Payment.
- 1.8. Release Planning staff invoice, staffing report and timecards must be submitted separate from the current NaphCare Correctional Health contract invoice, staffing report and timecards. If the Release Planning staff are included in the current Pima AZ – Hours Summary Report, PCADC invoice and staffing report, the charges will be denied. Contractor will be responsible to bill the County using the invoice referenced in Attachment B.1 Invoice for Release Planner Staffing Services – PCADC.
- 1.9. Invoices and with attached required staffing reports and timecards for only the Release Planning staff will be sent via email to the following Detainee and Crisis Systems staff monthly for payment:
 - Correctional Health Program Manager
 - Finance Manager
 - Contract Manager

End of Exhibit B

Attachment B.1 (1 page)
Invoice for Release Planner Staffing Services – PCADC

Name of Contractor:

Date of Invoice: <INSERT DATE>


Reporting Period Beginning: <INSERT DATE> and Ending <INSERT DATE>

#	Item	Monthly Charges
1	For the provision of one Release Planner Supervisor funded by the AZ AGO Opioid Abatement Grant	\$
2	For the provision of five additional Release Planners funded by the AZ AGO Opioid Abatement Grant	\$
3	Equals: Total Monthly Cost of Release Planner Staffing	\$
4	Grand Total Amount due for Reporting Period (Lines 1 + 2 = Line 3)	\$

		Original Contract Amount	Previous Amounts Billed	Current Amount Billed	Remaining Contract Balance
5	Cumulative Monthly Usage Report	\$685,550.40	\$0.00	\$0.00	\$0.00

End of Attachment B.1

Exhibit C (12 pages)
State of Arizona, Office of the Attorney General's Grant Conditions-Scope of Work

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1. Scope of Work

1.1. Introduction – Background of One Arizona Agreement

As of August 2023, Attorney General Kris Mayes reports that her office has secured consent judgments finalizing multiple historic multistate settlements with pharmaceutical companies for their roles in the opioids crisis. The Attorney General's Office ("AGO") previously reached an agreement with 91 Arizona cities and towns and all 15 counties, providing the framework of the One Arizona Distribution of Opioids Settlement Funds Agreement (the "One Arizona Agreement") to expeditiously distribute funds from future opioid settlements across Arizona. As part of the One Arizona Agreement, the Arizona Legislature appropriated a portion of the settlement funds to the AGO during the 2023 legislative session for purposes of providing funding for grant programs to address and ameliorate opioid abuse across the state during FY2024.

To achieve this goal, the AGO proposes \$11,500,000 be immediately available in grant funding to be distributed to counties that established a coordinated reentry planning services program within a county jail pursuant to A.R.S. § 11-392 on or before June 30, 2023 for purposes of mitigating the opioids crisis by upgrading reentry programs for criminal-justice-involved individuals. This Request for Grant Application ("RFGA") is funded by the State share of opioid settlement fund disbursements per the One Arizona Agreement.

1.2. Purpose

Funding is intended to support successful reentry into society of criminal-justice-involved individuals suffering from Opioid Use Disorder ("OUD") and any co-occurring Substance Use Disorder or Mental Health ("SUD/MH") conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies. Grant recipients shall collaborate with local law enforcement agencies participating in the coordinated reentry planning services program in determining expenditures of grant award monies.

1.3. Grant Category: Coordinated Reentry Planning Services Program Grants

Applicants eligible to apply include Arizona counties that established a reentry planning services program within a county jail pursuant to A.R.S. § 11-392 on or before June 30, 2023. Individual proposals will be evaluated and awards made such that funds are equitably distributed where the needs are greatest. All grants are capped at \$3,000,000 (proposals may not request more than \$3,000,000 in total grant funding).

1.4. Program Description

Applicants under this RFGA must provide services that fit within at least one of the following qualifying/eligibility criteria, and any request for grant funding outside of the specific eligibility parameters below will be rejected:

1.4.1. Connect People Who Need Help to the Help they Need (Connections to Care)


Provide connections to care for people who have – or are at risk of developing – OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies.

1.4.2. Address the Needs of Criminal-Justice-Involved Persons

Address the needs of persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are involved – or are at risk of becoming involved – in the criminal justice system through evidence-based, evidence-informed, or promising programs or strategies.

1.4.3. Leadership, Planning, and Coordination

Invest in infrastructure or staffing to support collaborative efforts and provide resources to oversee and

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manage programs.

The AGO expects to select Grantees that have experience with successful reentry programs that utilize substance abuse education and prevention programs and who have experience working with the target population. Due to the limited amount of funding and limited timeframe, projects that can leverage the AGO funding to create sustainable change in the target population, move a community towards greater capacity or expand an existing, successful program to reach a larger audience are encouraged to apply.

1.5. Program Goal and Strategy

The goal of these programs is to support successful reentry of criminal-justice-involved individuals using treatment and prevention of Opioid Use Disorder ("OUD") and any co-occurring Substance Use Disorder or Mental Health ("SUD/MH") conditions, co-usage, and or co-addiction through evidence-based, evidence-informed, or promising programs or strategies.

1.5.1. Proposals should be complete and include the following specifics for the program:

- Method of approach,
- Personnel involved in the implementation of the program,
- Outcome objectives,
- Evaluation strategies to attain program goals
- Collaboration with local law enforcement agencies, and
- Budget and resources.

1.5.2. Programs must include evidence-based or evidence-informed curriculum and/or strategies.

1.5.3. Grantees must demonstrate a full understanding of current demographic trends, needs and gaps in meeting the needs of their county.

1.5.4. The program implementation plan should demonstrate meaningful ways to leverage existing efforts and funding when possible and articulate sustaining efforts for goal attainment and maintenance.

1.6. Reimbursable Expenses and Costs

Ongoing administrative and program expenses, including salaries and ERE, will be paid by the AGO on a quarterly basis via an approved Quarterly Financial Report form (QFRR). QFRR shall be in accordance with the accepted Cost Sheet. (Attachment II - Cost Sheet Form).


1.7. Allowable Expenses

Direct program and overhead costs: personnel, travel, outreach, material and supplies directly related to the programs and services, equipment/technology used by program staff, communications, and other costs associated with the provision of services as detailed and accepted in the Cost Sheet provided in Attachment II. Indirect expenses cannot exceed ten percent (10%).

1.8. Reporting and Deliverables

The Grantee shall submit to the AGO:

1.8.1. Individual signed Quarterly Financial Report forms with supporting documentation are due not

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more than 30 days following the end of each quarter;

1.8.2. Resumes of all program staff funded under the contract, due within 30 days of hire;

1.8.3. Quarterly and Annual Reporting, to include:

- Narrative description of the project activities achieved toward the identified strategy or strategies, using the reporting template provided by the AGO;
- Statistical data, i.e., the actual numbers served based on the proposed numbers to serve or other relevant data for the reporting period and year to date; including recidivism rates;
- Assessment of strategies and the budget;
- Updated logic model, if changes are made to programming;
- Updated Gantt chart, if changes are made to the timeline.
- Monitoring to review supporting documentation in compliance with GAAP and/or 2 CFR 200.

1.9. Requirements for Award

1.9.1. Eligible Grantees

Available to Arizona counties that have established a reentry planning services program within a county jail pursuant to A.R.S. § 11-392 on or before June 30, 2023.

1.9.2. Number and Value of Awards

- **Individual Grants Cap**
Individual grant amounts capped at \$3,000,000 (proposals may not request more than \$3,000,000 in total grant funding).
- **Grant Categories**
Awards will take into consideration the number of county applicants that have applied.
- **Total Grant Funding**
\$11,500,000 in total funding is available and will be disbursed according to the greatest need.

The AGO will have sole discretion to determine the number of awards, if any, and the dollar amount of each award, based on the AGO's evaluation of the funding requests submitted and the availability of funds. The AGO reserves the right to reject and/or modify any funding request made through this Request for Grant Application ("RFGA"), including but not limited to, proposed goals and geographic service areas.

1.9.3. Duration


Grantees shall propose to use the funds over a one-year contract. Grant recipients shall expend all grant monies on or before June 30, 2025.

1.9.4. No Supplanting Existing Funds

Grants allocated under this section shall supplement and not supplant any existing local funds allocated to coordinated reentry planning services programs.

1.9.5. Actual Costs

Grant Applications should reflect the actual anticipated costs of the proposed program(s) and correspond to the number of individuals within the proposed geographic area they intend to serve. It is expected the

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grantee will be prepared to begin work on the agreed start work date and the organization will have sufficient funds to meet obligations while awaiting payments.

1.9.6. Program Start-Up

Grantees shall be fully staffed and have resources necessary to fulfill the commitments the grantee has promised in their proposal. Program start-ups are expected within 30 days of contract award. Should Grantee fail to staff at the level as accepted in this agreement the firm fixed cost will be decreased to equitably address the staff shortage. The AGO may allocate these funds to another Grantee.

1.9.7. Agency Self-Assessment Survey


This survey will be used primarily for initial monitoring of your organization. This survey may also be used in evaluating the financial capability of the organization in the award process, and may be required annually. Deficiencies should be addressed for corrective action and the organization should consider procuring technical assistance in correcting identified problems.

1.9.8. Attribution Statements

Any credit given to the Arizona Attorney General's Office related to the use of grant funding in support of certain workshops or activities should include language such as:

This workshop/activity was supported by funding awarded through the One Arizona Plan, administered by the Arizona Office of the Attorney General. The opinions, findings, conclusions, and recommendations expressed in this workshop are those of the presenter(s) and do not necessarily represent those of the One Arizona Plan, the Arizona Office of the Attorney General, or the State of Arizona.

Any language that deviates from the above should be approved by the Arizona Attorney General's Office.

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2. Special Terms and Conditions

2.2. Grant

This grant is issued for the Arizona Attorney General's Office in accordance with A.R.S. § 41-2702.

2.3. Grant Type

Firm fixed cost.

2.4. Term of Grant

The term of the grant shall commence upon award and shall remain in effect for one year unless terminated, canceled or extended as otherwise provided herein.

If this grant is cancelled the Grantee may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the services delivered under the grant or which are otherwise not recoverable.

2.5. Grant Extension

By grant amendment, any resultant grant may be extended for supplemental period of up to a maximum of 12 months. Grant recipients shall expend all grant monies on or before June 30, 2025. If the AGO exercises such rights, all terms, conditions and provisions of the original grant shall remain in effect and apply during the renewal period, with the possible exception of price.

This grant may be cancelled without any further obligation by the State of Arizona or the AGO if monies are not appropriated or otherwise made available to support the continuation of this contract in a subsequent fiscal year. If this grant is cancelled the Grantee may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the services delivered under the grant or which are otherwise not recoverable.

2.6. Changes


The Office of the Attorney General reserves the right to add or delete related services and materials and make other changes within the general scope of work as may be deemed necessary to best serve the interests of the State. Changes to the Contract shall be documented by formal written amendment(s).

2.7. Documents Incorporated by Reference

The State of Arizona's Uniform Instructions to Offerors and Uniform Terms and Conditions are incorporated into this grant as if fully set forth herein and are available for review on <https://spcintra.az.gov/resources/standard-forms-and-documents>

2.8. Estimated Usage

Any contract resulting from this Solicitation shall be used on an as needed, if needed basis. The State makes no guarantee as to the amount of work that may be performed under any resulting contract.

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2.9. Non-Exclusive Contract

The Office of the Attorney General has the right to go outside the contract to obtain similar services or obtain materials from another source when necessary to meet the requirements of the State. Any off contract procurement shall be made in accordance with the Arizona Procurement Code.

2.10. Multiple Award

The state has a large number and variety of potential using agencies at locations throughout Arizona. In order to assure that any ensuing contracts will allow the state to fulfill current and future requirements, the state reserves the right to award contracts to multiple organizations. The actual utilization of any contract will be at the sole discretion of the state. The fact that the state may make multiple awards should be taken into consideration by each potential Grantee.

2.11. Ownership of Materials

All materials, documents, deliverables and/or other products of the contract (including but not limited to e.g., work plans, reports, etc.) shall be the sole, absolute and exclusive property of the State of Arizona and the Attorney General Office, free from any claim or retention of right on the part of the Grantee, its agents, Sub-grantees, officers or employees.

2.12. Key Personnel

The Grantee agrees to utilize only experienced, responsible, and capable people in the performance of this contract. The Grantee shall bear all transitional expenses incurred for any costs associated with removing or replacing key personnel who are performing work under this contract. The Grantee shall identify, at a minimum, the project director, project manager, software developer and any other personnel who will provide a key function on this project.

2.13. Skill and Knowledge of Grantee's Employees

Grantee represents and warrants to the State that Grantee has the skill and knowledge possessed by members of its trade or profession and that Grantee will apply skill and knowledge with care and diligence so Contractor and Grantee's employees and any authorized Sub-grantees shall perform the Services described in this Contract in accordance with the Statement of Work.

2.14. Background Check of Grantee's Employees


The Office of the Attorney General may require all personnel, Grantees, employees, or Sub-grantees, working with the Office of the Attorney General to submit to and successfully pass fingerprinting and background checks.

2.15. Removal of Grantee's Employees

The Office of the Attorney General may require the Grantee to remove from an assignment employees who endanger persons, property or whose continued employment under this contract is inconsistent with the interests of the Office of the Attorney General.

2.16. Availability of Grantee

The Grantee shall be available immediately upon receipt of the Notice to Proceed and remain available to the Office of the Attorney General throughout the period of performance as stated in the contract.

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2.17. Licenses and Permits

The Grantee shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business and conducted by the Grantee and for the completion of the work specified in the Scope of Work.

2.18. Confidentiality of Records

The Grantee shall establish and maintain procedures and controls that are acceptable to the Office of the Attorney General for the purpose of assuring that no information contained in its records or obtained from the State or from others carrying out its functions under the contract shall be used by or disclosed by the Grantee, its agents, offices, employees, or Sub-grantees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to the Office of the Attorney General. Grantee also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Grantee as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the Office of the Attorney General.

2.19. Treatment of Confidential Business Information

AGO may turn over to the Grantee Confidential Business Information (CBI) necessary to carry out the work required under the Contract or the Grantee may be exposed to CBI while working with the AGO. The Grantee and the Grantee's employees agree to use the CBI only under the following conditions:


- 2.19.1. Use the CBI only for the purposes of carrying out the work required by the Contract;
- 2.19.2. Not disclose the information to anyone other than properly cleared employees; and
- 2.19.3. Return the CBI to AGO whenever the information is no longer required by the Grantee for performance of the work required by the Contract, or upon completion/termination of the Contract.

2.20. Laws and Regulations

The Grantee shall establish and maintain procedures and controls that comply with laws and regulations. The Grantee shall hold the State and the Attorney General harmless from loss, cost or damage by reason of any actual or alleged violation thereof arising out of the Grantee's employees or Sub-grantee's failure to so comply.

2.21. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

The Office of the Attorney General intends to comply with assurances given to components of the State covered under HIPAA and its accompanying Administrative Simplification Regulations ("Covered Components"). These written assurances certify that the Office will collect, receive, use, and disclose the minimum necessary protected health information and related records solely for the purposes allowed under HIPAA. The Grantee warrants that it is familiar with the requirements of HIPAA and its accompanying regulations and will comply with any HIPAA requirement that may be applicable to the Office during the course of this agreement. In addition, the Grantee shall agree to cooperate to ensure compliance with assurances given to Covered Components, including signing a Business Associate Agreement in cases where the Grantee, Grantee's employees, and any Sub-grantees may work with data that involves a Covered Component (e.g. CPS, DDD, State Hospital, BHS, AHCCCS, etc.) and these agencies receive protected health information from or on behalf of the HIPAA covered client. Counsel agrees to execute such further HIPAA assurances or agreements as the State may deem appropriate.

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2.22. Pricing

2.22.1. Pricing

All Prices shall be on an all-inclusive basis and shall contain the labor rate, labor benefits, payroll burden, insurance, workman's compensation, all taxes, profit, overhead, general and administrative expenses, fees, travel expenses and all other related charges.

2.22.2. Price Reduction

A price reduction adjustment may be offered at any time during the term of the contract and shall become effective upon notice.

2.23. Shipping

Prices shall be FOB Destination Phoenix, Arizona.

2.24. Invoicing

2.24.1. Invoice Frequency

The Grantee shall submit quarterly invoices during the performance of this contract. Payment shall only be for the amount of work completed and accepted by the Office of the Attorney General, as detailed in the accepted cost proposal, for that preceding reporting period unless otherwise stipulated in the contract. Invoices shall be received no later than the 30 days from the previous quarter's performance. In no instance shall the amount(s) being invoiced differ from the price established in the contract and any subsequently approved written Amendments.

2.24.2. Invoices and Payment


Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Grantee shall submit a complete and accurate invoice for payment and appropriate supporting documentation to the State within thirty (30) days from the previous quarter's performance period.

2.24.3. Invoice Format

Invoices shall be accompanied by the quarterly report and clearly indicate the work accomplished. The total amount for the invoice shall correlate to the offer accepted by the AGO. Contract and/or Purchase Order numbers should be included. The Grantee shall submit invoices to the Office of the Attorney General, Attention: Grants Unit at Grants@azag.gov or, 2005 N Central Ave, Phoenix, AZ 85004.

2.25. Indemnification

To the fullest extent permitted by law, Grantee shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee or any of its owners, officers, directors, agents, employees or Sub-grantees. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Grantee to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified.

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by Grantee from and against any and all claims. It is agreed that Grantee will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Grantee agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Grantee for the State of Arizona.

This indemnity shall not apply if the Grantee or Sub-grantee(s) is/are an agency, board, commission or university of the State of Arizona.

2.26. Insurance Requirements:

2.26.1. Grantee and Sub-grantees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Grantee, its agents, representatives, employees or Sub-grantees.

2.26.2. The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Grantee from liabilities that arise out of the performance of the work under this Contract by the Grantee, its agents, representatives, employees or Sub-grantees, and the Grantee is free to purchase additional insurance.

2.26.3. Minimum Scope and Limits of Insurance

Grantee shall provide coverage with limits of liability not less than those stated below

- Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.


General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Each Occurrence	\$1,000,000

a. The policy shall include coverage for Sexual Abuse and Molestation. This coverage may be sub-limited to no less than \$500,000. The limits may be included within the General Liability limit, provided by separate endorsement with its own limits, or provided as separate coverage included with the Professional Liability.

b. Grantee must provide the following statement on their Certificate(s) of Insurance: "Sexual Abuse and Molestation coverage is included" or "Sexual Abuse and Molestation coverage is not excluded."

c. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Grantee.

d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards,

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commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Grantee.

• Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional Insureds with respect to liability arising out of the activities performed by, or on behalf of, the Grantee involving automobiles owned, hired and/or non-owned by the Grantee.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Grantee.

• Workers' Compensation and Employers' Liability


Workers' Compensation Employers' Liability	Statutory
Each Accident	\$1,000,000
Disease - Each Employee	\$1,000,000
Disease - Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Grantee.
- b. This requirement shall not apply to each Grantee or Subgrantee that is exempt under A.R.S. § 23-901, and when such Grantee or Subgrantee executes the appropriate waiver form (Sole Proprietor or Independent Grantee).

• Professional Liability (Errors and Omissions Liability)

Each Claim	\$ 2,000,000
Annual Aggregate	\$ 2,000,000

- a. If SAM coverage is being provided under this policy then Grantee must provide the following statement on their Certificate(s) of Insurance: "Sexual Abuse and Molestation coverage is included" or "Sexual Abuse and Molestation coverage is not excluded."
- b. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Grantee warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- c. Policy shall cover professional misconduct or wrongful acts for those positions defined in the Scope of Work of this contract.

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2.27. Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

The Grantee's policies, as applicable, shall stipulate that the insurance afforded the Grantee shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

Insurance provided by the Grantee shall not limit the Grantee's liability assumed under the indemnification provisions of this Contract.

2.28. Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Grantee's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Grantee must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Arizona Attorney General's Office and shall be mailed or emailed to Procurement Section, 2005 N Central Ave, Phoenix, AZ 85004 or Procurement@azag.gov.

2.29. Acceptability of Insurers

Grantee's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Grantee from potential insurer insolvency.


2.30. Verification of Coverage

Grantee shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- a. All certificates and endorsements, as required by this written agreement, are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- b. All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

2.31. Sub-grantees

Grantee's certificate(s) shall include all Sub-grantees as insureds under its policies or Grantee shall be responsible for ensuring and/or verifying that all Sub-grantees have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each Sub-grantee. All coverages for Sub-grantees shall be subject

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to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Grantee that its Sub-grantees have the required coverage.

2.32. Approval and Modifications

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

2.33. Exceptions

In the event the Grantee or Sub-grantee(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Grantee or Sub-grantee(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

End of Exhibit C

Exhibit D (7 pages)
Business Associate Agreement

WHEREAS, Pima County, on behalf of the Pima County Detainee and Crisis Systems Department ("Covered Entity"), and NaphCare Arizona, LLC ("Business Associate") (each, a "Party," and collectively, the "Parties") wish to enter into a Business Associate Agreement to ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Privacy and Security Rules") (45 C.F.R. Parts 160 and 164); and

WHEREAS, the Health Information Technology for Economic and Clinical Health ("HITECH") Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the "HIPAA Privacy and Security Rules" include all amendments thereto set forth in the HITECH Act and any accompanying regulations); and

WHEREAS, the Parties have entered into a written or oral arrangement or arrangements (the "Underlying Agreement") whereby Business Associate will provide certain services to Covered Entity that require Business Associate to create, receive, maintain, or transmit Protected Health Information ("PHI") on Covered Entity's behalf, and accordingly Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy and Security Rules; and

WHEREAS, Business Associate and Covered Entity wish to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a business associate to Covered Entity.

THEREFORE, in consideration of the Parties' continuing obligations under the Underlying Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Business Associate Agreement ("Agreement").

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, the HIPAA Privacy and Security Rules in effect at the time shall control. Where provisions of this Agreement are different than those mandated by the HIPAA Privacy and Security Rules but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this Agreement shall control.

I. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

A. Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity.

B. Business Associate may use PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

C. Business Associate may disclose PHI in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:

1. the disclosures are required by law; or
2. Business Associate obtains reasonable assurances from the third parties to whom the PHI is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.

D. Until such time as the Secretary Issues regulations pursuant to the HITECH Act specifying what constitutes "minimum necessary" for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, access, use, and request only PHI that is contained in a limited data set (as defined in 45 C.F.R. § 164.514(e)(2)), unless Business Associate requires certain direct identifiers in order to accomplish the intended purpose of the access, use, or request, in which event Business Associate may access, use, or request only the minimum necessary amount of PHI to accomplish the intended purpose of the access, use, or request.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

A. Business Associate agrees not to use or further disclose PHI other than as permitted or required by this Agreement or the Underlying Agreement or as required by law.

B. Business Associate agrees to use appropriate safeguards and to comply, where applicable, with 45 C.F.R. Part 164, Subpart C with respect to Electronic Protected Health Information, to prevent use or disclosure of PHI other than as provided for by this Agreement. Specifically, Business Associate will:

1. implement the administrative, physical, and technical safeguards set forth in 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with 45 C.F.R. § 164.316, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in 45 C.F.R. §§ 164.308, 164.310, and 164.312; and

2. report to Covered Entity any Security Incident, and any use or disclosure of PHI that is not provided for by this Agreement, of which Business Associate becomes aware.

C. Business Associate shall require each subcontractor that creates, receives, maintains, or transmits PHI on its behalf to enter into a Business Associate Agreement or equivalent agreement containing the same restrictions on access, use, and disclosure of PHI as those applicable to Business Associate under this Agreement. Furthermore, to the extent that Business Associate provides Electronic PHI to a subcontractor, Business Associate shall require such subcontractor to comply with all applicable provisions of 45 C.F.R. Part 164, Subpart C.

D. Business Associate agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, of which Business Associate has been notified by Covered Entity.

E. If Business Associate maintains a designated record set on behalf of Covered Entity, at the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available PHI required for Covered Entity to respond to an individual's request for access to his or her PHI in accordance with 45 C.F.R. § 164.524. If Business Associate maintains PHI in an electronic designated record set, it agrees to make such PHI available electronically to Covered Entity or, upon Covered Entity's specific request, to the applicable individual or to a person or entity specifically designated by such individual, upon such individual's request.

F. If Business Associate maintains a designated record set on behalf of Covered Entity, at the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available PHI required for amendment by Covered Entity in accordance with the requirements of 45 C.F.R. § 164.526.

G. Business Associate agrees to document any disclosures of Protected Health Information, and to make PHI available for purposes of accounting of disclosures, as required by 45 C.F.R. § 164.528.

H. If Business Associate is to carry out one or more of Covered Entity's obligations under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

I. Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of PHI received from or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, to enable the Secretary to determine Business Associate's or Covered Entity's compliance with the HIPAA Privacy and Security Rules. Business Associate also shall cooperate with the Secretary and, upon the Secretary's request, pursuant to 45 C.F.R. § 160.310, shall disclose PHI to the Secretary to enable the Secretary to investigate and review Business Associate's or Covered Entity's compliance with the HIPAA Privacy and Security Rules.

J. Unless expressly authorized in the Underlying Agreement, Business Associate shall not:

1. use PHI for marketing or fundraising;
2. use PHI to create a limited data set or to de-identify the information;
3. use PHI to provide data aggregation services relating to the health care operations of Covered Entity; or
4. use or disclose PHI in exchange for remuneration of any kind, whether directly or indirectly, financial, or non-financial, other than such remuneration as Business Associate receives from Covered Entity in exchange for Business Associate's provision of the services specified in the Underlying Agreement.
5. Prior express written authorization from Covered Entity is required for Business Associate to access, store, share, maintain, transmit, use, or disclose PHI in any form

via any medium with any entity or person, including the Business Associate's employees and subcontractors, beyond the boundaries and jurisdiction of the United States. Authorization may be granted in the sole discretion of Covered Entity and, if granted, will be subject to additional conditions with which Business Associate must agree.

III. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS

A. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

B. Following the discovery of a Breach of Unsecured PHI ("Breach"), Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than thirty (30) calendar days after discovery of the Breach, and shall assist in Covered Entity's breach analysis process, including risk assessment, if requested. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate. The Breach notification shall be provided to Covered Entity in the manner specified in 45 C.F.R. § 164.410(c) and shall include the information set forth therein to the extent known. If, following the Breach notification, Business Associate learns additional details about the Breach, Business Associate shall notify Covered Entity promptly as such information becomes available. Covered Entity shall determine whether Business Associate or Covered Entity will be responsible for providing notification of any Breach to affected individuals, the media, the Secretary, and/or any other parties required to be notified under the HIPAA Privacy and Security Rules or other applicable law. If Covered Entity determines that Business Associate will be responsible for providing such notification, Business Associate may not carry out notification until Covered Entity approves the proposed notices in writing.

C. Notwithstanding the provisions of Section III.B., above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:

1. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or

2. if the statement is made orally, Business Associate shall document the statement, including the identity of the official making it, and delay such notification for no longer than thirty (30) days from the date of the oral statement unless the official submits a written statement during that time.

Following the period of time specified by the official, Business Associate shall promptly deliver a copy of the official's statement to Covered Entity.

D. Business Associate shall bear Covered Entity's costs of any Breach and resultant notifications, if applicable, to the extent the Breach arises from Business Associate's negligence, willful misconduct, violation of law, violation of the Underlying Agreement, or violation of this Agreement.

IV. OBLIGATIONS OF COVERED ENTITY

A. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520.

B. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, if such changes could reasonably be expected to affect Business Associate's permitted or required uses and disclosures.

C. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate's use and disclosure of such Protected Health Information.

V. TERM AND TERMINATION

A. Term. The Term of this Agreement shall be effective as of the first effective date of any Underlying Agreement, and shall terminate upon later of the following events: (i) in accordance with Section V.C., when all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is returned to Covered Entity or destroyed (and a certificate of destruction is provided) or, if such return or destruction is infeasible, when protections are extended to such information; or (ii) upon the expiration or termination of the last of the Underlying Agreement.

B. Termination. Upon either Party's knowledge of a material breach by the other Party of its obligations under this Agreement, the non-breaching Party shall, within twenty (20) days of that determination, notify the breaching Party, and the breaching Party shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. If the breaching Party fails to take reasonable steps to effect such a cure within such time period, the non-breaching Party may terminate this Agreement and the Underlying Agreement without penalty.

Where either Party has knowledge of a material breach by the other Party and determines that cure is infeasible, prior notice of the breach is not required, and the non-breaching Party shall terminate the portion of the Underlying Agreement affected by the breach without penalty.

C. Effect of Termination.

1. Except as provided in paragraph 2 of this subsection C., upon termination of this Agreement, the Underlying Agreement or upon request of Covered Entity, whichever occurs first, Business Associate shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors of Business Associate. Neither Business Associate nor its subcontractors shall retain copies of the PHI except as required by law.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide within ten (10) days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual

agreement of the Parties that return, or destruction of PHI is Infeasible, Business Associate, and its applicable subcontractors, shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate and its applicable subcontractors maintain such Protected Health Information.

VI. MISCELLANEOUS

A. No Rights in Third Parties. Except as expressly stated herein or in the HIPAA Privacy and Security Rules, the Parties to this Agreement do not intend to create any rights in any third parties.

B. Survival. The obligations of Business Associate under Section V.C. of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Underlying Agreement, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

C. Amendment. The Parties agree that this Agreement will be amended automatically to conform to any changes in the HIPAA Privacy and Security Rules as are necessary for each of them to comply with the current requirements of the HIPAA Privacy and Security Rules and the Health Insurance Portability and Accountability Act, unless a particular statutory or regulatory provision requires that the terms of this Agreement be amended to reflect any such change. In those instances where an amendment to this Agreement is required by law, the Parties shall negotiate in good faith to amend the terms of this Agreement within sixty (60) days of the effective date of the law or final rule requiring the amendment. If, following such period of good faith negotiations, the Parties cannot agree upon an amendment to implement the requirements of said law or final rule, then either Party may terminate this Agreement and the Underlying Agreement upon ten (10) days written notice to the other Party. Except as provided above, this Agreement may be amended or modified only in a writing signed by the Parties.

D. Assignment. Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

E. Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. Nothing in this Agreement creates or is intended to create an agency relationship.

F. Governing Law. To the extent this Agreement is not governed exclusively by the HIPAA Privacy and Security Rules or other provisions of federal statutory or regulatory law, it will be governed by and construed in accordance with the laws of the state in which Covered Entity has its principal place of business.

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

H. Interpretation. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Privacy and Security Rules.

I. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

J. Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.

K. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written. In the event of any inconsistency between this Agreement and any other agreement between the Parties concerning the use and disclosure of PHI and the Parties' obligations with respect thereto, the terms of this Agreement shall control.

L. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

End of Exhibit D