



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: June 22, 2021

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Sahuarita Unified School District

***Project Title/Description:**

Provision and Administration of Childhood Immunizations and Other Health Services

***Purpose:**

This IGA formalizes the relationship between the Pima County Health Department and Sahuarita Unified School District to provide students with immunizations required for attending school. In addition, this IGA includes language to allow for collaboration in other areas such as public health nursing, tobacco cessation, oral health, WIC and health education.

***Procurement Method:**

This IGA is a non-Procurement contract and not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

This IGA seeks to assist the Health Department to meet their mandate to provide students with immunizations required for school attendance and to allow for other areas of cooperation as opportunities arise.

***Public Benefit:**

Reduced incidence of vaccine preventable disease in the community. Through this IGA, the Health Department is able to use grant resources to provide technical support and assistance to the Sahuarita Unified School District on such items as immunization reporting and making sure enrolled children are up-to-date with the required vaccinations. The joint effort of the Health Department and Sahuarita Unified School District is particularly important for low-income families and those living in areas with poor access to health care services.

***Metrics Available to Measure Performance:**

Immunization coverage rates for Kindergarten and 6th grade students. Number of vaccines administered.

***Retroactive:**

No.

TO: COB 6-3-21 (1)
vers: 1
pgs: 15

Contract / Award InformationDocument Type: CTN Department Code: HD Contract Number (i.e.,15-123): 21-125Commencement Date: 07/01/2021 Termination Date: 06/30/2026 Prior Contract Number (Synergen/CMS): N/A☐ Expense Amount: \$ _____ ☐ Revenue Amount: \$ _____***Funding Source(s) required:** N/A - no costFunding 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 or ☐ 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: Sharon GrantDepartment: Health Telephone: 724-7842Department Director Signature/Date: [Signature] 05/27/21Deputy County Administrator Signature/Date: [Signature] 7/28 May 2021County Administrator Signature/Date: [Signature] 6/2/21
(Required for Board Agenda/Addendum Items)

Contract No: CTN-HD-21-125 Amendment No: _____

This number must appear on all correspondence and documents pertaining to this contract

**INTERGOVERNMENTAL AGREEMENT BETWEEN
PIMA COUNTY AND SAHUARITA UNIFIED SCHOOL DISTRICT
FOR THE PROVISION AND ADMINISTRATION
OF CHILDHOOD IMMUNIZATIONS AND OTHER HEALTH SERVICES**

This Intergovernmental Agreement ("Agreement") is entered into between Pima County, a body politic and corporate of the State of Arizona ("County"), and the Sahuarita Unified School District, ("District"), a political subdivision of the State of Arizona, for nursing services in the provision and administration of childhood immunization and other health services.

RECITALS:

WHEREAS, the District desires to enter into an Agreement with the County for the provision and administration of childhood immunization and other health services;

WHEREAS, to provide Public Health Nurse Services and other appropriate services offered by the Pima County Health Department (PCHD) at select Sahuarita Unified School District community and school sites;

WHEREAS, the schools in Sahuarita Unified School District may request training and authorization from the Pima County Health Department for the school nurse to administer vaccines under A.R.S. § 36-673(C);

WHEREAS, the District has trained registered nurses and licensed practical nurses capable of administering childhood immunization services pursuant to the orders of a licensed physician under A.R.S. Title 32, Chapter 15;

WHEREAS, the County is mandated by A.R.S. § 36-673 to provide school immunizations;

WHEREAS, in accordance with A.R.S. § 11-951 et seq., Pima County, a body politic and corporate of the State of Arizona, and Sahuarita Unified School District, a political subdivision of the State of Arizona, are authorized to enter into this Agreement.

NOW, THEREFORE, THE DISTRICT AND THE COUNTY AGREE AS FOLLOWS:

Article I. TERM

This Agreement shall be effective July 1, 2021 and terminate on June 30, 2026. Any modification or termination shall be made by formal written amendment executed by the Parties.

Article II. PURPOSE

This Agreement defines the responsibilities of the Parties in a joint effort to provide required childhood immunization services at no charge to the school children of Pima County.

Article III. FINANCE

Each Party shall bear its own costs for the performance of its responsibilities as set forth in this Agreement.

Article IV. DISTRICT RESPONSIBILITIES

The District shall:

- A. Hold immunization clinics for school age children and/or adults in their service area in collaboration with County;
 - 1. Any school child receiving immunizations pursuant to this Agreement shall receive such immunizations at no cost.
 - 2. Underinsured is defined as a person (child) who has health insurance, but the coverage does not include vaccines or a person whose insurance covers only selected vaccines. Children with deductibles and co-pays are considered insured and NOT "underinsured."
 - 3. Follow the "How to handle your Underinsured patients after June 30, 2013" process required by the ADHS, as set forth in **Exhibit A** (1 page).
- B. Make registered nurses, licensed practical nurses, and necessary clerical staff available for training by the County.
- C. Make registered nurses, licensed practical nurses, and necessary clerical staff available to perform the responsibilities set forth in this Agreement.
- D. Appropriately store vaccines and clinical supplies, following best practices for vaccine administration as defined by the County.
- E. Be responsible for ordering supplies; setup of the clinic(s); completion of the immunization forms and records; and returning forms to County for reporting of immunizations to Medical Records and the Arizona Department of Health Services.
- F. Provide support to other PCHD programs as agreed upon.

Article V. COUNTY RESPONSIBILITIES

The County shall:

- A. Provide training and training materials.
- B. Provide standing orders as determined by the Department's Chief Medical Officer.
- C. Provide District with, vaccine, all necessary forms or copy ready originals, and medical supplies, such as alcohol swabs and syringes.
- D. Provide emergency drugs and protocols.
- E. Give technical support.
- F. Be available to answer organizational and medical questions during clinic(s).
- G. Provide a Public Health Nurse and relevant PCHD programs and services at select Sahuarita Unified School District community and school sites.
- H. Provide Public Health Nursing staff who will conduct Community and Population based services; Case Management/Home Visitation and immunization services at select District sites. These services may include but are not limited to:
 - 1. Prevention/Health Promotion classes and/or activities
 - 2. Consultation to school nurse(s) in regard to immunizations, communicable disease
 - 3. Community assessment activities in conjunction with Sahuarita Unified School District staff and/or nursing students
 - 4. Participation in coalitions, neighborhood groups or other stake holder organizations
 - 5. Receive referrals and conduct home visits as appropriate
 - 6. Work collaboratively with Sahuarita Unified School District staff to provide immunizations to all age groups.
- I. Provide other PCHD services as appropriate. These services may include, but are not limited to:
 - 1. Healthy Living,
 - 2. Tobacco Cessation,
 - 3. Oral health,
 - 4. Women, Infant and Children (WIC),

5. Health education classes
6. Reproductive Health Education and Services

Article VI. WORKER'S COMPENSATION COVERAGE

Each Party shall comply with the notice provisions of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each participating agency shall be considered the primary employer of all personnel currently or hereafter employed by that agency, and said agency shall have the sole responsibility for the payment of worker's compensation benefits or other fringe benefits of said employees.

Article VII. INSURANCE

Parties shall provide, or self-insure, professional liability and general liability insurance in amounts sufficient to cover their respective responsibilities under this Agreement. Parties shall maintain their own insurance, worker's compensation insurance, and shall handle all of their own internal accounting.

Article VIII. INDEMNIFICATION

To the fullest extent permitted by law, District will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") 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 District or any of District'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 District to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by District from and against any and all Claims. District 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.

Article IX. LAWS AND REGULATIONS

- 9.1. Compliance with Laws. District will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.
- 9.2. Licensing. District warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.
- 9.3. 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.

Article X. NO PARTNERSHIP

This Agreement shall not be construed to create any partnership, joint venture, or employment relationship between the parties or any employee, agent or contractor of either Party.

Article XI. NON-DISCRIMINATION

District agrees to 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, District 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.

Article XII. AMERICANS WITH DISABILITIES ACT COMPLIANCE

The parties shall comply with all applicable provisions of 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).

Article XIII. CONFLICT OF INTEREST

This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

Article XIV. TERMINATION

This Agreement may be terminated by either Party upon thirty (30) days written notice.

Article XV. NON-APPROPRIATION

Notwithstanding any other provision in this Agreement, this Agreement may be terminated if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Agreement. In the event of such cancellation, the County shall have no further obligation to the District.

Article XVI. NO THIRD PARTY BENEFICIARIES

Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

Article XVII. NOTICES

Any notice required or permitted to be given under this Agreement shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

County:

Director
Pima County Health Department
3950 S. Country Club, Suite 100
Tucson, Arizona 85714-2056

District:

President
Sahuarita Unified School District
350 W. Sahuarita Road
Sahuarita, Arizona 85629-6522

Article XVIII. SEVERABILITY

Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

Article XIX. LEGAL ARIZONA WORKERS ACT COMPLIANCE

- 19.1. Compliance with Immigration Laws. District 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"). District will further ensure that each subcontractor who performs any work for District under this Contract likewise complies with the State and Federal Immigration Laws.
- 19.2. Books & Records. County has the right at any time to inspect the books and records of District and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 19.3. Remedies for Breach of Warranty. Any breach of District'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 District 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, District 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 District.
- 19.4. Subcontractors. District 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."

Article XX. 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. District acknowledges that it may obtain confidential personal health information in the course of District's 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.

District agrees to maintain the privacy, confidentiality and security of information it may obtain in the course of its performance under this Agreement. In particular, District agrees that it is County's Business Associate and agrees to be bound by the Business Associate Agreement in **Exhibit B** (7 pages) which is incorporated into this agreement, and further specifically agrees that:

- 20.1. Any confidential personal health information that District may obtain shall remain the sole property of the County; and
- 20.2. District 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 Contract shall be used by or disclosed by District, its agents, officers, employees or sub-contractors, except as required in the performance of its obligations under the terms of this Contract; and
- 20.3. District shall not remove any confidential personal health information from County premises, if applicable; and
- 20.4. Any other information pertaining to individual persons shall not be divulged other than to employees or officers of District as needed for the performance of its duties under this Contract, or to County.

Article XXI. COUNTREPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

Article XXII. ENTIRE AGREEMENT

This document constitutes the entire Agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement shall not be modified, amended, altered or extended except through a written amendment signed by the parties.

IN WITNESS WHEREOF, the Parties hereto approve this Agreement.

County

District

Chair, Board of Supervisors

KGJ 12-MAY-2021

President Date

ATTEST

ATTEST

Clerk of the Board Date

Manuel A. Valenzuela

Superintendent Date

APPROVED AS TO FORM

Pursuant to A.R.S. § 11-952(D), the attorney for the each party has determined that the foregoing Intergovernmental Agreement is in proper form and is within the powers and authority of the entity as granted under the laws of the State.

[Signature] 5/26/21

Deputy County Attorney Date

[Signature] 5-4-2021

Legal Counsel Date

APPROVED AS TO CONTENT

[Signature]

Department Representative

05/27/21

Date

EXHIBIT A



How to handle your Underinsured patients after June 30, 2013

Definition of Underinsured: A person who has health insurance, but the coverage does not include vaccines or a person whose insurance covers only selected vaccines. Children with deductibles and co-pays are considered insured and NOT underinsured.

Step 1: Verify the patient's insurance status down to the vaccine dose level.

Step 2: Inform the patient that only certain vaccines may be covered.

Step 3: Discuss the two options for the uncovered recommended vaccines.

Option 1: Vaccinate using private stock and bill the patient out-of-pocket.

Option 2: Refer the patient to a facility with the ability to provide the uncovered recommended vaccines at no cost.

If the patient chooses Option 1: Pay for vaccine out-of-pocket

Step 4: Use your private vaccine stock and administer the covered and uncovered vaccines. Charge the patient out-of-pocket for the cost of the uncovered vaccines.

If the patient chooses Option 2: Referral to a deputized site

Step 4: If some of the recommended vaccines are covered by insurance, use your private stock to administer the covered vaccine. You don't want to miss an opportunity to vaccinate.

Step 5: Give the patient a list of the recommended uncovered vaccines and tell them to bring the list and their shot record with them to the new facility. Consider using the Underinsured Patient Referral Form*.

Step 6: Provide the patient with a county specific list, from the Underinsured Referral Locations document*, with all the FQHCs and RHCs, deputized providers and county health department clinics.

Step 7: Tell the patient to call before visiting a new provider site to find out if an appointment is necessary.

* The Underinsured Patient Referral Form and the Underinsured Referral Locations document can be found on the ADHS website (<http://www.azdhs.gov/phs/immunization/vaccine-policy-changes.htm>)

If you have any questions, please contact the Arizona VFC Program 602-364-3642.

July 2, 2013

Exhibit B (7 pages)

Business Associate Agreement

WHEREAS, Pima County, on behalf of the Pima County Health Department ("Covered Entity"), and the Sahuarita Unified School District ("Business Associate") (each, a "Party," and collectively, the "Parties") wish to enter into a Business Associate Agreement to ensure compliance with the Privacy, Security, Breach Notification, and Enforcement 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 may 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, 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 the inconsistency is discovered 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 state and federal 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 without unreasonable delay and in no case later than thirty (30) calendar days after discovery.

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 reasonable 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.