



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Award Contract Grant

Requested Board Meeting Date: January 19, 2021

* = Mandatory, information must be provided

or Procurement Director Award

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

Tucson Medical Center (TMC)

***Project Title/Description:**

COVID-19 Vaccination Agreement.

***Purpose:**

This contract enables the County to pay TMC for their expenses in administering COVID-19 vaccinations during the Phase 1-B vaccination phase. TMC will operate two COVID-19 vaccination sites on its main campus.

***Procurement Method:**

Pursuant to Pima County Procurement Code 11.12.060, Emergency and other limited procurement, award for CT-HD-21-291 is recommended to the above named Tucson Medical Center with which the County has negotiated a satisfactory agreement.

***Program Goals/Predicted Outcomes:**

The goal is to vaccinate as many people in the priority groups as quickly as vaccine supply allows.

***Public Benefit:**

Vaccination of as many people as quickly as possible is the key to ending the COVID-19 pandemic. TMC is one of several Points of Distribution (PODs) helping to administer vaccines to the residents of Pima County.

***Metrics Available to Measure Performance:**

TMC will provide vaccination services according to the EPIC Vaccine System. Metrics for payment of invoices include:

- # of days TMC provides vaccines on its campus
- # of hours staff time providing EPIC validation
- # of hours spent in planning phase with County staff

***Retroactive:**

Yes. Contract is retroactive to date planning with County staff for Phase 1-B began.

To: CoB- 1-15-21
Ver. - 1
Pgs. - 23
(4) - Addendum

44152191049903060000

Contract / Award Information

Document Type: CT Department Code: HD Contract Number (i.e., 15-123): 21-291

Commencement Date: 01/11/2021 Termination Date: 01/10/2022 Prior Contract Number (Synergen/CMS): N/A

Expense Amount: \$* 5,000,000.00 Revenue Amount: \$ _____

***Funding Source(s) required:** Initially expenses will be charged to the Health Special Revenue fund, function code HDCOVID19. It is anticipated that most of the expenses will be reimbursed by the federal government

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 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 Grant

Department: Health Telephone: 724-7842

Department Director Signature/Date: [Signature] 01/15/21

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: C. R. Schellberg 1/15/21

(Required for Board Agenda/Addendum Items)

Contract No: CT-HD-21-291 Amendment No: _____

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

**COVID-19 VACCINATION AGREEMENT
TUCSON MEDICAL CENTER AND PIMA COUNTY**

This COVID-19 Vaccination Agreement (this "Agreement") by and between Tucson Medical Center ("TMC") and Pima County (the "County") is made and entered into effective as of January 11, 2021 (the "Effective Date"). Capitalized terms used in this Agreement are defined in **Attachment A** (2 pages) or within the Agreement or the Addendum.

RECITALS

- A. TMC operates a licensed hospital serving the residents (including the indigent residents) of the communities in its service area by providing or arranging to provide health care services (the "TMC Mission").
- B. The County desires to contract for certain TMC services under this Agreement.
- C. TMC has the resources and expertise to provide the Services, and desires to provide Services under this Agreement in furtherance of the TMC Mission.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. PARTIES.

TMC: Tucson Medical Center
5301 East Grant Road
Tucson, AZ 85712

County: Pima County Health Department
3950 S. Country Club Rd., Suite 100
Tucson, AZ 85714

2. TMC AND COUNTY RESPONSIBILITIES.

- 2.1. Vaccine System Services. TMC will provide Services to the County in accordance with **Attachment B**, the EPIC Vaccine System Addendum (7 pages) attached hereto (the "Vaccine System Services"). The Vaccine System Services may be changed at any time by execution of a new or revised EPIC Vaccine System Addendum by TMC and the County.

The County will make use of the Vaccine System Services in accordance with the EPIC Vaccine System Addendum attached hereto.

- 2.2. Vaccination Administration. TMC will operate two (2) COVID-19 vaccination sites on its main campus at 5301 East Grant Road, Tucson, AZ for administering COVID-19 vaccinations to individuals in Phase 1-B, and will administer the COVID-19 vaccinations at these sites ("Vaccination Administration", and, together with the Vaccine System Services, the "Services").

3. COMPENSATION. The County shall compensate TMC for Services as follows:

3.1. Vaccine System Services Compensation. For the Vaccine System Services, the County shall:

- Reimburse TMC for its direct out-of-pocket expenses in providing the Vaccine System Services, except for those relating to EPIC Validation.
- Compensate TMC for the time spent by TMC Personnel in providing EPIC Validation for County vaccination sites at the rate of **Fifty and no/100 Dollars (\$50.00)** per hour.

3.2. Vaccination Administration Compensation. For the Vaccination Services, the County shall:

- Compensate TMC at a rate equal to the greater of (i) TMC's actual costs for providing Vaccination Administration (including EPIC Validation for TMC sites) or (ii) **Fifteen Thousand and no/100 Dollars (\$15,000.00)** per day that TMC is operating the COVID-19 vaccination sites on its campus. The amount of \$15,000 per day represents TMC's good faith estimate of its costs for providing Vaccination Administration. In the event TMC costs exceed \$15,000 per day, TMC will provide the County with detailed cost information upon request.
- Compensate TMC for the time spent by TMC Personnel in assisting the County with planning for Phase I-B vaccination at County sites at the rate of **One Hundred and no/100 Dollars (\$100.00)** per hour.

3.3. Payment. TMC will invoice the County on a monthly basis. The County shall pay invoices in full upon receipt. Payments not made within thirty (30) days after receipt of an invoice shall be deemed late and subject to interest at the rate of 1.5% per month commencing on the 31st day after receipt of invoice. For purposes of this clause, invoices are deemed received as of the earlier of electronic delivery or the 4th business day after mailing.

3.4. Maximum Payment Amount. County's total payments to TMC under this Agreement, including any sales taxes, may not exceed **Five Million and no/100 Dollars (\$5,000,000)** (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. TMC is not required to provide any services, payment for which will cause the County's total payments under this Agreement to exceed the NTE Amount; if TMC does so, it is at TMC's own risk.

4. **INDEMNITY.** For purposes of this Section 4:

"Claims" consist of claims, demands, assessments, judgments, damages, losses, actions (including professional malpractice actions), penalties, fines, liabilities, encumbrances, or liens of whatever kind or nature asserted against the Indemnified Party that arise out of, in connection with or otherwise results from any act or omission of the Indemnifying Party, its officers, agents, or employees in connection with this Agreement.

"Expenses" consist of costs and expenses of investigation and defense of any Claim, whether or not such Claim is ultimately defeated, including but not limited to, reasonable attorneys' fees and disbursements.

Claims and Expenses do not include (i) any loss of profit, business, reputation, contracts, revenues or anticipated savings or (ii) claims, demands, assessments, judgments, damages, losses, actions (including professional malpractice actions), penalties, fines, liabilities, encumbrances, or liens of whatever kind or nature asserted against the Indemnified Party that arise out of, in connection with or otherwise results from any act or omission of the Indemnified Party, its officers, agents, or employees.

4.1. County Indemnity. To the extent permitted by law, the County (in such capacity, the “Indemnifying Party”) will defend, indemnify, and hold TMC and its Affiliates, including all of the directors, trustees, officers, and employees of the foregoing (in such capacity, the “Indemnified Party”), harmless from and against any Claims and Expenses arising out of:

(a) Inappropriate or unauthorized use, operation of, or access to, the Vaccine System by the County or County Personnel;

(b) Any impermissible use or disclosure of the Information by the County or County Personnel;

(c) Any breach of this Agreement by the County or County Personnel or the County’s performance or failure to perform its obligations hereunder;

(d) The negligence, recklessness or willful misconduct of the County or County Personnel;

(e) Any unauthorized action or omission of the County or County Personnel;

(f) Any breach or alleged breach by the County or County Personnel of Applicable Law relating to the gathering, transmission, processing, use, receipt, reporting, disclosure, maintenance, storage, and other treatment of confidential patient information, including, but not limited to, HIPAA and the Information Blocking Rule; or

(g) Any claim of infringement of patents, trademarks, industrial designs, copyrights, or other intellectual property rights if such claim shall be due to the County’s or County Personnel’s negligence, recklessness or willful misconduct or by reason of any alteration, modification, adjustment or use of the Vaccine System, User Documentation or other materials provided by TMC.

4.2. TMC Indemnity. TMC (in such capacity, the “Indemnifying Party”) will defend, indemnify, and hold the County and its Affiliates, including all of the directors, trustees, officers, and employees of the foregoing (in such capacity, the “Indemnified Party”), harmless from and against any Claims and Expenses arising out of:

(a) Any claim that the Vaccine System any Software or Data Products owned by TMC infringes a United States patent or United States copyright; or

(b) TMC’s breach of this Agreement.

4.3. Indemnification. Indemnification shall be available under this Section 4 provided that the Indemnified Party gives the Indemnifying Party prompt, written notice of any Claim against the Indemnified Party and all reasonable assistance to defend such Claim. The Indemnifying Party shall have no obligations under this Section 4 if such Claim results from the (i) Indemnified Party’s breach of this Agreement, (ii) gross misconduct or an intentional violation of Applicable Law by the Indemnified Party or (iii) where the County is the Indemnified Party, the County’s unauthorized or inappropriate use of or modifications to the Vaccine System.

(a) The Indemnifying Party shall have the right to exercise sole control over the defense and settlement of any Claim for which indemnification or defense is sought, including the sole right to select defense counsel and to direct the defense or settlement of any such Claim; provided that the Indemnifying Party shall not enter into any non-monetary settlement or admit fault or liability on

the Indemnified Party's behalf without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed. In the event a Claim is or may be asserted, the Indemnified Party shall have the right to select and to obtain representation by separate legal counsel. If the Indemnified Party exercises such right, all costs, expenses, and risks incurred by the Indemnified Party for such separate legal counsel shall be borne by the Indemnified Party.

The Indemnifying Party shall be responsible for any settlement of a Claim entered into with its advance written consent. The Indemnifying Party shall have no obligation to indemnify the Indemnified Party, and the Indemnified Party shall waive any claim to indemnification by the Indemnifying Party, in the event the Indemnified Party enters into a settlement or any other agreement resolving a Claim without the advance written consent of the Indemnifying Party.

(b) The indemnification set forth in this Section 4 shall not be deemed to waive or limit any other rights, and shall not be interpreted or applied to restrict either TMC or the County from pursuing either a right to indemnity and/or a right to contribution as a matter of Arizona law and not as a result of a right of contract indemnity.

(c) The County acknowledges that TMC may have similar rights of indemnity under its System Agreements with System Vendors and related software or data products that may extend to cover the County, and in such cases TMC will arrange for the County's inclusion under such indemnity provisions directly; and the provisions of this Section 4.3 shall apply to the indemnifying party as though TMC were the indemnifying party.

5. TERM AND TERMINATION.

5.1. Term. The initial "Term" of this Agreement commences on January 11, 2021 and shall terminate one (1) year later on January 10, 2022 or until extended by mutual agreement or earlier terminated according to its terms. If the commencement date of the Initial Term is before the effective date of this Contract, the parties will, for all purposes, deem the Agreement to have been in effect as of the commencement date.

5.2. Termination Without Cause. This Agreement may be terminated at any time by either of the parties without cause by giving the other party at least ninety (90) calendar days prior written notice, or upon mutual agreement of the parties.

5.3. Termination for Cause.

(a) Either party may terminate this Agreement in the event the other party breaches any material obligation within this Agreement and fails to cure such breach within thirty (30) calendar days after the breaching party's receipt of notice of the breach, or in the event a cure within such period is not possible, the breaching party fails to provide a commitment to a written and detailed plan of corrective action containing prompt timelines that is reasonably acceptable to the other party.

(b) If the County's conduct is causing, or in TMC's reasonable opinion will cause, TMC to breach any contract with a System Vendor and the County fails to cure such breach within ten (10) business days after the County's receipt of notice of the breach, or in the event a cure within such period is not possible, the County fails to provide a commitment to a written and detailed plan of corrective action containing prompt timelines that is reasonably acceptable by TMC, TMC may, upon written notice to the County, terminate this Agreement or take other reasonable

steps necessary to avoid such breach.

- 5.4. Waiver. A waiver by TMC or the County of a breach of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any prior, concurrent or subsequent breach of the same or similar provision. No breach of this Agreement shall be considered waived by TMC or the County unless such waiver is given in writing.
- 5.5. Force Majeure. Neither TMC nor the County shall be liable or be deemed in breach of this Agreement for any failure or delay of performance which results, directly or indirectly, from acts of God, acts of terrorism, natural disaster, civil or military authority, public disturbance, accidents, fires or any other cause beyond the reasonable control of TMC or the County, as appropriate.
- 5.6. Post-Termination Obligations. The termination or expiration of this Agreement shall not relieve either party of any obligation pursuant to this Agreement which is intended to survive the termination or expiration of this Agreement including without limitation the County's obligation to compensate TMC for Services provided prior to termination or expiration of this Agreement.

6. GENERAL PROVISIONS.

- 6.1. Entire Agreement. This Agreement, including any amendments and any exhibits or addenda specifically referenced herein, constitutes the entire agreement between TMC and the County regarding the subject matter hereof and supersedes all prior or contemporaneous discussions, representations, correspondence, offer letters, memoranda, and agreements, whether oral or written, pertaining thereto.
- 6.2. Amendments. This Agreement may be amended only by a written instrument signed by TMC and the County.
- 6.3. Remedies. The remedies provided to TMC and the County by this Agreement are not exclusive or exhaustive, but are cumulative of each other and in addition to any other remedies TMC and the County may have. All legal and equitable remedies, including injunction, are available to enforce the provisions of this Agreement. TMC and the County acknowledge that a remedy at law for any breach of this Agreement may be inadequate, and they each hereby acknowledge that, in addition to all other relief that may be available, the non-breaching party may be entitled, without the necessity of posting a bond of cash or otherwise, to injunctive relief in case of any such breach or material violation.

If the scope of any provision of this Agreement is too broad to permit enforcement of such provision to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and TMC and the County hereby agree that such scope may be modified accordingly in any proceeding brought to enforce such provision.

- 6.4. Attorney Fees. If any party brings an action against another party to enforce any provision of this Agreement, the prevailing party, in addition to other relief awarded by a court or arbitrator, shall be entitled to recover from the other party its court costs and reasonable attorney's fees incurred in such action.
- 6.5. Notice. Notices or communications given under this Agreement shall be provided in writing by (i) personal delivery, (ii) commercial delivery service or registered or certified postage prepaid mail to the address set forth in this Agreement, or at such other addresses and to such other

persons as the recipient may from time to time designate by notice given as herein provided or (iii) email. Such notices or communications shall be deemed to have been given (i) upon receipt if by personal delivery, (ii) upon delivery if by a commercial delivery service, (iii) three (3) business days after deposit in the United States mail if sent by registered or certified postage prepaid mail or (iv) upon transmission confirmation if by email (including the absence of any message indicating the email was not delivered).

- 6.6. Further Acts. TMC and the County shall cooperate fully with each other to take such further action and execute such other documents or instruments as necessary or appropriate to implement their Agreement.
- 6.7. No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement. This Agreement is not intended, nor shall it be interpreted or applied, to confer any benefits on any third party, nor shall any third party have any right to seek, enforce or recover any right or remedy with respect to this Agreement.
- 6.8. Counterparts. This Agreement may be executed electronically, in accordance with the Arizona Revised Statutes § 44-7001 et seq., and in multiple counterparts. Each counterpart shall be considered an original.
- 6.9. Construction. The language of this Agreement shall be construed as a whole according to its fair and common meaning. The various titles of the sections in this Agreement are used solely for convenience and shall not be used to interpret or construe any word, clause, paragraph or subparagraph of this Agreement. No provision of this Agreement shall be interpreted for or against any party on the basis of which party drafted such provision.
- 6.10. Governing Law; Venue. This Agreement shall be construed and governed according to the laws of the State of Arizona, without giving effect to its conflict of laws provisions. Except as set forth below, this Agreement shall be deemed to have been executed and shall be performed in Pima County, Arizona and venue of all disputes, claims, and lawsuits arising under this Agreement shall lie in Pima County, Arizona.
- 6.11. Dispute Resolution. In addition to any other applicable provision in this Agreement, and subject to the right of TMC or the County to seek a temporary restraining order or temporary injunction from any court of competent jurisdiction, TMC and the County will make a good faith effort to resolve any claim or controversy arising out of or relating to this Agreement.

If a satisfactory resolution does not arise from informal discussions, TMC or the County may submit a written request for mediation, including a description of the claim or controversy. The recipient of the request must respond in writing within ten (10) business days by accepting, rejecting or modifying the mediation request. The costs of mediation shall be borne equally by TMC and the County. Any mediation shall be held in Tucson, Arizona for the convenience of TMC and the County.

This dispute resolution provision shall not apply to any claim for which injunctive relief is sought under this Agreement. This dispute resolution provision shall not prevent either TMC or the County from electing to terminate this Agreement in accordance with its terms.

- 6.12. Conflict of Interest. This Agreement is subject to cancellation for conflict of interest under the provisions of A.R.S. § 38-511.

- 6.13. Non-Discrimination. TMC 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 Agreement, TMC 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.
- 6.14. Legal Arizona Workers Act Compliance. If TMC, under this Agreement, furnishes labor, time or effort to County within the State of Arizona, the following applies: TMC warrants that it will at all times during the term of this Agreement 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"). TMC will further ensure that each subcontractor who performs any work for TMC under this Agreement likewise complies with the State and Federal Immigration Laws. A breach of this paragraph will be deemed a material breach of this Agreement that subjects TMC to penalties up to and including termination of the Agreement. County retains the legal right to inspect the papers of any TMC or subcontractor employee who works on the Agreement to ensure that TMC or subcontractor is complying with this warranty.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or agents, all as of the date first above written.

TUCSON MEDICAL CENTER

PIMA COUNTY

By: _____
Judy Rich, Chief Executive Officer

By: _____
Sharon Bronson, Chair, Pima County Board of Supervisors

ATTEST

Clerk of the Board

Date _____

APPROVED AS TO CONTENT

Department Representative

Date 01/15/21

APPROVED AS TO FORM

Sherry _____
Deputy County Attorney

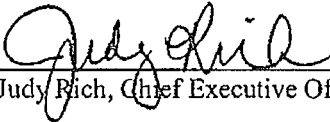
Date 1/15/2021

- 6.13. Non-Discrimination. TMC 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 Agreement, TMC 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.
- 6.14. Legal Arizona Workers Act Compliance. If TMC, under this Agreement, furnishes labor, time or effort to County within the State of Arizona, the following applies: TMC warrants that it will at all times during the term of this Agreement 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"). TMC will further ensure that each subcontractor who performs any work for TMC under this Agreement likewise complies with the State and Federal Immigration Laws. A breach of this paragraph will be deemed a material breach of this Agreement that subjects TMC to penalties up to and including termination of the Agreement. County retains the legal right to inspect the papers of any TMC or subcontractor employee who works on the Agreement to ensure that TMC or subcontractor is complying with this warranty.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or agents, all as of the date first above written.

TUCSON MEDICAL CENTER

PIMA COUNTY

By: 
 Judy Rich, Chief Executive Officer

By: _____
 Sharon Bronson, Chair, Pima County Board of Supervisors

ATTEST

 Clerk of the Board

Date _____

APPROVED AS TO CONTENT

 Department Representative

Date _____

APPROVED AS TO FORM

 Deputy County Attorney

Date _____

ATTACHMENT A (2 pages)

COVID-19 VACCINATION AGREEMENT
TUCSON MEDICAL CENTER AND PIMA COUNTY

Definitions

The following terms shall have the meanings given them below:

Affiliate: An entity is an Affiliate of another entity if it directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such other entity. "Control" includes the power to elect through membership, ownership, contract or otherwise fifty percent (50%) or more of the governing body of an entity. "Control" also includes the power to direct or cause the direction of the policies and management of an entity, whether through membership, ownership, contract (including a lease or management agreement) or other arrangement.

Applicable Law: Applicable laws, rules, pronouncements, and regulations of any governmental authority.

Authorized User. The County and those individual persons designated and authorized by the County to access and use the Vaccine System on behalf of the County, as more fully described in this Addendum who execute a Remote Access Agreement.

Business Associate. "Business Associate" or "BA" shall have the meaning it has in HIPAA.

County Clinical Data. Individually identifiable information that (a) relates to the past, present, or future physical or mental health or condition of a patient of the County, (b) relates to the provision of health care to a patient of the County, and (c) is entered into the Vaccine System by County Personnel. A patient of the County is any patient who has received healthcare services from the County or is scheduled for a healthcare-related appointment with the County.

County Management Data. The County's business, financial, and administrative data entered into the Vaccine System by the County and all reports, analyses, and other results using only such information.

County Personnel: Any of the County's employees, agents or contractors, but not including TMC Personnel.

County Primary Contact. This designee is a member of the County's staff assigned to coordinate County operation and on-going support interaction with TMC for the use of the Vaccine System.

Designated Record Set: A group of records maintained by or for a covered entity that may include patient medical and billing records; the enrollment, payment, claims, adjudication, and cases or medical management record systems maintained by or for a health plan; or information used in whole or in part to make care-related decisions.

Electronic Health Information or "EHI" is defined as the electronic protected health information (ePHI) in a designated record set (as defined in the Health Insurance Portability and Accountability Act (HIPAA) regulations) regardless of whether the records are used or maintained by or for a covered entity

EHR. Electronic Health Record, also known as Electronic Medical Record or EMR.

EPIC Validation. Comparing COVID-19 vaccine registration on the Vaccine System against TMC's existing patient database to prevent the creation of duplicate medical records in TMC's patient database.

Information. Generally, all Non-County Clinical Data, County Management Data, and County Clinical Data that is maintained in the Vaccine System.

Non-County Clinical Data. Individually identifiable information that (a) relates to the past, present, or future physical or mental health or condition of a patient of a non-County entity, (b) relates to the provision of health care to a patient of a non-County entity, and (c) is entered into the Vaccine System by non-County Personnel. A patient of a non-County entity is any patient who has received services at an entity other than the County or is scheduled for an appointment at an entity other than the County.

Remote Access Agreement. An Agreement setting out the conditions of use of the Vaccine System for Authorized Users.

System Administrator. A TMC designee who performs regular systems monitoring and is responsible for developing and maintaining relevant procedures and standards with regard to the Vaccine System.

System Agreements. The TMC System Agreements and System Vendors under which TMC is authorized to provide County with the rights granted by the Addendum with regard to the Vaccine System and any associated agreements between the County and the System Vendor where in County is directly granted rights to use portions of the Vaccine System.

System Requirements. Hardware, software, and telecommunications network configuration standards identified by TMC as essential for accessing the Vaccine System; as such standards may be revised by TMC from time to time.

System Vendors. The organizations which have entered into System Agreements with the County or TMC associated with the supply of the software and related components for the Vaccine System.

TMC Personnel: Any of TMC's employees, agents or contractors who provide services to or on behalf of TMC or any Affiliate of TMC, but not including any County Personnel.

TMC System Agreements. The agreements between and among TMC and the System Vendors under which TMC is authorized to provide the County with the rights granted by this Addendum with regard to the Vaccine System.

User Documentation. The written reference manuals, guidelines, training materials, and procedures relating to the County's access to and use of the Vaccine System pursuant to this Addendum, which will be made available to the County by TMC or the System Vendor, along with other training materials provided to Authorized Users in connection with the Vaccine System.

Vaccine Documentation: The registration and creation of appointments for individuals to receive vaccinations against COVID-19, and the patient medical record charting incident to providing COVID-19 vaccination.

Vaccine System Services. The services provided by TMC under this Addendum.

Vaccine System. The software described in this Addendum, to include all software and components but excluding data and information.

ATTACHMENT B (7 pages)

**COVID-19 VACCINATION AGREEMENT
TUCSON MEDICAL CENTER AND PIMA COUNTY**

EPIC Vaccine System Addendum

1. TMC's Duties & Responsibilities.

1.1. Vaccine System Services Provided. TMC will provide the Vaccine System Services set forth below including access to the Vaccine System. Access to the Vaccine System is provided to the County either through license agreements between TMC and the System Vendors or through a separate agreement directly between the County and System Vendors. In the event of any conflict between the terms of this Addendum and the terms of any separate agreement with System Vendors, this Addendum shall control, unless both parties agree in writing that the separate agreement will control.

(a) Training Services. Initial Vaccine System training services will be provided to the County and Authorized Users by TMC through a combination of computer-based training and instructor-based training. Training of relevant County Personnel will be completed prior to TMC granting access to Authorized Users.

(b) Support Services. The following "Support Services" will be provided by TMC following the start of the County's use of the Vaccine System:

- (1) Help Desk, Call Triage, and Emergency On-Call Support for the Vaccine System;
- (2) Vaccine System Analyst Support: Not to exceed ten (10) hours per location per month of System Analyst support to cover troubleshooting workflow and issues, minor training of existing users on the Vaccine System, adjustment of base reports, and optimization of Vaccine System use. TMC will consider, but cannot guarantee, customization of the Vaccine System.
- (3) Routine software updates and error corrections for the Vaccine System.

(c) Availability; Maintenance and Upgrades. TMC will use reasonable efforts, or cause its System Vendors to use reasonable efforts, to make the Vaccine System Services available to County during County's normal business hours; provided, however, and the County acknowledges and agrees that TMC may take down the Vaccine System, suspend Vaccine System Services, and/or degrade Vaccine System performance temporarily for scheduled and unscheduled maintenance and upgrades. There may be instances where the Vaccine System or Vaccine System Services may be unavailable in response to a risk of harm to a patient or other person or in response to a security risk.

(d) Vaccine System Subscription. TMC grants to the County a non-exclusive, nontransferable, revocable, limited right (the "Subscription") to access and use the Vaccine System subject to the limitations and the permitted uses set forth in this Addendum. This Subscription is subject to the County's material compliance with this Addendum, and the terms of any supporting/existing usage agreements. The County does not have any right to receive a copy of Vaccine System software in any form and does not have a right to receive source code. To the extent TMC's license or rights in any software are subject to an agreement or grant from any third

party, the license and rights received by the County are expressly subordinate to and limited to TMC's license and rights received from such third party. If, for any reason TMC's license or right provided by a third party is limited or terminated, the rights of the County shall also be limited or terminated.

(e) Rights. All rights in patents, copyrights, trademarks, and trade secrets encompassed in the Vaccine System or its related products will remain in TMC or its licensor(s), as applicable. The County does not obtain any rights in the Vaccine System, documentation of the Vaccine System training tools, or other administrative tools used by TMC to administer the Vaccine System except the limited right to use the Vaccine System as provided herein.

1.2. Vaccine System Security. TMC shall implement reasonable security measures with respect to the Vaccine System, Vaccine Documentation, and the County's and other User Data.

1.3. Excluded Hardware, Infrastructure, and Non-Covered Services.

(a) Desktop hardware, printers, scanners, and other equipment (the "County Hardware") are not provided by TMC as part of this Addendum and are therefore excluded from the scope of this Addendum. Communications equipment and services (the "Infrastructure") are not provided by TMC as part of this Addendum and are therefore excluded from the scope of this Addendum. TMC will work with the County's vendors to resolve issues caused by such County Hardware or Infrastructure but TMC is not responsible for suspensions or interruptions in service or use caused by such County Hardware or Infrastructure.

(b) Non-covered services including report development, new employee and refresher training, and process review/optimization consulting are available to the County, and may be provided to the County pursuant to an Addendum to this Agreement.

2. County Duties & Responsibilities.

3.1. Authorized User Documentation. The County will assure that each Authorized User completes an Authorized User use statement or other user agreement as may be required, and fully comply with the terms therein.

3.2. Notice of Staffing Changes. The County shall promptly notify TMC in writing of staffing changes affecting the status of the County's Authorized Users.

3.3. Representations and Warranties. The County represents and warrants as follows:

(a) The County will use the Vaccine System solely to create, maintain, transmit, or receive Vaccine Documentation.

(b) The County has trained its workforce in the requirements of Applicable Law governing the confidentiality, privacy, and security of and access to health information, including without limitation requirements imposed under HIPAA and the Information Blocking Rule.

3.4. Appointment of Primary Contact. The County shall designate the County's IT administrator or a similar qualified primary contact (the "County Primary Contact") to represent the County on issues that arise under this Addendum.

- (a) The County Primary Contact will function as the coordinator for each County site during installation preparation, go-live events, on-going Vaccine System update/enhancement activities; system support requests/troubleshooting activities, and optimization assessments.
- (b) The County Primary Contact will serve as the point person for TMC-directed communications, and will be responsible for assuring that information reaches the County's Authorized Users.
- 3.5. County Data. The County shall use reasonable efforts to ensure that all data it provides to the Vaccine System is accurate, free from serious error, and complete.
- 3.6. The County's Grant of License. Subject to limitations on the use of Information and in accordance with the terms of this Addendum, the County grants to TMC a perpetual, no cost, worldwide, non-exclusive, royalty-free, right and license (the "County License") to (i) permit other Authorized Users of the Vaccine System to access and use all County Clinical Data provided pursuant to this Addendum for purposes permitted or required by Applicable Law, and (ii) use such Information to carry out the System Administrator duties under this Addendum, and otherwise as TMC determines necessary and appropriate to carry out its obligations under Applicable Law. The License granted in this Section 3 shall survive termination, expiration, non-renewal, or rescission of this Addendum.
- 3.7. The County's Vaccine System Security. The County shall implement reasonable security measures with respect to the Vaccine System and Vaccine Documentation. The County is solely responsible for County Personnel's access and use of the Vaccine System.
- 3.8. Security of Information. The County will maintain the security and confidentiality of the Information and protect it from loss or destruction. The County will take all appropriate actions to ensure that adequate technical, physical, and administrative security measures are in place and utilized so as to prevent the unauthorized use of or access to, or the disclosure, loss or destruction of the Information. In the event the County discovers, or suspects, unauthorized use of or access to any Information via the Vaccine System, it will immediately notify TMC.
- 3.9. Compliance. In no event will the County or any County Personnel use the Vaccine System to access Protected Health Information for any purpose other than those purposes for which use of such Protected Health Information by the County or such County Personnel, and disclosure of such Protected Health Information to the County or County Personnel by TMC, is permitted by HIPAA and other Applicable Laws.

The County accepts sole responsibility for:

- (a) The accuracy, completeness and integrity of the Information that the County inputs into the Vaccine System;
- (b) The programming, procedures and communication lines established and used by the County for purposes of Internet-based or remote access to the Vaccine System;
- (c) All medical judgments and advice made and provided by the County using the Vaccine System and the Vaccine Systems' data processing results;
- (d) Maintaining and updating the list of the County's Authorized Users; and

- (e) All other uses of the Vaccine System by the County and County Personnel.
- 3.10. Use, Infringement, Copyright and Prohibited Uses. The County's use of the Vaccine System will not violate any intellectual property right or license Addendum with any third party or infringe on the rights of any third party. Except as specifically provided herein, the County shall not, without TMC's prior written consent, copy any portion of the Vaccine System operating on the County's equipment. The County shall notify TMC of all Vaccine System problems which come to the County's attention, and hereby assigns to TMC all rights, title, and interest to any improvements or enhancements arising from any action taken by TMC in response to the County's notice, together with all property rights therein, including without limitation, all patent, copyright, trade secret, mask work, trademark, moral right, or other intellectual property rights created or derived from such processes. The County shall not market, sell, distribute, sublicense, modify, change, reverse assemble, reverse compile, reverse engineer, translate, reproduce, dispose of, rent, lease, or otherwise display, disclose, transfer, make available, use, or permit use of any portion of the Vaccine System except as expressly permitted in this Addendum.

3. Mutual Duties and Responsibilities.

- 3.1. Ownership. TMC, its successors in interest, or third parties under contract with TMC, will retain all right, title, and interest in and to the Vaccine System. The County shall not challenge ownership of the software or any intellectual property therein by TMC or its licensors. The County has no right, title or interest in the Vaccine System other than the rights and interests set forth in this Addendum. TMC retains all other rights to the Vaccine System and all the components thereof. The County shall not obtain any rights to the Vaccine System; except for the limited rights to use the Vaccine System expressly granted by this Addendum. The County will retain all right, title, and interest in and to County Clinical Data and County Management Data entered into the Vaccine System by or on behalf of the County under this Addendum. As County Clinical Data and County Management Data entered into the Vaccine System becomes part of TMC's EHR, TMC will not delete County Clinical Data and County Management Data, but will provide the County with access to County Clinical Data and County Management Data and permit the County to make and retain copies of the County Clinical Data and County Management Data pursuant to this Addendum.
- 3.2. Limitations on Use of Information. Data, including without limitation, Information provided by the County hereunder shall not be used for a purpose other than as permitted under this Addendum. This limitation does not apply to: (a) a party's use of its own Information; or (b) a party's future use of clinical data (including County Clinical Data and Non-County Clinical Data) accessed or exchanged for a purpose permitted under this Addendum, provided that party's future use of that data is permitted or required under Applicable Law.
- 3.3. Security Breach Notice. The County shall promptly disclose to TMC in writing any breach in security in the County's systems, whether internal or external, which could affect the security of the Information or the Vaccine System, and will take appropriate remedial action to ensure that the same type of breach does not recur.
- 3.4. Authorized User Notice. The County shall immediately disclose to TMC in writing when an Authorized User is no longer employed by or under contract with the County.
- 3.5. Release of Information Request. In the event the County or TMC receives a release of information request with regard to patients common to TMC and the County, the County shall, as required by Applicable Law, provide access in one or more Designated Record Sets. TMC shall,

as required by Applicable Law, provide access in one or more Designated Record Sets maintained by or for TMC as long as the information is maintained by TMC or by a Business Associate on behalf of TMC. The County and TMC shall each bear their respective costs and expenses associated with release of information requests for patients common to TMC and the County. The County and TMC, as appropriate, shall inform the person requesting the release of information in a cover letter that there may be other records maintained by the other so that the person requesting the release of information may be fully advised of the extent of their medical record content.

4. WARRANTY, WARRANTY DISCLAIMER; LIMITATION OF LIABILITY.

- 4.1. Warranty. TMC warrants that the Vaccine System will perform substantially in accordance with the applicable User Documentation for the Vaccine System. Following implementation, if the Vaccine System fails to perform in accordance with the User Documentation, the County shall notify TMC in writing of the functionality at issue, and TMC shall repair or replace the Vaccine System. TMC will use its best efforts which may include obtaining cooperation of the County which will not be unreasonably delayed, to resolve the functionality at issue. If TMC is unable to resolve, repair or replace the functionality at issue within ninety (90) days notice from the County, TMC may request additional time from County to resolve, repair or replace the functionality at issue. If after exhausting its best efforts TMC is unable to resolve, repair or replace the functionality at issue, then the license to use such Software shall be deemed to be terminated under Section 5.3 of the Agreement (Termination for Cause). These warranties are void if the County violates any County Responsibilities set out in this Addendum or commits any act or omission that would be grounds for indemnity as set out in Section 6 of the Agreement (Indemnification), or uses the Vaccine System in any manner that is not allowed under this Addendum, or otherwise allows unauthorized persons to use the Vaccine System.
- 4.2. Disclaimer of Warranties. EXCEPT AS SET FORTH ABOVE IN SECTION 7.1, THE COUNTY EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE SYSTEM AND SERVICES IS AT COUNTY'S SOLE RISK AND THAT THE SYSTEM AND SERVICES ARE BEING PROVIDED "AS IS." TMC MAKES NO WARRANTIES THAT THE SERVICES OR SYSTEM WILL BE UNINTERRUPTED OR MEET THE COUNTY'S REQUIREMENTS. TMC HAS NOT MADE, AND THE COUNTY HAS NOT RECEIVED, ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED.
- 4.3. Limitation of Liability.
- (a) THE LIABILITY OF TMC AND ITS AFFILIATES, PREDECESSORS AND SUCCESSORS IN INTEREST, AND ANY ENTITY WHICH HAS AN OWNERSHIP OR CONTROLLING INTEREST IN TMC OR IN WHICH TMC HAS AN OWNERSHIP OR CONTROLLING INTEREST, INCLUDING ALL DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, LICENSORS OR SUBCONTRACTORS OF THE FOREGOING (COLLECTIVELY, THE "TMC ENTITIES"), FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS ADDENDUM WILL BE LIMITED TO AND WILL NOT EXCEED, FOR ALL CLAIMS, ACTIONS, AND CAUSES OF ACTION OF EVERY KIND AND NATURE, THE TOTAL AMOUNT PAID BY THE COUNTY FOR VACCINE SERVICES.

(b) IN NO EVENT WILL THE MEASURE OF DAMAGES PAYABLE BY THE TMC ENTITIES, NOR WILL THE TMC ENTITIES BE LIABLE TO THE COUNTY FOR, ANY AMOUNTS FOR LOSS OF DATA, LOSS OF INCOME, PROFIT, OR SAVINGS, OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, EVEN IF THE TMC ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE, AND ALL SUCH DAMAGES ARE EXPRESSLY DISCLAIMED.

(c) THE FOREGOING TERMS OF THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION THAT IMPOSES LIABILITY, WHETHER IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE.

- 4.4. Carrier Lines. The County acknowledges that access to the Vaccine System is provided over various facilities and communications lines and information will be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices (collectively "carrier lines") that are owned, maintained, and serviced by third-party carriers, utilities and Internet service providers, all of which are beyond TMC's control. TMC assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at the County's risk and is subject to Applicable Law.
- 4.5. Unauthorized Access; Validation of Data; Lost or Corrupt Data. TMC is not responsible for unauthorized access to the County's transmission facilities or equipment by individuals or entities using the Vaccine System or for unauthorized access to, or alteration, theft or destruction of the County's data files, programs, procedures or information through the Vaccine System, whether by accident, fraudulent means or devices, or any other method. The County is solely responsible for validating the accuracy of all output and reports and protecting the County's data and programs from loss by implementing appropriate security measures. The County waives any damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunction, security violations, the use of third-party software, or otherwise. TMC is not responsible for the content of any information transmitted or received through TMC's provision of the Vaccine System Services.
- 4.6. Inaccurate Data. Notwithstanding any other provision of this Addendum or the Agreement, TMC shall have no responsibility for or liability related to the accuracy, content, currency, completeness, content, or delivery of any data provided by the County.
- 4.7. Patient Care. Notwithstanding any other provision of this Addendum or the Agreement, the County and the County's Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients and clients resulting from or in any way related to the use of the Vaccine System or the Vaccine Documentation or the data made available thereby. The County and its Authorized Users shall not have any recourse against, and each shall waive, any claims against TMC and System Vendors for any loss, damage, claim or cost relating to or resulting from its own use or misuse of the Vaccine System and/or the Vaccine Documentation or the data made available thereby.

5. Confidentiality.

- 5.1. HIPAA Compliance. In connection with the performance of Vaccine System Services, TMC and the County may be creating, acquiring, making use of, and disclosing “protected health information” as defined by HIPAA. TMC and the County shall comply with the applicable provisions of HIPAA.

TMC and the County shall implement HIPAA policies and procedures.

Attachment C, the Business Associate Addendum (7 pages) attached to these Policies is incorporated by reference into each Agreement.

The County may act as a “business associate” (as defined by HIPAA) of TMC, and shall comply with the terms of the Business Associate Addendum.

TMC may act as a “business associate” (as defined by HIPAA) of the County, and shall comply with the terms of the Business Associate Addendum.

- 5.2. Non-Clinical TMC Information. The County will only permit access to proprietary and confidential non-clinical (*e.g.*, business and financial) information of TMC, Epic Systems Corporation (“Epic”) or any other vendor under contract with TMC only by County Personnel or third parties under a duty of confidentiality to the County who need such access as part of their duties on behalf of the County.
- 5.3. Non-Clinical County Information. TMC will only permit access to proprietary and confidential non-clinical (*e.g.*, business and financial) information of the County or any other vendor under contract with the County only by TMC Personnel or third parties under a duty of confidentiality to TMC who need such access in order to perform their duties on behalf of TMC and the County.
- 5.4. Patient Information and Consent. Each party agrees to comply with all legal, regulatory, professional, and ethical requirements applicable to that party's use and disclosure of patient Information maintained in the Vaccine System. The County will be responsible to administer its use of the Vaccine System, and the County will advise TMC immediately in the event Information it includes within the Vaccine System is subject to any limitations on use. The County agrees to report promptly to TMC any material breach of the confidentiality of patient Information in the Vaccine System (*i.e.*, a breach that is not an incidental disclosure permitted under 45 CFR 164.502(a) (1) (iii)).

ATTACHMENT C (7 pages)

**COVID-19 VACCINATION AGREEMENT
TUCSON MEDICAL CENTER AND PIMA COUNTY**

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) is incorporated by reference into the COVID-19 Vaccination Agreement between Tucson Medical Center and Pima County, and applies in the following circumstances:

- (1) The County (in such capacity, a “Covered Entity”) discloses PHI (as defined below) to TMC or any Affiliate of TMC which receives such PHI in its capacity as a business associate of the County (a “Business Associate”) or
- (2) TMC or any Affiliate of TMC (in such capacity, a “Covered Entity”) discloses PHI to the County which receives such PHI in its capacity as a business associate of such Covered Entity (each, a “Business Associate”).

RECITALS

1. The Covered Entity and the Business Associate are parties to an agreement or arrangement pursuant to which the Business Associate performs certain services (the “Services”) for the Covered Entity.
2. The Covered Entity may Disclose or make available to the Business Associate, and the Business Associate may Use, Disclose, receive, transmit, maintain or create from or on behalf of the Covered Entity, health information that is considered PHI (as defined below) in connection with the provision of Services to or on behalf of the Covered Entity.
3. The parties are committed to compliance with the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as amended from time to time (collectively, “HIPAA”).
4. The purpose of this Addendum is to satisfy the obligations of the Covered Entity and the Business Associate under HIPAA and ensure the integrity and confidentiality of PHI that the Business Associate Uses, Discloses, receives, transmits, maintains or creates from or on behalf of the Covered Entity.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. Capitalized terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, the HITECH Standards or any future regulations promulgated or official guidance thereunder.

- A. “Breach” shall have the same meaning as that term is defined and used in the Breach Notification Rule.

- B. "Breach Notification Rule" shall mean the provisions of 45 CFR Parts 160 and 164, Subpart D, entitled Breach Notification for Unsecured Protected Health Information Rules.
- C. "Discover" or "Discovery" shall mean, with respect to a Use or Disclosure by the Business Associate not provided for by this Addendum including, without limitation, any Breach, the earlier to occur of: (1) the Business Associate's actual knowledge of such Use or Disclosure; (2) the first day on which the Business Associate, by exercising reasonable diligence, reasonably would have known of such Use or Disclosure; or (3) the first day on which such Use or Disclosure reasonably would have been known, by exercising reasonable diligence, to any person, other than the person committing the Use or Disclosure, who is an employee, officer or other agent of the Business Associate.
- D. "Electronic Protected Health Information" or "ePHI" shall have the same meaning as the term "electronic PHI" in the Security Rule, to the extent information is created, maintained, or received by, or transmitted to or by, the Business Associate to, from or on behalf of the Covered Entity.
- E. "HITECH" means Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§17921-17954 and its implementing regulations, when and as each is effective.
- F. "Individual" shall have the same meaning as the term "individual" in the Privacy Rule, and shall include a person who qualifies as a personal representative in accordance with the Privacy Rule.
- G. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, subparts A and E, as amended from time to time.
- H. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in the Privacy Rule, to the extent such information is created, maintained, or received by, or transmitted to or by, the Business Associate to, from or on behalf of the Covered Entity.
- I. "Required By Law" shall have the same meaning as the term "required by law" as used in the Privacy Rule.
- J. "Security Rule" shall mean the Security Standards for the Protection of Electronic PHI at 45 C.F.R. Parts 160 and 164, Subparts A and C, as amended from time to time.

2. Scope. This Addendum applies to and shall be, and hereby is, automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between the Covered Entity and the Business Associate, pursuant to which PHI is created, maintained, or received by, or transmitted to or by, the Business Associate to, from or on behalf of the Covered Entity in any form or medium whatsoever. As of the effective date of this Addendum, this Addendum automatically extends to, is incorporated into and amends all existing agreements between the Covered Entity and the Business Associate involving the Use or Disclosure of PHI.

3. Purpose; General Rules. This Addendum sets forth the terms and conditions pursuant to which the Business Associate shall handle all PHI that is used, disclosed, received, transmitted, maintained, or created by the Business Associate from, to or on behalf of the Covered Entity and subcontract any portion of the services it provides to the Covered Entity. All Uses and Disclosures of PHI by the Business Associate not Required by Law, authorized by this Addendum, or authorized by any other written

agreement with the Covered Entity or the Covered Entity's written instructions are prohibited.

4. Relationship of Parties. In the performance of the work, duties and obligations described in this Addendum or in any other agreement between the parties, the parties acknowledge and agree that each party is at all times acting and performing as an independent contractor and at no time shall the relationship between the parties be construed as a partnership, joint venture, employment, principal/agent relationship, or master/servant relationship.

5. Ownership of PHI. The Business Associate acknowledges that all right, title and interest in and to any information, including without limitation PHI, furnished to the Business Associate vests solely and exclusively with the Covered Entity or the Individual to whom such PHI relates.

6. Permitted Activities of the Business Associate. Except as otherwise limited in this Addendum, the Business Associate may:

- A. **Use** PHI for the proper management and administration of the Business Associate, to carry out the legal responsibilities of the Business Associate, provided such Uses are permitted under applicable federal and state confidentiality laws.
- B. **Use or disclose** PHI to perform services for the Covered Entity provided that such use or disclosure would not violate HIPAA if done by the Covered Entity.
- C. **Disclose** PHI in its possession for its proper management and administration or to carry out its legal responsibilities, provided such disclosures are permitted under applicable federal and state confidentiality laws and are: (i) Required by Law, or (ii) the Business Associate obtains reasonable written assurances from the third party to whom the information is disclosed that such PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and the third party notifies the Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

7. Protection of PHI by the Business Associate. The Business Associate shall:

- A. Not use or disclose PHI other than as permitted or required by this Addendum, any underlying agreement between the parties, or as Required by Law.
- B. Make reasonable efforts to limit requests for and the use and disclosure of PHI to a Limited Data Set (as defined in 45 C.F.R. § 164.514(e)(2)) or to the Minimum Necessary PHI to accomplish the intended purpose of such use, disclosure or request.
- C. Use appropriate, commercially reasonable safeguards to prevent the use or disclosure of PHI other than those uses or disclosures provided for by this Addendum and comply with the Security Rule with respect to ePHI.
- D. Develop and implement administrative, physical and technical safeguards, at its expense, as may be required from time to time to maintain compliance with HIPAA and HITECH and to reasonably and appropriately protect the confidentiality, integrity and availability of ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity and to prevent non-permitted or violating Uses or Disclosures of ePHI.
- E. Mitigate, to the extent practicable, any harmful effect of an unauthorized use or disclosure of PHI

by the Business Associate, or a subcontractor, vendor, or agent of the Business Associate, in violation of the requirements of this Addendum.

- F. Report to the designated privacy officer of the Covered Entity by telephone without unreasonable delay, and in no event later than three (3) business days, any “security incident” (as defined in the Security Rule) that the Business Associate Discovers.
- G. Notify the designated privacy officer of the Covered Entity by telephone or in writing without unreasonable delay, and in no event later than three (3) business days, after the Discovery of a Breach or suspected Breach by the Business Associate or one of Business Associate’s subcontractors or agents.
 - (1) Without unreasonable delay, and in no event later than ten (10) business days of notifying the Covered Entity after Discovery of a Breach or suspected Breach, the Business Associate shall provide the designated privacy officer of the Covered Entity the information required under 45 C.F.R. § 164.410(c) in writing, preferably in a secure electronic format.
 - (2) Under no circumstances shall the Business Associate notify any affected Individual about a Breach or suspected Breach without the consent of the Covered Entity.
 - (3) If the Business Associate (or one of its subcontractors or agents) is responsible for a Breach or reportable breach under any applicable state law, the Covered Entity may, at its option, require the Business Associate to provide any notifications required by 45 C.F.R. § 164.404 or any applicable state law at the Business Associate’s expense, the content of which shall be created and/or approved by the Covered Entity.
 - (4) If the Business Associates (or one of its subcontractors or agents) is responsible for an impermissible use or disclosure that constitutes a Breach or a reportable breach under applicable state law, the Business Associate shall reimburse the Covered Entity for all reasonable costs and expenses incurred in (i) determining the scope of the Breach/breach; (ii) notifying all affected or potentially affected Individuals; (iii) mitigating any harm or potential harm to such Individuals, including providing 1-year credit monitoring to any affected Individual whose social security number, credit card number or bank information was involved or potentially involved; and (iv) notifying the media, government or any other third-party, if such notification is required by law.
- H. If the Business Associate (or one of its subcontractors, vendors or agents) is responsible for a Breach (as determined by the Covered Entity), the Covered Entity may, at its option, require the Business Associate at its own expense (i) to provide any of the notifications required by 45 C.F.R. § 164.404, the content of which shall be created by the Covered Entity; and (ii) to offer credit monitoring to any affected Individuals and provide such monitoring upon an Individual’s request.
- I. Ensure that any agents, including subcontractors, to whom the Business Associate provides PHI received from, or created or received by the Business Associate on behalf of the Covered Entity, agrees in writing to the same restrictions and conditions that apply to the Business Associate with respect to such information, including requiring a subcontractor or agent, to agree in writing to comply with the Security Rule with respect to any ePHI provided to such subcontractor or agent, and monitor any such subcontractor for any pattern of activity that could constitute a material breach of such subcontractor’s obligations and take reasonable steps to cure the breach, end the violation or terminate the subcontractor relationship.

- J. Provide access, at the request of the Covered Entity, to PHI in a Designated Record Set to the Covered Entity or to an Individual or another person properly designated by the Individual, in order to meet the requirements under 45 C.F.R. § 164.524. If the Business Associate maintains PHI electronically in a Designated Record Set and if the Individual requests an electronic copy of such information, the Business Associate must provide the Covered Entity, or the Individual or person properly designated by the Individual, as directed by the Covered Entity, access to the PHI in the electronic form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the Covered Entity and the Individual. Any fee that the Business Associate may charge for such electronic copy shall not be greater than the Business Associate's labor and supply costs in responding to the request.
- K. Make any amendment(s) to PHI in its possession contained in a Designated Record Set at the request of the Covered Entity or an Individual pursuant to 45 C.F.R. § 164.526, in a time and manner to satisfy the Covered Entity's obligations under 45 C.F.R. 164.526.
- L. Document disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, including those made through an electronic health record in accordance with HITECH, in accordance with 45 C.F.R. § 164.528 and provide such information to the Covered Entity within ten (10) business days of a written request from the Covered Entity.
- M. Make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available to the Covered Entity for purposes of determining the Covered Entity's or the Business Associate's compliance with the Privacy Rule.
- N. Comply with the requirements of the Privacy Rule that apply to the Covered Entity to the extent the Business Associate carries out any of the Covered Entity's obligations under the Privacy Rule.
- O. Not sell PHI, as defined in 42 CFR §164.502(a)(5)(ii).
- P. Not make any disclosure of PHI of an Individual who has requested to restrict disclosure of PHI where the disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law, and the PHI pertains solely to a health care item or service for which the Individual or person other than the health plan on behalf of the Individual, has paid the Covered Entity in full.

8. Injunctive Relief; Acknowledgment. The Business Associate acknowledges that the restrictions contained in this Addendum are reasonable and necessary to protect the legitimate professional and business interests of the Covered Entity and to ensure the Covered Entity's compliance with HIPAA. The Business Associate further acknowledges and agrees that a breach of the covenants contained in this Addendum will cause irreparable harm to the Covered Entity and that damages arising from any such breach may be difficult to ascertain and no adequate legal remedy exists. Accordingly, in such situation the Covered Entity shall be entitled to receive injunctive relief and/or specific performance and damages, as well as any and all legal or equitable remedies to which it may be entitled.

9. Term and Termination.

- A. Term. The term of this Addendum shall be coterminous with the term of the Agreement to which it is attached and incorporated by reference, *provided, however*, it shall remain in effect until all

of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

B. Termination for Cause. Upon the Covered Entity's knowledge of a material breach of this Addendum by the Business Associate, the Covered Entity shall either, at its sole discretion:

(1) Provide an opportunity for the Business Associate to cure the breach/end the violation, and terminate this Addendum if the Business Associate does not cure the breach/end the violation within the time specified by the Covered Entity; or

(2) Immediately terminate this Addendum.

The Business Associate shall ensure that it maintains the termination rights in this Section 9 in any agreement it enters into with a subcontractor.

C. Obligations of the Business Associate upon Termination.

(1) Except as provided in paragraph (2) of this Section, upon termination of this Addendum, for any reason, within ten (10) business days, the Business Associate shall return to the Covered Entity or, if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity that the Business Associate maintains in any form. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

(2) The Business Associate and its subcontractors and agents shall not retain copies of the PHI except to the extent necessary for the Business Associate to carry out its own management and administration or its legal responsibilities after termination of this Addendum provided that the Business Associate shall extend the protections of this Addendum to such PHI.

10. **Miscellaneous.**

A. Regulatory References. A reference in this Addendum to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended and for which compliance is required.

B. Amendment. No change, amendment, or modification of this Addendum shall be valid unless set forth in writing and agreed to by both parties. Notwithstanding the foregoing, the parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to ensure compliance with such developments ("Required Amendment"), and therefore this Addendum shall be deemed automatically amended to the extent necessary for the Covered Entity to continue to comply with the requirements of HIPAA and its implementing regulations, including, without limitation, the Privacy Rule, the Security Rule and the Breach Notification Rule, as those requirements may be amended from time to time. Unless otherwise specified, any Required Amendment shall be effective when provided to the Business Associate in writing ("Amendment Notice").

C. Survival. The provisions and respective rights and obligations of the parties under Sections 2, 5, 6, 7, 8, 9, 10, 11, and 12 of this Addendum shall survive the termination of this Addendum.

D. Interpretation. Any ambiguity in this Addendum shall be resolved to permit the Covered Entity

and the Business Associate to comply with HIPAA.

- E. Notice. Any notice, report or other communication required under this Addendum shall be in writing and shall be delivered personally, telegraphed, emailed, sent by facsimile transmission, or sent by U.S. mail.
- F. Governing Law. The rights, duties and obligations of the parties to this Addendum and the validity, interpretation, performance and legal effect of this Addendum shall be governed and determined by applicable federal law with respect to HIPAA and otherwise by the laws of the State of Arizona.
- G. No Third Party Beneficiaries. There are no intended third party beneficiaries to this Addendum. Without in anyway limiting the foregoing, it is the parties' specific intent that nothing contained in this Addendum give rise to any right or cause of action, contractual or otherwise, in or on behalf of any Individual whose PHI is used or disclosed pursuant to this Addendum.
- H. Waiver. No provision of this Addendum shall be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
- I. Conflicts. In the event of any conflict between the terms and conditions stated within this Addendum and those contained within any other agreement or understanding between the parties (written, oral, or implied), the terms of this Addendum shall govern. Without limiting the foregoing, no provision of any other agreement or understanding between the parties limiting the liability of the Business Associate to the Covered Entity shall apply to the breach of any term, condition or covenant contained in this Addendum by the Business Associate.
- J. Headings. The headings of each section are inserted solely for purposes of convenience and shall not alter the meaning of this Addendum.