



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 03/17/20

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Arizona Dental Insurance Services, Inc. dba Delta Dental of Arizona (Headquarters: Glendale, AZ)

***Project Title/Description:**

Self-Funded Dental Plan

***Purpose:**

Award: Master Agreement No. MA-PO-20-141. This Master Agreement is for an initial term of one (1) year in the annual award amount of \$2,350,000.00 and includes four (4) one-year renewal options.

Administering Department: Human Resources.

***Procurement Method:**

Pursuant to Pima County Procurement Code 11.12.020, Competitive sealed proposals, Solicitation No. RFP-PO-2000004 was conducted. Five (5) responses were received. Award is to the responsive and responsible respondent submitting the highest scoring proposal.

PRCUID: 357918

Attachments: Notice of Recommendation for Award and Professional Services Contract.

***Program Goals/Predicted Outcomes:**

To provide dental insurance benefit to all eligible employees.

***Public Benefit:**

To attract and retain qualified employees for County positions.

***Metrics Available to Measure Performance:**

Employee enrollment in each tier and Contractor adherence to the terms and conditions of the contract.

***Retroactive:**

No.

TO: CORB 03/02/20
VERS: 1
PGS: 21

Contract / Award InformationDocument Type: MA Department Code: PO Contract Number (i.e., 15-123): 20-141Effective Date: 07/01/20 Termination Date: 06/30/21 Prior Contract Number (Synergen/CMS): _____☒ Expense Amount: \$ \$2,350,000.00 ☐ Revenue Amount: \$ _____***Funding Source(s) required:** Health Benefit Self-Insurance Fund (96%) and Employee Contributions (4%)Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ NoIf Yes, is the Contract to a vendor or subrecipient? VendorWere 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.: _____

Effective 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): _____

Effective 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: Kelsey Braun-Shirley, Procurement Officer 2/28/2020 For DW Division Manager: DWDepartment: Procurement May 8 Telephone: (520)724-7466Department Director Signature/Date: [Signature] 2/28/2020Deputy County Administrator Signature/Date: [Signature] 3/2/2020County Administrator Signature/Date: C. Dulubay 3/2/2020

(Required for Board Agenda/Addendum Items)



NOTICE OF RECOMMENDATION FOR AWARD

Date of Issue: February 28, 2020

The Procurement Department hereby issues formal notice to respondents to Solicitation No. RFP-PO-2000004 for Self-Funded Dental Plan that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Board of Supervisors on or after March 17, 2020.

Award is recommended to the highest scoring proposal.

AWARDEE NAME

Arizona Dental Insurance Services, Inc.
dba Delta Dental of Arizona

ANNUAL AWARD AMOUNT

\$2,350,000.00

OTHER RESPONDENT NAMES

Aetna Life Insurance Company
Ameritas Life Insurance Corp. dba Ameritas
Cigna Health and Life Insurance Company dba Cigna
United Concordia Companies, Inc. dba United Concordia Dental

Issued by: Kelsey Braun-Shirley, Procurement Officer

Telephone Number: (520) 724-7466

This notice is in compliance with Pima County Procurement Code §11.12.010(C) and §11.20.010(C).

Copy to: Pima County SBE via e-mail at SBE@pima.gov.

MVF

Pima County Department of Human Resources**Project: Self-Funded Dental Plan**

Contractor: Arizona Dental Insurance Services, Inc.
dba Delta Dental of Arizona
5656 W. Talavi Blvd.
Glendale, AZ 85306

Amount: \$2,350,000.00

Contract No.: MA-PO-20-141

Funding: Health Benefit Self-Insurance Fund

PROFESSIONAL SERVICES CONTRACT**1. Parties, Background and Purpose.**

- 1.1. Parties. This Contract is between Pima County, a body politic and corporate of the State of Arizona ("County"), and Arizona Dental Insurance Services, Inc. ("Contractor").
- 1.2. Authority. County selected Contractor pursuant to and consistent with Pima County Procurement Code 11.12.020 Competitive Sealed Proposals;
- 1.3. Solicitation and Other Documents. County previously issued Solicitation No. RFP-PO-2000004 for certain services (the "Solicitation"). Requirements and specifications contained in the Solicitation, all documents included in the Solicitation, and any information and documentation submitted by Contractor in response to the Solicitation, are incorporated into this Contract by reference.
- 1.4. Contractor's Response. Contractor submitted the most advantageous response to the Solicitation.

2. Term.

- 2.1. Original Term. This Contract is effective for a one (1)-year period commencing on July 1, 2020 (the "Initial Term"). "Term," when used in this Contract, means the Initial Term, plus any exercised Extension Options.
- 2.2. Extension Options. County may renew this Contract for up to four (4) additional periods of up to one (1) year each (each an "Extension Option"). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.

3. Scope of Services. Contractor will provide County with the services described in **Exhibit A: Self-Funded Dental Plan Scope of Work** (5 pages) upon demand. The Services must comply with all requirements and specifications in the Solicitation.**4. Key Personnel.** Contractor will employ suitably trained and skilled professional personnel to perform all consultant services under this Contract. Prior to changing any key personnel, especially those key personnel County relied upon in making this Contract, Contractor will obtain the approval of County. The key personnel include the following staff:

Heather Mollon, Director Client Services
Stacy Nietupski, Sales Executive
Ann Coupland, Strategic Account Executive
Rachel Day, Implementation Consultant

5. **Compensation and Payment.**

- 5.1. Rates; Adjustment. County will pay Contractor at the rates set forth in **Exhibit B: Self-Funded Dental Plan Admin. Fees** (1 page). Those rates will remain in effect during an Extension Option period.
- 5.2. Maximum Payment Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$2,350,000.00 per year (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.
- 5.3. Timing of Payments. County will self-bill on a monthly basis for administrative fees and reimburse Contractor on a weekly basis for paid claims as set forth in **Exhibit B**. County must receive invoice no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.
- 5.4. Content of Invoices. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.
- 5.5. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 23 below, question any payment under this Contract. If County raises a question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.
- 5.6.1. All compensation to Contractor will be netted from the security purchase yield. All security transactions must be settled on a delivery versus payment basis at Pima County's custodian bank. Contractor also must cooperate with any safekeeping arrangements that the County has made.
- 5.6.2. For the period of record retention identified in section 23. Books and Records of this contract, County reserves the right to question any payment made to Contractor and to require reimbursement therefore by setoff or otherwise for payments determined to be improper or contrary to this Contract or law.

6. **Insurance.** Contractor will procure and maintain at its own expense insurance policies (the "Required Insurance") satisfying the below requirements (the "Insurance Requirements") until all of its obligations under this Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Contractor's indemnity obligations under this Contract. The County in no way warrants that the required insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

6.1. Insurance Coverages and Limits:

- 6.1.1. Minimum Scope and Limits of Insurance: Contractor shall procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.
- 6.1.1.1. Commercial General Liability (CGL) – Occurrence Form with limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include cover for liability arising from premises, operations, independent

contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations.

- 6.1.1.2. Business Automobile Liability – Coverage for bodily injury and property damage on any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract with minimum limits not less than \$1,000,000 Each Accident.
- 6.1.1.3. Workers' Compensation and Employers' Liability – Statutory coverage for Workers' Compensation. Workers' Compensation statutory coverage is compulsory for employers of one or more employees. Employers Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each employee – disease.
- 6.1.1.4. Professional Liability (E & O) Insurance – This insurance is required for work from professionals whose coverage is excluded from the above CGL policy. The policy limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The insurance shall cover professional misconduct or negligent acts of anyone performing any services under this contract.
- 6.1.1.5. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor shall warrant that continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" located in the next section.
- 6.1.1.6. Network Security (Cyber)/Privacy Insurance-Coverage shall have minimum limits not less than \$2,000,000 Each Claim with a \$2,000,000 Annual Aggregate. The insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

6.2. Additional Insurance Requirements:

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

- 6.2.1. Claims Made Coverage: If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
- 6.2.2. Additional Insured Endorsement: The General Liability, Business Automobile Liability and Technology E&O Policies shall each be endorsed to include Pima County, its departments, districts, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

- 6.2.3. Subrogation Endorsement: The General Liability, Business Automobile Liability, Workers' Compensation and Technology E&O Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- 6.2.4. Primary Insurance Endorsement: The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, employees or Pima County shall be excess and not contributory insurance.
- 6.2.5. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR). Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 6.2.6. Insurer Financial Ratings: Coverage must be placed with insurers acceptable to the County with A.M. Best rating of not less than A-VII, unless otherwise approved by the County.
- 6.2.7. Subcontractors: Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.
- 6.3. Notice of Cancellation:
For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to Pima County, within two (2) business days of receipt of notice, if a policy is suspended, voided, or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to the Pima County Contracting Representative. Notice shall include the Pima County project or contract number and project description.
- 6.4. Verification of Coverage:
 - 6.4.1. Contractor shall furnish Pima County with certificates of insurance (valid ACORD form or equivalent approved by Pima County) as required by this Contract. An authorized representative of the insurer shall sign the certificates.
 - 6.4.2. All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. Each insurance policy required by this Contract must be in effect 10 days prior to work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
 - 6.4.3. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this Contract at any time.
 - 6.4.4. Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its departments, officials and employees. Note: Contractors for larger projects must provide actual copies of the additional insured and subrogation endorsements.

6.5. Approval and Modifications:

Pima County Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

7. **Indemnification.** To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "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 Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.
8. **Laws and Regulations.**
- 8.1. **Compliance with Laws.** Contractor will comply with all federal, state, and local laws, rules, regulations, standards, and Executive Orders. Any changes in the governing laws, rules, and regulations during an agreement apply, but do not require an amendment or revisions.
- 8.2. **Licensing.** Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.
- 8.3. **Choice of Law; Venue.** The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.
9. **Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents, or employees will be considered an employee of Pima County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under the Pima County Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.
10. **Subcontractors.** Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
11. **Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.

12. **Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin.
13. **Americans with Disabilities Act.** Contractor will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
14. **Authority to Contract.** Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.
15. **Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's full and complete performance under this Contract, or to take any action based on the other party's failure to fully and completely perform, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
16. **Conflict of Interest.**
- 16.1 Cancellation: This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
- 16.2 Exemptions; employment prohibition: This Contract is subject conflict of interest pursuant to A.R.S. § 38-503, the pertinent provisions of which are incorporated into this Contract by reference.
17. **Termination by County.**
- 17.1. Without Cause. County may terminate this Contract at any time, with or without cause, by serving a written notice upon Contractor at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of termination.
- 17.2. With Cause. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.
- 17.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.
18. **Notice.** Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:
- | | |
|---|--|
| County: | Contractor: |
| Mary Jo Furphy, Procurement Director | Brad Clothier, Executive VP/Business Development |
| 130 W. Congress St. 3 rd Floor | 5656 W. Talavi Blvd |
| Tucson, AZ 85701 | Glendale, AZ 85306 |
19. **Non-Exclusive Contract.** Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.

20. **Remedies.** Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.
21. **Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.
22. **Control of Data Provided by County.** For those projects and contracts where County has provided data to enable the Contractor to provide contracted services or products, unless County otherwise specifies and agrees in writing, Contractor will treat, control and limit access to said information as confidential and will under no circumstances release any data provided by County during the term of this contract and thereafter, including but not limited to personal identifying information as defined by A.R.S. § 44-1373, and Contractor is further prohibited from selling such data directly or through a third party. Upon termination or completion of the contract, Contractor will either return all such data to County or will destroy such data and confirm destruction in writing in a timely manner not to exceed sixty (60) calendar days.
23. **Books and Records.** Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
24. **Public Records.**
- 24.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in award of this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
- 24.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of those records contain proprietary, trade-secret, or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.
25. **Legal Arizona Workers Act Compliance.**
- 25.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 25.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 25.3. Remedies for Breach of Warranty. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is

suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.

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

Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to ensure 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.

26. **Grant Compliance.** Not Applicable.
27. **Counterparts.** The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.
28. **Amendment.** The parties may modify, amend, alter, or extend this Contract only by a written amendment signed by the parties.
29. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

The remainder of this page is intentionally left blank

30. **Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

APPROVED:

Chairman, Board of Supervisors

Date: _____

Delta Dental of Arizona



Authorized Officer Signature

Brad Clothier, Executive VP/Business Development
Printed Name and Title

Date: January 30, 2020

ATTEST:

Clerk of the Board

Date: _____

APPROVED AS TO FORM:



Deputy County Attorney

STACEY ROSEBERRY

2/27/2020

Date

EXHIBIT A: SCOPE OF WORK (5 PAGES)

Contractor must provide County with the services described below for the administration and operation of the Pima County Dental Plan (Plan). The current Plan Document can be found at:

http://webcms.pima.gov/government/human_resources/employee_benefits/dental_insurance_plans

Plan Administration

Contractor must assist in the design, redevelopment, amendments, modifications and revisions of the Plan and Plan Document including underwriting assistance, cost estimates and projections.

Contractor must establish quality assurance standards, control processes and procedures for the assurance of compliance with the established standards.

Contractor must maintain, or cause to be maintained, records of the care and services provided to each patient, consistent with professional requirements and state law. The records indicate at least the date of each visit, the name of the practitioner providing the treatment, the diagnosis, the treatment and any other data which the practitioner deems necessary for the patient's proper care and treatment. The patient's record shall show any charges made.

Contractor must treat all information gathered, created, generated or acquired within the scope of the contract as confidential. Contractor will notify County immediately if there are any breaches of confidential information. Any breach of information is subject to cancellation of contract and Contractor will be held liable for damages.

Contractor's plan must conform to all Federal and State laws. Contractor must maintain compliance with all applicable Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules as a covered entity. Individuals, organizations, and agencies that meet the definition of a covered entity under HIPAA will comply with the Rules' requirements to protect the privacy and security of health information and will provide individuals with certain rights with respect to their health information.

Contractor will be responsible for conducting any billing reconciliations it deems necessary and appropriate. County will provide assistance to Contractor to complete the reconciliation process, but in no way will initiate the reconciliation process.

Contractor must allow County or its designated third party agent to audit performance under the contract. Any travel, room and board costs of the auditors would be at the County's expense. The County may review Contractors SSAE 16 (SAS70) report in lieu of performing on-site audits. The SSAE 16 is an in-depth audit of processes and practices by an external auditing firm.

Annual enrollment for group insurance is held at least once a year and is scheduled by Human Resources. This is a specified period during which an eligible employee may enroll in, change or cancel dental insurance, add eligible dependents, and cancel dependents. County reserves the right to declare no less than one Annual Enrollment period per Contract term to take place prior to the contract term's effective date. While it is County's intent to have only one Annual Enrollment period during the year, County reserves the right to allow individual employees who have had specific problems with Contractor (e.g., change of address, inadequate care/services, etc.) to change plans during the Contract year. County will give Contractor prior notice of such enrollment changes. No late entrance penalties shall apply.

Contractor must provide financially based performance guarantees to assure a high level of service.

Claim Payment Services

Contractor's claims processing system must auto-process dental claims and maintain a complete record of detailed dental claim history for each plan member. Contractor will recognize and process deductibles, coinsurance levels, maximums and claim allowances. The Contractor must detect duplicate submissions, frequency limitations and more, ensuring claims are paid according to the Plan.

Contractor must maintain the current and complete records and files of claims payments for each plan member. Contractor must have available the ability to receive claims from dental offices electronically, and will generally process these claims within three business days of receipt.

Contractor will investigate and process with respect to plan members and determine the amount due and payable for claims. Contractor will notify claimants of rejected services and the specific reasons(s) for the rejection.

Contractor will investigate appeals and process any written requests or inquiries received on appeals for denied claims and will accept full fiduciary responsibility. Contractor will make payment or issue a denial notice.

Contractor will provide claim forms including check register, claims checked/drafts and other types of claim forms.

Contractor will issue drafts from Contractor's draft account in payment of valid claims to plan members or to such other person or assignee entitled thereto and notify County to initiate fund transfer entries from County's account to reimburse Contractor for drafts issued. Three secured electronic documents are required each week; Payment Request, Claims Payments, and Check Registers. Each document must be subtotaled by the Contractor.

When so directed by County, Contractor must suspend issuance of all drafts in payment of claims. Such suspension will continue until resumption is authorized by County.

If any claim payment made by Contractor is not for the correct amount, Contractor will adjust any underpayment and bring to the attention of County any discovered overpayment. Except where the mistake or other action was the direct consequence of a lack of ordinary care or reasonable diligence on the part of the Contractor or any of its directors, officers, or employees, the Contractor and its directors, officers and employees shall have no liability to County.

Contractor must notify County of the protest of a claim payment it receives.

Contractor must maintain as confidential all claims, reports, other information and material furnished, obtained or developed in regard to its services under this agreement.

Contractor will provide claimant notification via Explanation of Benefit (EOB) statements on all submitted claims, which fulfills the Employee Retirement Income Security Act of 1974 (ERISA) requirement.

Contractor must automatically detect multiple submissions for services that can only be covered once per tooth or mouth, including services performed by the same dentist on the same day. Contractor will confirm eligibility and deny claims when bills are submitted for employees or dependents who do not have coverage or who have not satisfied a required waiting period. Contractor must stop making payments when benefit year or lifetime maximums are reached.

When two or more procedures are considered under generally accepted dental standards to be adequate and appropriate to correct a particular condition, Contractor will consider benefits based on the amount for the lower-cost procedure.

Contractor must not have a missing tooth provision.

Contractor must make and maintain a record of any additional coverage that a plan member has and coordinate benefits with the other insurance carrier or benefit payer.

Contractor must have internal and external auditors conduct regular quality control audits.

Customer Service and Communications

Contractor must provide well-trained, skilled service representatives, extended call center hours, and convenient online services for plan members.

Contractor must have qualified and experienced representatives attend and present dental information (such as Plan changes for the following year, how to utilize the Plan most effectively, etc.) at Annual Enrollment Seminars and Health Fairs. Typically there are 10-15 fairs in April and May held in different locations around Pima County.

Contractor must attend, if requested, and present statistics of use of Plan at quarterly Pima County Health Care Benefits Trust meetings in Tucson. A quarterly pre trust meeting is held as well, but can be done telephonically.

Contractor will print and mail identification cards to plan members at no cost to County. Identification cards and new member packets must be mailed by the Contractor to the plan members' addresses within fourteen (14) calendar days following receipt of the enrollment and change forms.

Contractor must provide all marketing materials to give to prospective plan members. Adequate supplies of materials will be presented to County for Annual Enrollment and throughout the year for new employee communications.

Contractor will be responsible for the cost of printing all communication materials. All such materials are subject to review and modification by County.

Contractor will assign a dedicated Senior Account Manager who has the authority to respond to County's needs and questions in a timely manner. The Senior Account Manager shall be able to make decisions or report to a person who can make decisions concerning process changes as required in servicing this account. The Senior Account Manager is expected to maintain an up-to-date understanding and knowledge of the County's account and the Contractor's account management. Contractor shall make provisions for Senior Account Manager to attend any special meetings scheduled by County.

Contractor must assure that all customer service and claims staff are appropriately trained in the specific technical issues of the County's account.

Contractor will provide customer service by trained staff through a toll-free phone number available (at a minimum) from 8:00 a.m. to 5:00 p.m. Mountain Standard Time (Arizona), Monday through Friday. The customer service staff shall handle questions about claim status, discrepancies, disputes, and Plan interpretation. Contractor will have staff capacity adequate to respond to employees in a timely manner. Contractor must randomly review phone calls to ensure excellent service, including complete and accurate Plan information is provided. This customer service will be available, at the Contractor's expense, during the Annual Enrollment period preceding the effective date of the Contract.

Contractor must be capable of recording, investigating and resolving administrative problems, claim problems, service related problems or other complaints reported by plan members and/or representatives.

Contractor must have a website where plan members may retrieve fast and secure access to specific dental benefits information including the Plan's general eligibility and benefits summary, remaining maximum and deductible amounts, claim or payment status, EOB statements, cost estimators associated with the Plan for covered and specialty procedures, etc.

Contractor will draft, produce and mail, subject to County review and approval, all communication materials including but not limited to; brochures, certificates of coverage, ID cards, plan summaries, administrative forms, applications, claims, checks, and any other forms required for proper administration of the benefit plan. County will bear no financial responsibility for the cost of printing or mailing. Such documents must be produced in sufficient quantities to meet the needs of existing and future employees. Applicable documents must be available electronically for posting on the County's intranet and internet web sites.

Network of Providers

Contractor will assure that each practitioner/provider providing direct dental care services under the Plan is licensed by the State of Arizona as required by law. Contractor will also assure that each practitioner shall render services to the best of his/her ability and shall maintain the ethical standards required in the care and treatment of her/his patients. The character and privilege of the doctor/patient relationship shall be maintained at all times, except that Contractor agrees to waive all privileges in the event of 1) any dispute concerning the adequacy of the care Contractor rendered or caused to be rendered, or 2) the conduct of a professional audit.

Contractor agrees to include in the provider/practitioner agreements, provisions that the practitioner shall, upon the request of the patient, release the patient's record at no cost to the patient or to anyone to whom the patient gives authorization.

Contractor will provide County with a copy of the current list of providers within fourteen (14) calendar days after Contract award. Contractor must provide County with advance written notification of change of providers. Contractor will ensure dental network of contracted dentists is current, maintained and updated on a consistent basis. A directory shall be available on line.

Contractor has and shall maintain a comprehensive credentialing process of all dentists that includes:

- Primary source verification of the dental license to confirm active status and to uncover any disciplinary action
- Verification of malpractice insurance
- Review of any license disciplinary action or malpractice suit information discovered
- Query of National Practitioner's Data Bank and Healthcare Integrity and Protection Data Bank, if applicable
- Re-credentialing of providers periodically to make sure they continue to perform within accepted parameters.

Contractor will contract with experienced, practicing dentists (general practitioners, periodontists, oral surgeons, etc.) to serve as a dental consulting team. These professionals have the specialized knowledge required to evaluate and verify the accuracy and eligibility of procedures submitted.

Contractor will perform a review of dental practice patterns for every network provider contracted to evaluate procedures submitted. Through numerous procedure ratios, each network provider's practice patterns are compared to all providers (network and non-network) in his/her state to determine whose utilization patterns are outside the norm. If any issues are detected, Contractor shall investigate via written and verbal communication to correct them. The procedure ratios shall be reviewed on a periodic basis to ensure that ratios are current with dental technology, evidence-based research and dental trends.

Reports and Billings

The County currently uses Automatic Data Processing, Inc. (ADP) HR Outsourced Benefits Administration (OBA) for an employee benefits administration system. Contractor must receive and process enrollment and change files from that automated system.

Contractor will provide the County with statistical reports which detail Plan activity. These reports shall include claims processing reports, information on paid benefits and estimates of incurred but not paid claim liabilities.

Contractor will prepare accounting and statistical (electronic) reports for use by County to include weekly reports of paid claims and check register.

County will self-bill and pay monthly administrative costs based on ADP enrollment.

Contractor's weekly claim billing reports must include three secured electronic documents (Payment Request, Claims Payments, and Check Register).

Utilization reports will show procedure frequency and dentist encounters with plan members. Utilization reports shall also show quarter-to-date and plan-to-date for employees, dependents, and total members. The data shall also be subdivided into the following cost accounting entities: A) Pima County active employees and their dependents B) COBRA enrollees.

Contractor must also be able to generate an electronic Exception Report for the County within five (5) working days after processing the weekly data file from ADP/OBA.

Contractor will provide drill-down reports to better understand utilization. Contractor to identify, monitor and report cost drivers within each plan and develop strategies to mitigate impact of these.

County Duties

County will provide Contractor with a list of eligible individuals via the County's on-line benefits administration system (ADP/OBA). Contractor is required to accept from the County electronic eligibility and enrollment information needed to administer the plan. Eligibility for active employees shall be provided electronically via custom interfaces created with data contained in ADP/OBA. The Contractor must be able to accept and process the weekly eligibility file from ADP/OBA.

County will promote the Plan to all eligible employees during new employee orientation briefings and coordinate an annual promotion for the Plan.

County will assist Contractor with problems relative to eligibility for the Plan. The County shall be the final determinant for all eligibility issues. The County shall make the final determination on errors and has ultimate authority to correct any and all administrative errors.

County will be responsible for making any necessary payroll deductions. Such payroll deductions shall be in the form and frequency as determined by County. For individuals who don't receive a payroll check from County, such as COBRA beneficiaries and/or employees who are on approved leaves of absence, County or its agent will be responsible for remitting their premium payments to Contractor. Such remittance of premiums will be on a self-billed basis.

County will be responsible for maintaining demographic enrollment/changes in its on-line benefits enrollment system, through ADP/OBA. Contractor shall coordinate with Pima County benefits to ensure that electronic file transmission from on-line benefits enrollment/eligibility systems transfer properly and contain accurate and complete data.

County will produce monthly invoices based on current enrollment. Premiums will be paid once a month.

County will process any refund credit as requested by the Contractor and verified by County.

County will forward the administrative fees and claim payment for active employees and COBRA enrollees to Contractor.

County will research and resolve problems brought to the County's attention by Contractor. Types of problems include untimely payments, inability to obtain eligibility lists, etc.

The County maintains the right to accept, reject or cancel the contract at any time, if there is a significant change, in the County's opinion, in the Contractor's operation of the Plan, including but not limited to, satisfaction with customer and client service quality of the Plan.

Transition

At the termination of this agreement, should a different Contractor be selected to provide these services, a coordination team will be formed to plan and manage those actions required to achieve smooth, efficient and orderly transition and provision of services from the current to the subsequent service provider. This team will consist of competent representatives, as determined by the County, the Contractor, and the subsequent contractor. Contractor will participate and cooperate with the County and subsequent contractor to transition these services as required to avoid and minimize the frequency, and duration of any preventable service interruptions and costs.

Actively at work provisions will be waived for transition of coverage, during the initial Annual Enrollment period. An employee shall be actively at work on the date Contractor's dental plan is to go into effect. We shall waive the actively at work provision for any employee who was insured with the employer's prior group plan on the day before our Plan becomes effective. Otherwise, if the employee is not actively at work, the insurance shall go into effect on the date he or she returns to work. Contractor shall waive the actively at work requirement for plan members under COBRA continuation.

Takeover will be on a "no-loss, no-gain" basis; that is, no individual shall lose coverage or be subject to a new evidence of insurability application solely on the basis of a change in carrier.

Contractor will meet with the County's employee benefits division personnel to establish administrative and claims payment procedures.

At contract termination, Contractor will continue to process claims for 90 days if the claim was incurred while the Administrative Service Only agreement was in force. Claims processing shall be provided for claims incurred on or after the effective date of the plan. County is responsible for all claims liability

EXHIBIT B
SELF-FUNDED DENTAL PLAN ADMIN. FEES (1 PAGE)

Each rate shall be firm, fixed and fully-loaded for all benefit plans. It shall include direct cost, overhead, profit margin, subcontractors total costs for all services listed in Scope of Work.

Year	Estimated # Enrolled	Cost Per Employee Per Month	Extended
1	3,200	\$2.64	\$101,376.00
2	3,200	\$2.64	\$101,376.00
3	3,200	\$2.64	\$101,376.00
4	3,200	\$2.64	\$101,376.00
5	3,200	\$2.64	\$101,376.00
Total Price Proposed			\$506,880.00

EXHIBIT C: BUSINESS ASSOCIATE AGREEMENT (5 PAGES)

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

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

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

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

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

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

I. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

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

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

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

1. the disclosures are required by law; or

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

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

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

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

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

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

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

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

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

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

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

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

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

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

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

1. use PHI for marketing or fundraising;
2. use PHI to create a limited data set or to de-identify the information;

3. use PHI to provide data aggregation services relating to the health care operations of Covered Entity; or

4. use or disclose PHI in exchange for remuneration of any kind, whether directly or indirectly, financial or non-financial, other than such remuneration as Business Associate receives from Covered Entity in exchange for Business Associate's provision of the services specified in the Underlying Agreement.

5. Prior express written authorization from Covered Entity is required for Business Associate to access, store, share, maintain, transmit, use, or disclose PHI in any form via any medium with any entity or person, including the Business Associate's employees and subcontractors, beyond the boundaries and jurisdiction of the United States. Authorization may be granted in the sole discretion of Covered Entity and, if granted, will be subject to additional conditions with which Business Associate must agree.

III. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS

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

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

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

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

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

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

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

IV. OBLIGATIONS OF COVERED ENTITY

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

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

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

V. TERM AND TERMINATION

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

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

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

C. Effect of Termination.

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

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide within ten (10) days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate, and its applicable subcontractors, shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate and its applicable subcontractors maintain such Protected Health Information.

VI. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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