



# MEMORANDUM

Date: January 15, 2021

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator

Re: COVID-19 Pandemic Update for the January 19, 2021 Board of Supervisors Meeting

## Present State of COVID-19 Infections and Medical System Capacity

On January 15, 2021, the State reported 1,342 additional cases in Pima County. This brings the monthly total cases reported to date to approximately 17,932. Therefore, halfway through the month, January is projected to exceed the number of COVID-19 cases reported in December, which was 29,663.

In addition, the number of deaths reported from January 1 to January 15 totals 329, which is on pace to exceed the number of deaths reported in December. Clearly, there has been no substantial reduction in the COVID-19 infection rate.

Regarding hospital capacity, the latest report indicates the hospital capacity crisis is easing but should be closely monitored. The following statistics are relevant to this issue:

- The number of COVID-19 positive inpatients decreased 15 percent this week with 633 current COVID-19 positive inpatients.
- The number of ICU beds in use by COVID-19 patients has decreased by 6 percent.
  - There are 216 ICU beds in use by COVID-19 patients, or 60 percent of ICU beds.
  - 63 percent of ventilators in use are in use by COVID-19 patients.
- ICU bed availability: 5 percent with 20 beds available

## COVID-19 Testing

As I have previously reported to the Board, COVID-19 testing has dramatically accelerated in December and this testing load continues to increase in January. Attachment 1 shows the number of COVID-19 tests provided since July 13, 2020. These are weekly statistics that indicate during the first week in July there was in excess of 15,000 COVID-19 test in any given week based on a seven-day test, which simply means that as I have previously indicated, we are testing at the rate of approximately 2,200 COVID-19 tests per day. The volume of testing today is accelerating from that reported in the first week of January.

JAN 15 2021 04:45 PM C.H. HUCKELBERRY

County costs associated with this testing volume is approximately \$1 million every three days or more than \$2 million each week, all of which is unbudgeted with an unknown reimbursement timeframe. The County has made requests to our Congressional Delegation for funding clarity regarding our eligibility and amount of funding to be received for both COVID-19 testing and vaccination. To date there has been no response. The Chair of the Board recently asked the Governor to clarify the State's position since the Centers for Disease Control (CDC) indicated the State of Arizona received \$419 million for COVID-19 testing and \$66 million for vaccination (Attachment 2). To date there has been no response to the Chair's letter. The Arizona Border Counties Coalition has also written to the Governor regarding vaccine allocations; to date, there has been no response. (Attachment 3)

#### County Accelerated Immunization Plan

On January 12, 2021, I transmitted to the Board the County public health agency's Accelerated Immunization Plan. This plan is designed to provide a vaccination strategy over the next several months to accelerate vaccinations for the most vulnerable population, that being the population that is more likely to have severe illness and require hospitalization, intensive care or an end result that ends in death. A number of other priorities have been included in the State and Centers for Disease Control (CDC) guidelines. These guidelines were updated by the CDC nearly the same time we released the County Accelerated Immunization Plan. The State guidelines have individuals 65 years of age and older in Phase 1C with the recommendation by the CDC that these individuals be moved to Phase 1B. We have amended our Accelerated Immunization Plan to include the 65 years of age and older as 1B.1.d. Therefore, Classification d is a new addition that includes the +65 individuals. There are nearly 120,000 in Pima County between the age of 65 and 75. Adding this group to Phase 1B significantly increases the number of individuals in Group 1B requiring vaccination.

#### Vaccine Supply and Vaccination Rate in Pima County

A primary concern associated with maintaining the Regional Vaccination Centers has been the supply of vaccine distributed by the State. The most recent notification we received from the State regarding the allocation in Pima County is inadequate to sustain our vaccination capacity. Normally, we would have received a vaccination allocation of approximately 12,500 doses each week. We were recently notified that this will be increased to approximately 23,000 doses of Moderna and 5,000 doses of Pfizer. The table below identifies all of the vaccines allocated and received from the State.

Vaccine Receipt and Allocation

|                                  |               |
|----------------------------------|---------------|
| Allocated                        | 109,625       |
| Received                         | 81,550        |
| Administered                     | 41,556        |
| Vaccination Rate                 | 3,978/100,000 |
| On-hand                          | 39,994        |
| Second dose given                | 6,754         |
| Need for second dose             | 34,802        |
| Available for new first vaccines | 5,192         |

Regarding the administration of vaccines, the County continues to lead all other counties in the State in vaccination rate per 100,000 residents. The State has indicated and we have confirmed that we have administered 41,556 doses. The application of the vaccine will begin to dramatically increase next week as both the Kino/Banner South and Tucson Convention Center sites fully open for continuous vaccination. The Kino/Banner site will open on January 18, 2021, the Tucson Convention Center site will open January 20, 2021. The University of Arizona site is anticipated to open January 20, 2021. Attachment 4 shows the vaccination rate by Arizona County as of January 20, 2021.

Various Agreements and Contracts to Carry out the County Accelerated Immunization Plan

There are a number of partners that will participate with our public health agency in carrying out the Accelerated Immunization Plan. Their partnership requires appropriate agreements, memorandums of understanding and/or contracts. Listed below are the first series of contract agreements or memorandums of understanding that will be needed. Each will be described along with its purpose and will be included in the agenda for either Board approval or ratification if not already approved by the Board as a contract, agreement or Memorandum of Understanding (MOU).

1. **MOU between Banner Health and Pima County** - This MOU applies to both sites that will be operated by Banner in cooperation with the public health agency. The first site is the Banner University Medical North Campus, which continues to operate. Initially, this site began on December 17 for the 1A population and will continue to provide vaccinations for the 1B population. In addition, the site at the Kino Sports Complex, next to the Banner University South Campus is included in this agreement. This is a new site that will become operational on Monday, January 18, 2021 and will continue to provide vaccinations to the 1B population. The MOU is attached for your information and provides for certain monetary compensation for vaccinations over 30,000 per month. (Attachment 5)

2. **Contract with Tucson Medical Center for Medical Registration** – Tucson Medical Center (TMC) has been operating their facility on their campus both as an in-person and drive thru site. For the 1B population, they will continue to operate these two sites. We have also asked them to extend their medical registration system to non-TMC sites such as the Tucson Convention Center and the University of Arizona site. In doing so, they are not permitted to recover the cost of vaccinations, for which Medicare and Medicaid or insurance, pays approximately \$45 for both vaccine combined. Therefore, the cost associated with extending their registration system needs to be paid for by Pima County. In addition, moving into the general population requires TMC to be compensated for use of their registration system. The attached contract for TMC provides for the use of their medical registration system for sites not operated by them (Attachment 6). Those administering the vaccinations, either Pima County or the University of Arizona, should be able to bill insurance, Medicare or Medicaid as a reimbursement for the vaccines and their application. The magnitude of this contract anticipates medical registration for a very large segment of the 1B population.
3. **Intergovernmental Agreement (IGA) with Pima Community College** – This IGA is an extension of the Pima Community College (PCC) affiliation agreement where the public health agency enlists the assistance of PCC nursing and other trainees that act under supervision of PCC faculty and staff. This agreement needs to be extended and reapproved. The original affiliation agreement expired in November 2020. PCC desires an IGA rather than a simple affiliation agreement. This draft IGA is attached for Board consideration and will extend the ability of the County to provide vaccinations with the assistance of qualified trainers and faculty of PCC as well as allow the County to set up future vaccination sites at PCC locations for students and the general population in the 1C classification, as necessary. (Attachment 7)
4. **Premier Medical Group USA Vaccinator Contract** – The County issued a Request for Proposals for a vaccinator several weeks ago. A contract has been awarded by our Procurement Officer for this contract to the Premier Medical Group USA. Premier Medical Group USA is being tasked to continue to refine the developing a vaccination plan for semi- urban and rural areas of Pima County such as Ajo, Three Points, Arivaca, Catalina, Green Valley and Vail. They have been tasked to develop this plan within the next few days and will be doing so under the direction of our public health agency.
5. **Intergovernmental Agreement with the Northwest Fire District and Other Fire Districts-** To extend the ability to vaccinate larger segments of the population, the County will enter into an IGA with fire districts of Pima County to provide for their staff, primarily emergency medical technicians, to administer vaccines as part of a

medical team either at a fixed site or at any site that may be delegated or established at a fire district location.

Registration Difficulties and the Number of Participants to be Vaccinated who Registered on the First Day

We previously warned that registration would be the most difficult task associated with the vaccination process. This has proven to be accurate. I, myself attempted to register on the State system, qualified as essential and between the age of 65 and 74, and went through the laborious process to register, obtain an access code, develop a password, fill out all of the fields, including insurance and at the end was told there were no appointments available within 50 miles and no appointment would be available in the future.

This is the primary reason we chose to use the two registration vehicles that have been successfully used by Banner and TMC for the registration and vaccination of 1A eligible participants. It should be remembered that the volume of 1A participants was in the range of 60,000 to 70,000, but the range of participants in the 1B classification is now approximately 400,000. Based on the CDC and ADHS guidance issued the same day we sent our Accelerated Vaccination Plan, the CDC moved the 65 years of age and older group from 1C to 1B. This will add 119,000 individuals into this group. Based on those eligible for 1B, registration demand on the system from 1A to 1B increased eight-fold or greater.

The County chose to use the existing Banner registration portal. However, we and Tucson Medical Center were concerned that the additional load the MyChart/EPIC system would be detrimental to the entire hospital operations. Hence, the County, encouraged by TMC, developed an intermediate page through a system called "REDCap."

This system had the required number of fields to determine eligibility and to be able to contact the individual. These fields were then aggregated at the County's portal, batched by the County in certain groups and then transmitted in measured amounts to the TMC system at a rate that the TMC system could accept without being overloaded.

Both registration systems were opened and made live on January 14, 2021 at 9:17 am and received over 20,000 registrations in the first two hours. Most systems provided adequate response with some temporary slowdowns but continued to accept registrations throughout the day. As of 7:00 pm on January 14, over 44,700 new registrations were accepted into both systems.

The registration system is certainly challenging for those who may be unfamiliar with computer systems, applications and the internet; therefore, we have stood up a call center that was overwhelmed early in the process. We have stood up additional capacity in a virtual

call center for assistance. Given there are 400,000 plus eligible members in the 1B classification, registering nearly 50,000 on the first day, the system continues to be open for registration and not crashing any of the related systems is a positive accomplishment for all of our Information Technology professionals on all sides of the issue. Banner, TMC and County staff are to be congratulated for a successful registration rollout.

To demonstrate how easy it is to introduce absolute chaos into the registration system, for whatever reason, our public law enforcement agencies took it upon themselves to decide they could obtain a vaccination without an appointment and show up at the Tucson Medical Center. Over 250 police officers from the FBI, TPD, Sheriff, members of the Courts and Attorneys showed up without an appointment. TMC was kind enough to oblige these individuals who failed to observe expected protocols regarding registration. It is unfortunate these individuals failed to understand the importance of observing established protocols and inserted their registration above those who are more critical. Hopefully, the conversations that I have had with the Sheriff and others will resolve this problem. I have instructed TMC management and others to turn away anyone who is not properly and appropriately registered.

#### State Assistance in Vaccination

Assistance from the State of Arizona in rolling out our six Regional Vaccination Centers has been noticeably absent. We have received no assistance from the State from either the Governor's Office, the Arizona Department of Health Services nor the Arizona Department of Emergency Management and Military Affairs in this process. The only assistance has been a commitment of vaccines as described on the table located on page 3. At the same time, the State has rolled out two 24/7 vaccination center in Maricopa County and is now working on a second.

#### Status of Litigation against the County and/or Requests for Attorney General Opinions Regarding County Infection Prevention/Mitigation Measures Regarding the Spread of COVID-19

On December 31, 2020, Representative Bret Roberts filed an Opinion Request with the Attorney General. The filing questioned the validity of Pima County's mandatory curfew.

In addition, a group of bar owners filed suit against the County, Next Level Arcade Tucson LLC, in a matter and requested a temporary restraining order. This lawsuit seeks to prevent the County from imposing and/or regulating the mandatory curfew from 10:00 pm to 5:00 am. The County Attorney filed a response to the lawsuit, which I forwarded to you on January 13, 2021. A hearing on the temporary restraining order was held before Judge Kellie Johnson on Friday January 15, 2021. I will report to the Board with the County

Attorney regarding the outcome of the temporary restraining order hearing if an answer has been obtained by the time we update the Board of this matter.

Finally, a damage claim has been filed related to Viva Coffee. The County is prepared to fully defend any lawsuit filed as a result of this claim.

### Funding

As I have previously indicated, the County has fully expended the first CARES Act fund appropriation of approximately \$87.1 million. We will not have an accurate determination of how much in excess of this appropriation we have spent as of December 31, 2020 until early February. We continue to incur significant expense in pandemic response without any assurance of reimbursement. For example, we are undertaking significant additional expenses as previously outlined in this memorandum by standing up a number of regional vaccination centers and entering into contracts with hospitals as well as vaccinator contracts.

In addition, there has been a significant acceleration in a number of COVID-19 tests occurring on County-funded only sites. Previously, these sites have been averaging approximately 1,000 tests per day. They are now averaging approximately 2,200 tests per day and at the reimbursement rate for the contractor and/or contractors.

There have been significant communications regarding the need to make an early determination as to how much, if any, of the Consolidated Appropriations Act of 2021 will be allocated to Pima County for both testing and vaccination.

Some verification of funding assistance will need to occur in the very near future or we will be either forced to curtail testing in favor of vaccination or if we continue both without reimbursement, most County departments, including Elected Officials will be required to reduce their budget to fund the \$55 million necessary to continue the County pandemic response.

CHH/anc

### Attachments

c: Jan Leshar, Chief Deputy County Administrator  
Carmine DeBonis, Jr., Deputy County Administrator for Public Works  
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,  
Health and Community Services  
Terry Cullen, MD, MS, Public Health Director, Pima County Health

# ATTACHMENT 1



## TESTS BY WEEK - ALL SITES

| WEEK STAI | #  | KINO   | MOBILE | 6009  | UDALL  | PCHD UofA | DOWNT | INSIDE TIA | TOTAL   |
|-----------|----|--------|--------|-------|--------|-----------|-------|------------|---------|
| 13-Jul    | 29 | 2,643  |        |       |        |           |       |            | 2,643   |
| 20-Jul    | 30 | 3,192  |        |       |        |           |       |            | 3,192   |
| 27-Jul    | 31 | 3,457  |        |       |        |           |       |            | 3,457   |
| 3-Aug     | 32 | 2,901  |        |       | 489    |           |       |            | 3,390   |
| 10-Aug    | 33 | 1,758  |        |       | 893    |           |       |            | 2,651   |
| 17-Aug    | 34 | 1,361  |        |       | 845    |           |       |            | 2,206   |
| 24-Aug    | 35 | 1,212  |        | 4     | 846    |           |       |            | 2,062   |
| 31-Aug    | 36 | 1,253  |        | 150   | 922    | 1         |       |            | 2,326   |
| 7-Sep     | 37 | 1,124  | 206    | 22    | 960    | 1         |       |            | 2,313   |
| 14-Sep    | 38 | 1,149  | 302    | 41    | 840    |           |       |            | 2,332   |
| 21-Sep    | 39 | 913    | 85     | 37    | 755    |           |       |            | 1,790   |
| 28-Sep    | 40 | 1,096  | 82     | 54    | 1,116  |           |       |            | 2,348   |
| 5-Oct     | 41 | 1,500  | 21     | 71    | 1,662  |           |       |            | 3,254   |
| 12-Oct    | 42 | 1,286  | 40     | 75    | 1,185  |           | 148   |            | 2,734   |
| 19-Oct    | 43 | 1,647  | 4      | 65    | 1,629  |           | 415   |            | 3,760   |
| 26-Oct    | 44 | 2,017  | 9      | 93    | 2,185  |           | 546   |            | 4,850   |
| 2-Nov     | 45 | 2,775  |        | 118   | 2,653  |           | 501   |            | 6,047   |
| 9-Nov     | 46 | 2,168  | 5      | 150   | 2,266  |           | 341   | 24         | 4,954   |
| 16-Nov    | 47 | 2,717  | 1,360  | 841   | 3,052  |           | 321   | 534        | 8,825   |
| 23-Nov    | 48 | 1,764  | 192    | 661   | 2,594  |           | 301   | 1,219      | 6,731   |
| 30-Nov    | 49 | 3,814  | 96     | 667   | 4,422  |           | 504   | 884        | 10,387  |
| 7-Dec     | 50 | 3,827  | 36     | 962   | 4,928  |           | 684   | 973        | 11,410  |
| 14-Dec    | 51 | 4,670  | 31     | 1,234 | 5,768  |           | 666   | 1,338      | 13,707  |
| 21-Dec    | 52 | 2,682  | 11     | 927   | 3,552  |           | 484   | 1,704      | 9,360   |
| 28-Dec    | 53 | 4,805  | 97     | 1,056 | 5,547  |           | 433   | 1,405      | 13,343  |
| 4-Jan     | 1  | 5,986  | 17     | 890   | 6,675  |           | 743   | 1,030      | 15,341  |
| Total     |    | 63,717 | 2,594  | 8,118 | 55,784 | 2         | 6,087 | 9,111      | 145,413 |

# ATTACHMENT 2



**SHARON BRONSON**  
**CHAIR**

**PIMA COUNTY BOARD OF SUPERVISORS**  
**DISTRICT 3**

33 N. STONE AVENUE, 11<sup>TH</sup> FLOOR  
TUCSON, ARIZONA 85701  
(520) 724-8051  
district3@pima.gov  
www.district3.pima.gov

January 12, 2021

The Honorable Douglas A. Ducey, Governor  
State of Arizona  
1700 West Washington Street  
Phoenix, Arizona 85007

**Re: Additional County Funding for Responding to the Coronavirus Pandemic**

Dear Governor Ducey:

Pima County appreciates your leadership as well as the assistance of the Arizona Department of Health Services Director, Dr. Cara Christ and her staff in helping our public health agency respond to the ongoing pandemic.

As you know, Pima County was awarded a direct grant from the CARES Act in the amount of \$87.1 million. As of the beginning of the calendar year, these funds have been exhausted and spent largely on COVID-19 testing, contact tracing and a number of other mitigation measures, including eviction prevention and utility assistance. We understand that recently the State set up a regional vaccination center at the State Farm Stadium in Glendale, Arizona. This is a very positive first step in vaccinating the people of the state.

Pima County is also setting up six regional vaccination centers to continue our efforts to curtail the spread of the Coronavirus. We need funding assistance from those funds allocated to the State by the 2021 Consolidated Appropriations Act where \$419 million is being made available for COVID-19 testing and \$66 million being made available for vaccination activities.

Based on the present accelerated infection rate in Pima County and the State, our costs associated with COVID-19 testing are higher now than they ever have been and Pima County is now bearing the costs of setting up the six Pima County regional vaccination centers.

We ask for your earliest assistance in the allocation of funding from the Federal Consolidated Appropriations Act of 2021 so we can continue our COVID-19 testing and set up an accelerated vaccination program.

Governor Doug Ducey

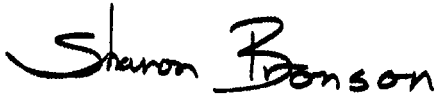
Re: **Additional County Funding for Responding to the Coronavirus Pandemic**

January 12, 2021

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We appreciate your assistance in this effort and look forward to the day when COVID-19 is behind us.

Sincerely,

A handwritten signature in black ink that reads "Sharon Bronson". The signature is written in a cursive style with a large, stylized "S" and "B".

Sharon Bronson, Chair  
Pima County Board of Supervisors

- c:     The Honorable Ann English, Cochise County Representative, Arizona Border Counties Coalition  
          The Honorable Bruce Bracker, Santa Cruz County Representative, Arizona Border Counties Coalition  
          The Honorable Tony Reyes, Yuma County Representative, Arizona Border Counties Coalition  
          Chuck Huckelberry, Pima County Administrator  
          Craig Sullivan, Executive Director, County Supervisors Association of Arizona

# ATTACHMENT 3



December 23, 2020

The Honorable Doug Ducey  
Governor  
State of Arizona  
1700 West Washington  
Phoenix, Arizona 85007

Re: **COVID-19 Vaccine Allocations to Border Counties**

Dear Governor Ducey,

We are pleased to hear that the State of Arizona has started vaccine allocations to each county in Arizona. We are eager to begin vaccinating our healthcare workers and essential workers, including teachers. The Border counties that include Cochise, Santa Cruz, Pima and Yuma, have vaccine needs that far exceed current supplies. Counties that share a border with Mexico have unique risks and exposure. Thus, we write to ask the State of Arizona to consider a higher vaccine allocation to meet the unusual demands in Border counties.

Vaccine allocations to Counties based solely on resident population fails to recognize the increased risk from Mexico visitors and workers. In addition, Border counties are home to approximately 5,000 Customs and Border Protection and Border Patrol officers. These officers, essential members of our community, are unique as they will compete for scarce vaccine allocations with other mandated 1B recipients in border counties.

More than 23.5 million people crossed the Border into Arizona in 2019. While that number is down due to COVID related border crossing restrictions, we anticipate that approximately 14.1 million people will have crossed the Border in 2020, a number that is sure to rise dramatically when border crossing restrictions are removed. These 14 million people enter our communities, creating an increased demand and burden on our medical resources, which highlights the inherent problem of population based vaccine allocations to Border counties.

We respectfully request that, as you and your team determine future allocations for each county, you give serious consideration to those counties that have the added responsibility for protecting federal Customs and Border Protection Patrol officers as well as travelers from Mexico into Arizona.

Because of these facts, Border counties should merit a higher allocation of vaccines than what is now simply a population-based equation. We look forward to our continued work with you and your team to defeat this terrible pandemic. We are grateful for your efforts and thank you for your consideration to this request.

The Honorable Doug Ducey  
Re: **COVID-19 Vaccine Allocations to Border Counties**  
DATE  
Page 2

Should you have any questions please feel free to contact Teresa Bravo at (520)724-2005 or to [teresa.bravo@pima.gov](mailto:teresa.bravo@pima.gov) with any questions.

Respectfully,



The Honorable Sharon Bronson  
Pima County Supervisor  
Arizona Border Counties Coalition



The Honorable Ann English  
Cochise County Supervisor  
Arizona Border Counties Coalition



The Honorable Bruce Bracker  
Santa Cruz County Supervisor  
Arizona Border Counties Coalition



The Honorable Tony Reyes  
Yuma County Supervisor  
Arizona Border Counties Coalition

- c:     The Honorable Raúl M. Grijalva, Congressman – Arizona District 3  
          The Honorable Ann Kirkpatrick, Congresswoman – Arizona District 2  
          The Honorable Mark Kelly, US Senator - Arizona  
          The Honorable Krysten Sinema, US Senator – Arizona  
          Mr. Guadalupe Ramirez Jr., Director of Field Operations – CBP Tucson Field Office  
          Mr. John R. Modlin, Interim Sector Chief - Border Patrol Tucson Sector  
          Dr. Cara M. Christ, Director, Arizona Department of Health Services

# ATTACHMENT 4



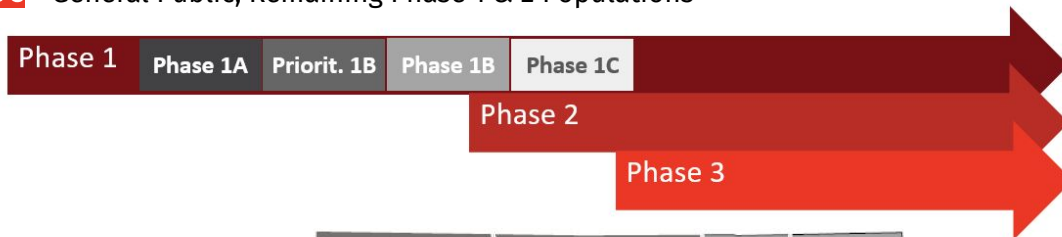
# COVID-19 Vaccine Phase

## By Arizona County

Arizona COVID-19 vaccine is allocated through local and tribal health jurisdictions. Due to the current limited initial supply of vaccine, Arizona counties will be utilizing a [vaccine prioritization phased approach](#). The map below shows which phase each county is currently vaccinating. Please note that in order to be vaccinated, **you will need to be a member of the current phase**, schedule an appointment, and provide appropriate identification once you arrive at the vaccination site.

### Vaccination Phase by County

- **Phase 1A** - Healthcare Workers & Healthcare Support Occupations, Emergency Medical Services Workers, Long-term Care Facility Staff & Residents
- **Prioritized Phase 1B** - Education & Childcare Workers, Protective Services Occupations, Adults 75 and older, Remaining 1A
- **Phase 1B** - , Essential Services/ Critical Industry Workers, Adults with High-Risk Conditions in Congregate Settings, Remaining 1A & Prioritized 1B
- **Phase 1C** - Adults 65 and Older, Adults of Any Age with High-Risk Medical Conditions, Adults Living in Congregate Settings, Remaining 1A & 1B
- **Phase 2** - Additional High-Risk/ Critical Populations, General Public, Remaining Phase 1 Populations
- **Phase 3** - General Public, Remaining Phase 1 & 2 Populations



# COVID-19 Vaccine Phase

## By Arizona County

| County     | Phase Vaccinating | Total Vaccines Administered | Vaccination Rate* (per 100,000) |
|------------|-------------------|-----------------------------|---------------------------------|
| Apache     | 1B                | 881                         | 1,227                           |
| Cochise    | Priorit. 1B       | 3,818                       | 2,919                           |
| Coconino   | Priorit. 1B       | 5,669                       | 3,849                           |
| Gila       | Priorit. 1B       | 2,182                       | 3,956                           |
| Graham     | Priorit. 1B       | 874                         | 2,272                           |
| Greenlee   | Priorit. 1B       | 323                         | 3,113                           |
| La Paz     | 1A                | 289                         | 1,309                           |
| Maricopa   | Priorit. 1B       | 130,830                     | 2,995                           |
| Mohave     | Priorit. 1B       | 3,880                       | 1,788                           |
| Navajo     | 1B                | 3,023                       | 2,679                           |
| Pima       | Priorit. 1B       | 41,556                      | 3,978                           |
| Pinal      | 1B                | 9,160                       | 2,012                           |
| Santa Cruz | 1B                | 1,445                       | 2,718                           |
| Yavapai    | Priorit. 1B       | 4,316                       | 1,857                           |
| Yuma       | Priorit. 1B       | 5,897                       | 2,564                           |
| Statewide  | --                | 217,716                     | 3,028                           |

**NOTE:** Doses administered in the last 24 hours may not be included in this report. The number of doses administered counts the number of vaccines administered, as reported to ASIIS.

Updated: 1/14/2021

# COVID-19 Vaccine Phase

## By Arizona County - Vaccines Allocated

| County        | Phase       | Ordered* | Partial Series** | Complete Series*** |
|---------------|-------------|----------|------------------|--------------------|
| Apache        | 1B          | 2,400    | 866              | --                 |
| Cochise       | Priorit. 1B | 5,200    | 3,643            | --                 |
| Coconino      | Priorit. 1B | 7,575    | 5,476            | 167                |
| Gila          | Priorit. 1B | 3,000    | 2,171            | --                 |
| Graham        | Priorit. 1B | 1,500    | 863              | --                 |
| Greenlee      | Priorit. 1B | 500      | 323              | --                 |
| La Paz        | 1A          | 500      | 289              | --                 |
| Maricopa      | Priorit. 1B | 378,100  | 111,306          | 14,546             |
| Mohave        | Priorit. 1B | 9,600    | 3,832            | --                 |
| Navajo        | 1B          | 4,300    | 2,915            | --                 |
| Pima          | Priorit. 1B | 81,550   | 31,403           | 6,754              |
| Pinal         | 1B          | 14,500   | 9,031            | 10                 |
| Santa Cruz    | 1B          | 1,900    | 1,334            | --                 |
| Yavapai       | Priorit. 1B | 10,400   | 4,270            | --                 |
| Yuma          | Priorit. 1B | 7,400    | 5,753            | --                 |
| Statewide**** | --          | 602,625  | 186,779          | 21,612             |

\*Data reported for the week of January 10; Please note that the statewide total includes the doses ordered for each county in addition to doses allocated to 4 tribal partners, the CDC Pharmacy Partnership program, and ADHS.

\*\*Doses administered in the last 24 hours may not be included in this report; Partial series represents 1 dose for Pfizer and Moderna vaccine.

\*\*\*Doses administered in the last 24 hours may not be included in this report; Complete series represents 2 doses for Pfizer and Moderna vaccine. The number of people completing the series counts the number of unique individuals who received a valid, complete vaccine series.

\*\*\*\*Numbers may not match the total number of doses administered shown on page 2 due to unresolved duplicate vaccination reports, data entry errors, dose spacing errors, or mixed manufacturers for first and second dose.

Updated: 1/14/2021

# ATTACHMENT 5

## **Memorandum of Understanding**

Between

**BANNER HEALTH  
&  
PIMA COUNTY, ARIZONA**

WHEREAS, PIMA County, Arizona ("County") and BANNER HEALTH ("Contractor") have entered into an agreement to provide COVID -19 Vaccination services to PHASE 1A AND, BEGINNING JANUARY 15, 2021, TO PHASE 1B. The agreed upon scope of work is as follows:

### **SCOPE OF WORK**

BANNER HEALTH shall perform activities related to the continuing management and operation of point(s) of dispensing to administer COVID-19 vaccine. The focus of this scope of work is on activities associated with the administration of COVID-19 vaccine to the PHASE 1B population. Activities associated with additional populations and phases may be offered as mutually agreed upon amendments to this work upon agreement of both parties. The following are integral and material components or functional requirements for PHASE 1B:

#### ***BANNER HEALTH Roles and Responsibilities:***

1. Establish and operate site(s) for 90 days, with option to continue as needed and mutually agreed upon:
  - a. Banner University Medicine North Campus, 3838 N Campbell Ave Bldg. 2, Tucson, AZ 85719
  - b. Kino Sports Park, next to Banner University Medical Center South Campus, 2500 E Ajo Way, Tucson, AZ 85713
2. Continue to provide vaccine to Phase 1A and provide vaccine to identified 1B population of 75 years of age and older. After the first week it is determined that all appointments cannot be filled with initial population Banner will open appointments to other 1B categories (Protective Service Employees, Educators and Individuals 65+).
3. Execute the staffing plan identified for the populations to manage daily operations and administer vaccine.
4. Establish an appointment schedule to provide a minimum number of appointments for phase 1A and 1B population.
  - a. Provide an average of 1,000 appointments each day, includes Phase 1A and Phase 1B populations.
  - b. Additional appointments offered based on vaccine allocation and staffing. Reimbursement for vaccine administration above the total of 30,000 over 30 days will be \$5 per additional vaccine administered.
  - c. Should the number of vaccine slots provided be significantly (5%) less than the number of 1,000 average per day (30,000 over 30 days), Banner must provide a corrective action plan. Reimbursement of expenses will be prorated based on the 1,000 average per day vaccine slots if vaccine slots provided are significantly less.
5. Establish a process to filter population for appointments based on current guidelines and be held harmless if patients falsify information.
6. Establish an operations plan which includes all aspects of site operations; provide required staff including immunizers and support staff; vaccinate population with two doses of vaccine as per medication guidelines.
7. Establish a logistics plan, in coordination with the County, which includes all aspects of logistics, supply, security of vaccine from time received until administered, services, cold chain management, and waste disposal (medical and non-medical).
8. Identify a lead person responsible for managing daily staffing needs during operation.

9. Bill insurance companies of insured individuals requesting vaccine for reimbursement of the established federal administration fee rate for COVID-19 vaccine dose 1 and dose 2.
10. Continue Immunization Registration and Vaccine accountability system to facilitate scheduling, inventory management, and specific dose tracking. Provide COUNTY with daily reports to include:
  - a. number of vaccines scheduled
  - b. number of vaccines administered
  - c. slots not filled
  - d. number of no shows
  - e. number of staff assigned
  - f. number of volunteers
11. Continue to provide daily reporting to COUNTY on vaccinations completed during the event period, following agreed upon data specifications.

***COUNTY Roles and Responsibilities:***

1. Continue Immunization Registration and Vaccine accountability system to facilitate scheduling, inventory management, and specific dose tracking. Provide COUNTY with daily reports by vaccinated product type:
  - a. Number of vaccines scheduled
  - b. Number of vaccines administered
  - c. Unfilled slots by day and week
  - d. Number of no shows
  - e. Adverse reactions
2. Allocate vaccines for 1A and 1B population as they are made available by the State and Federal government.
3. Provide hotline and website information for 1B population.
4. Provide staffing support through volunteer pool or Pima County employees as agreed upon in the Workforce and Staffing Plan.
5. Provide traffic control and site security to include but not limited to parking attendant, lane control, law enforcement, FIRE/EMS support.
6. Provide site logistics support to include:
  - a. Set up and tear down of tent structures
  - b. Portable heaters/air conditioners, lights, tables, chairs
  - c. Access to electricity for IT infrastructure
  - d. Public restrooms for staff and patients
  - e. Dedicated space for work/break room and locked storage
  - f. Regular trash collection/waste management
  - g. Way finding/directional signage

**Deliverables**

| Activity        | Deliverable  | Banner | Pima County |
|-----------------|--|--------|-------------|
| System Planning | Ongoing system planning and strategy for PIMA County Plan                                  |        | X           |
| Planning        | Ongoing Workforce and Staffing Plan<br>Banner Health ongoing plan to provide site staffing | X      | X           |

|            |   |   |   |
|------------|---|---|---|
| Planning   | Operations Plan; including call center and on-line scheduling<br>Banner Health staff conducting planning for site specific logistics including all aspects of vaccination process   | X |   |
| Operations | Site Operations to administer Vaccine to population<br>Including: Provider, registration, vaccinator, scribe, observer, pharmacy, tech, runner, call center, and leaders.   | X | X |
| Operations | Site Security:<br>Including officers, law enforcements, Fire/EMS support  |   | X |
| Operations | Traffic Control:<br>Including parking attendant and lane control  |   | X |
| Logistics  | Site Logistics Support; provide all aspects of logistical support for operation (supplies, PPE, cold chain storage, medical waste disposal, site sanitation, portable bathrooms, etc.)<br>Supplies, equipment, and services for vaccination of identified population. | X | X |

**IN WITNESS WHEREOF**, this Memorandum of Understanding is executed on the date set forth below when executed by PIMA County.

**BANNER HEALTH:**



\_\_\_\_\_  
Chad Whelan, MD, CEO  
Banner University Medicine Tucson

1/14/2021

Date

**PIMA COUNTY:**



\_\_\_\_\_  
Chuck Huckelberry, County Administrator  
Pima County

1/14/21

Date

# ATTACHMENT 6



**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 1-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 31<sup>st</sup> day after receipt of invoice. For purposes of this clause, invoices are deemed received as of the earlier of electronic delivery or the 4<sup>th</sup> 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 \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Deputy County Attorney

Date \_\_\_\_\_

- 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

Sharon \_\_\_\_\_  
Deputy County Attorney

Date 1/15/2021



## 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.



# ATTACHMENT 7



**INTERGOVERNMENTAL AGREEMENT  
Between Pima Community College  
AND  
Pima County**

This Intergovernmental Agreement (**Agreement**) entered into as of the date of final signature hereto (**Effective Date**) by and between Pima Community College District (**College**), a political subdivision of the State of Arizona, and Pima County (**County**), a political subdivision of the State of Arizona. College and County may be referred to as Party (**Party**) and Parties (**Parties**) herein.

**Recitals**

**I. Authority**

- a. The Parties are both political subdivisions of the State of Arizona and are authorized to enter into this Agreement pursuant to A.R.S. §§ 11-952.
- b. College has students enrolled in healthcare degree seeking programs who will benefit from the practical experience gained from participation under this Agreement.
- c. County will benefit from the additional resources in addressing the public health threat presented by COVID-19 provided by the participation of the Students (as defined below) under this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises set forth herein and for good and valuable consideration, it is agreed by and between College and County as follows:

**Terms and Conditions**

1. **Recitals:** The Parties acknowledge and agree that the above recital is true and correct and is hereby incorporated by this reference.
2. **Term:** The Term (**Term**) of this Agreement shall commence on January 20, 2021 and shall continue in full force and effect for a period of two (2) years from the Effective Date. The Effective Date of this Agreement will be the date this Agreement is signed by the last party (as indicated by the date associated with that party's signature).
3. **Payment:** Students are strictly volunteers for the County and, therefore, no monetary compensation will be paid to any Student. Each party is responsible for its own costs associated with its participation under this Agreement.
4. **College Responsibilities:** College shall have the following responsibilities under this Agreement.

- a. Students (**Student(s)**) currently enrolled in College's Nursing Program (**Program**) shall assist County in the administering of the COVID-19 Vaccine (**Vaccine**) in Pima County. Students' shall have responsibility to administer the Vaccine, providing patient intake services, and monitoring of patients who receive the Vaccine. Students shall not be asked to perform any other acts pursuant to this Agreement unless prior written authorization is received from College. Students shall only administer the Vaccine after receiving proper training from a qualified health professional from County and all administering of the Vaccine shall be under the supervision of a qualified health professional.
- b. College shall inform Students that they are responsible for their own health insurance and are not eligible for Pima County insurance coverages or benefits including health insurance.

5. **County Responsibilities:**

- a. A qualified health professional shall provide proper training to the Students of the correct procedures to administer the Vaccine.
- b. A qualified health professional shall supervise Students at all times during any administering of the Vaccine.
- c. The facility in charge of the Point of Distribution (POD) shall at all times retain ultimate control of the administering of the Vaccine and patient care.
- d. County shall provide any feedback to College regarding Student performance in the administering of the Vaccine and any other duties which College may approve for Students to perform.

6. **Removal of Students:** County may immediately remove, or request College to remove, from participation under this Agreement, any Student who poses an immediate threat or danger to any patient, personnel, or to the quality of medical services provided under this Agreement, or for unprofessional behavior. College shall honor any reasonable request to remove a Student from participation under this Agreement.

7. **Limitation of Liability:** County acknowledges that the Students are not health professionals and are not licensed or certified to perform health services. As such, except for intentional misconduct (including that of a Student), College shall have no liability under this Agreement for the performance of the Students while acting under this Agreement. Except for instances of intentional misconduct (including that of a Student), County shall maintain all responsibility for any potential liability arising out of the conduct relating to this Agreement.

8. **Relationship of Parties:** The Parties intend that an independent contractor relationship will be created by this Agreement. The Parties expressly acknowledge that nothing contained in this



Agreement will be deemed or construed to create a partnership or joint venture between College and County. Additionally, nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship between the Parties or their respective employees or students.

9. **Assignment:** This Agreement may not be assigned by either Party without the prior written consent of the other Party.
10. **Termination:** Either Party may terminate and cancel this Agreement without cause upon ninety (90) days written notice to the other Party. This Agreement may be terminated by either Party for cause. For purposes of this Agreement, "cause" shall mean any act or omission of either Party which is contrary to the other Party's business interests, reputation, or good will, or for any material breach of this Agreement, and failure to cure such breach within thirty (30) days following written notice of such breach.
11. **Indemnification:** County agrees to indemnify, defend, and hold harmless College, and its officers, directors, employees, students, and affiliates, from and against any and all liability, loss, cost, expense (including, without limitation, reasonable attorneys' fees and all other expenses of litigation up through final appeal), and/or claims (including, but not limited to claims of personal injury and death) arising out of or in connection with the breach of this Agreement, negligence and/or intentional acts of County and/or its employees, agents, or affiliates or any party acting at the direction of County pursuant to this Agreement.
12. **Governing Law:** This Agreement shall be construed by and enforced in accordance with the laws of the State of Arizona, Pima County, without regard to its principles of conflicts of law. Each Party hereby submits to the jurisdiction of Federal and State courts located in the State of Arizona, Pima County, with respect to all legal actions or proceedings relating to or arising from this Agreement.
13. **Arbitration:** The Parties recognize that this Agreement is bound by the provisions of A.R.S. §§ 12-133 and any claim exceeding \$65,000 brought under this Agreement may be subject to arbitration.
14. **Disclosure of Information:** During the term of this Agreement, either Party may be exposed to information which is confidential and proprietary (**Confidential Information**) to the other Party. This information shall be clearly and conspicuously marked and identified as Confidential in order to be deemed as Confidential Information. Confidential Information received by either Party shall be handled, stored and secured in a manner to prevent such information from being intercepted by unauthorized parties, lost, published, or otherwise disseminated. In no circumstance shall the Confidential Information be given less protection than the receiving Party's own confidential and

proprietary information. Upon expiration or termination of this Agreement, the Parties shall ensure that all Confidential Information of one Party received by the other Party is either (i) promptly returned to the originating/disclosing Party or (ii) to the extent permitted by law, continued to be maintained in a confidential and secure manner until such Confidential Information is properly destroyed at the end of any applicable retention period. Information not clearly and conspicuously marked and identified as Confidential which is disclosed pursuant to a valid public records request shall not be deemed a breach of this Agreement. This Section shall not prohibit either Party from disclosing any information pursuant to a subpoena or court order in criminal, civil or administrative proceedings, or otherwise required by law. The Parties will notify each other, within ten (10) business days, of any instance in which the disclosure or copies of confidential information is requested by any party to be disclosed under valid order of a court of law. The obligations of this paragraph shall survive the termination of this Agreement. Notwithstanding the foregoing, Confidential Information shall not include any information that:

- a. is or becomes publicly available or known without breach of the confidentiality provisions herein by receiving Party, its employees, or other agents;
- b. has been or is disclosed to receiving Party by a third party who was not, or is not, under any obligation of confidence or secrecy to disclosing Party at the time the third party disclosed or discloses such information to receiving Party;
- c. has previously been disclosed to receiving Party without an obligation or duty of confidentiality;
- d. is independently developed by employees of receiving Party who had no knowledge of the Confidential Information, as evidenced by written records of receiving Party; OR
- e. is pre-approved for release by written authorization of disclosing Party.

15. **Confidential Records.** If, during the Term, County is provided with access to student records, health and safety reports, or any other documentation of a private or confidential nature ("Confidential Records"), County shall handle and store such Confidential Records in a secure manner so as to prevent that information from being intercepted by unauthorized persons, lost, published, or otherwise disseminated. County will treat educational records of the Students as confidential internally. In the event a public records request is submitted to County for Students' educational records, County will notify College of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless College 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. County recognizes that College is bound by U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA) regarding student educational records.



16. **Record Retention.** To the extent required by Section 35-214 of the Arizona Revised Statutes, County shall retain all records relating to this Agreement. County shall make the records available at all reasonable times and with reasonable prior notice for inspection and audit by Educational Institution or the Arizona Auditor General during the Term and for a period of five (5) years after the termination or expiration of this Agreement.
17. **HIPAA:** To the extent that Students are exposed to any Personal Health Information (**PHI**) as defined by the Health Insurance Portability and Accountability Act (**HIPAA**), County shall train Students in its guidelines for compliance with maintaining the confidentiality of any PHI a Student is exposed to. For purposes of the HIPAA, College and County acknowledge Students are part of the County's "work force," as defined in the HIPAA Privacy Regulations at 45 C.F.R. 160.103, and as such, no Business Associate Agreement is required between the County and College. Nothing in this section is intended to alter or otherwise conflict with the nature of the relationship between County and Students as set forth in this Agreement.
18. **Change in Law:** In the event that there is a change in a statute, regulation or the application or interpretation thereof, or the adoption of new legislation which may otherwise make this Agreement illegal or unenforceable, the Parties agree to use their best efforts to agree upon modifications to this Agreement which will make it legal and enforceable. If after using best efforts, the Parties are unable to reach any such agreement, then either Party may terminate this Agreement upon thirty (30) days written notice to the other Party.
19. **Notice:** Whenever any notice, demand or consent is required or permitted under this Agreement, such notice, demand or consent shall be written and shall be deemed given when sent by certified mail, return receipt requested to the following address:
- If to College:**  
Pima County Community College District  
4905 E. Broadway Blvd.  
Building D  
Tucson, AZ. 85709  
Attention: General Counsel
- With copy to  
Pima County Community College District  
4905 E. Broadway Blvd.  
Building D  
Tucson, AZ. 85709  
Attention: Contract Services



**If to County:**

Donald Gates  
Business Operations Manager  
3950 S. Country Club Rd., Suite 100  
Tucson, AZ 85714

20. **Representatives:** In carrying out this Agreement, each Party shall designate an individual to ensure that the obligations of each Party is carried out. Such individuals are identified below.

For College:

Yolanda McCoy-Stokes  
Phone: 520-206-3091  
email: [ymccoy@pima.edu](mailto:ymccoy@pima.edu)

For County:

Spencer Graves  
Phone: 520-724-9306  
Email: [Spencer.Graves@pima.gov](mailto:Spencer.Graves@pima.gov)

21. **Force Majeure:** Neither Party shall be liable nor deemed to be in default for any delay or failure in performance of this Agreement or other interruptions of service or employment deemed resulting directly, or indirectly, from acts of God, civil or military authority, acts of public enemy, or accidents, fires, explosions, earthquakes, floods, failure of transportation, pandemic, epidemic, strikes or other work interruptions by either Party's employees or any similar cause beyond the reasonable control of either Party.
22. **Waiver:** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach hereof.
23. **Entire Agreement:** This Agreement (i) represents the entire agreement the Parties with respect to the subject matter of this Agreement, (ii) supersedes all prior and contemporaneous agreements, understandings, representations and warranties relating to the subject matter of this Agreement, and (iii) may only be amended, canceled or rescinded by a writing signed by both Parties.
24. **Modification:** No modification of any of the provisions of this Agreement shall be binding unless in writing and signed by authorized representatives of both Parties.
25. **Severability:** If any section of this Agreement is deemed invalid the remainder of the Agreement shall remain in force.
26. **Headings:** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**27. Miscellaneous:**

- a. The Parties agree that they will not discriminate against any employee or applicant due to race, color, religion, sex, immigration, or national origin, and in this regard they will comply with all applicable federal and state employment laws, rules and regulations, including 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).
- b. Each Party shall at all times during the term of this Agreement, maintain in full force general liability insurance coverage with policy limits of at least \$1 (one) million per occurrence and \$3 (three) million in the aggregate covering property damage and bodily injury. College is self-insured and maintains all minimum levels of required insurance.
- c. Students, faculty, and College staff participating under this Agreement are not employees or agents of County, and employees and agents of the County are not employees of the College. Accordingly, employees of one party are not entitled to employee benefits normally provided to employees of the other party, including workers' compensation, medical or hospitalization insurance or retirement or any other employee benefits or rights.
- d. This Agreement is subject to the provisions of A.R.S. § 38-511.

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the final date below.

**Pima County Community College District**

**Pima County**

By:

By:

Name:

Name: Sharon Bronson

Title:

Title: Chair, Board of Supervisors

Date:

Date:

ATTEST

\_\_\_\_\_  
Clerk of the Board

Date: \_\_\_\_\_

APPROVED AS TO CONTENT

\_\_\_\_\_  
Pima County Health Department

Date: \_\_\_\_\_

ATTORNEY CERTIFICATION

The foregoing Agreement between Pima County and Pima County Community College District has been reviewed pursuant to A.R.S. § 11 952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement.

By:

By:

Pima County Community College District  
Legal Counsel

Pima County Deputy Attorney