



**BOARD OF SUPERVISORS AGENDA ITEM REPORT**  
**CONTRACTS / AWARDS / GRANTS**

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: April 6, 2021

\* = Mandatory, information must be provided

or Procurement Director Award ☐

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

The Tohono O'odham Nation

**\*Project Title/Description:**

Intergovernmental Agreement for COVID-19 Testing and Vaccination.

**\*Purpose:**

This IGA is for the Tohono O'odham Nation Health Care (TONHC) and the Pima County Health Department (PCHD) to ensure adequate COVID-19 testing and to vaccinate as many Nation members as possible to prevent further spread of disease and to protect the population.

**\*Procurement Method:**

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

**\*Program Goals/Predicted Outcomes:**

- PCHD will provide qualified staff to participate in mass testing or vaccination events held by TONHC.
- PCHD will process COVID-19 test samples and complete required reporting.
- PCHD will perform contact tracing on follow up with individuals that have a positive COVID-19 test result.

**\*Public Benefit:**

This cooperative IGA will help to ensure adequate COVID-19 testing to mitigate the spread of COVID-19 throughout the Reservation and surrounding areas. The IGA also seeks to vaccinate as many Nation members as possible to prevent further spread of disease and to protect the population.

**\*Metrics Available to Measure Performance:**

- # of COVID-19 test samples collected
- # of first and second vaccine doses given
- # of people contacted for contact tracing

**\*Retroactive:**

No.

APR 01 2021 09:16 AM  
MWH

TO: COB 4-1-21 (1)  
Vers.: 1  
Pgs.: 15 ADDENDUM

**Contract / Award Information**

Document Type: CTN Department Code: HD Contract Number (i.e., 15-123): 082 21\*082  
Commencement Date: 04/07/2021 Termination Date: 04/06/2026 Prior Contract Number (Synergen/CMS): N/A  
☐ Expense Amount: \$\* ☐ Revenue Amount: \$

\*Funding Source(s) required: N/A - no cost IGA

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

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

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

Were insurance or indemnity clauses modified? ☒ Yes ☐ No

If Yes, attach Risk's approval.

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

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

**Amendment / Revised Award Information**

Document Type: Department Code: Contract Number (i.e., 15-123):  
Amendment No.: AMS Version No.:  
Commencement Date: New Termination Date:

Prior Contract No. (Synergen/CMS):

☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$

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

\*Funding Source(s) required:

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

**Grant/Amendment Information** (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):  
Commencement Date: Termination Date: Amendment Number:

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

\*All Funding Source(s) required:

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

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

\*Funding Source:

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

Contact: Sharon Grant

Department: Health Telephone: 724-7842

Department Director Signature/Date: 03/30/21

Deputy County Administrator Signature/Date: 31 Mar 2021

County Administrator Signature/Date: C.R. Sullivan 3/31/21  
(Required for Board Agenda/Addendum Items)

**INTER-GOVERNMENTAL AGREEMENT  
BETWEEN  
THE TOHONO O'ODHAM NATION  
AND  
PIMA COUNTY**

This Inter-Governmental Agreement (Agreement) is made and entered into by and between the Tohono O'odham Nation, a federally recognized Indian tribe, on behalf of Tohono O'odham Nation Health Care ("TONHC") and Pima County, a body politic and corporate of the State of Arizona (the County) on behalf of the Pima County Health Department ("PCHD").

**Background and Purpose**

TONHC is a tribal health organization that provides comprehensive health care services on the Tohono O'odham Reservation in Arizona. TONHC provides such services under a Compact and Funding Agreements with the Secretary of Health and Human Services as authorized by Title V of the Indian Self-Determination and Education Act of 1975, as amended, 25 U.S.C. §§ 5301-5423.

PCHD is the health department for the county that encompasses much of the Tohono O'odham Reservation.

Both parties wish to build off the successes of the long-standing Inter-Governmental Agreement related to public health data sharing and identification activities of reportable infectious diseases between the Tohono O'odham Nation Department of Health and Human Services (TONHHS) and the PCHD. See CTN-HD-12-192. This separate Agreement is necessary due to the novel coronavirus (COVID-19) global pandemic. Both parties share an interest in ensuring adequate COVID-19 testing to mitigate the spread of COVID-19 throughout the Reservation and surrounding areas, and to vaccinate as many Nation members as possible to prevent further spread of disease and to protect the population. Therefore, the Parties wish to enter into this Agreement in order for PCHD to provide staff to participate in TONHC vaccination events and mass testing operations. The purpose of this Agreement is to clarify the relative roles and responsibilities of both parties.

NOW, THEREFORE, the Parties agree as follows:

**1. COVID-19 Testing and Vaccination Services.**

**1.1. PCHD agrees to do the following:**

- A. Provide qualified staff to participate in mass testing or vaccination events held by TONHC. These individuals must be qualified to conduct the testing or administer vaccinations without further training or certification. PCHD will coordinate with the TONHC Public Health Officer or designee regarding dates of events and number of staff needed.
- B. Process the COVID-19 test samples, including completing any mandatory reporting to the State of Arizona and/or CDC.

- C. Upon the request of TONHC, submit COVID-19 test samples for genetic sequencing and report the genetic sequencing results to TONHC.
- D. Perform contact tracing and required follow up with individuals that have a positive COVID-19 test result.
- E. Collect appropriate releases from patients for testing or vaccination.
- F. Provide PPE for PCHD employees collecting test samples or working at the testing or vaccination event.
- G. Provide supplies for COVID-19 vaccinations, such as the vaccine vials, needles, record cards, patient education, bandages and any other necessary vaccination supplies.

**1.2. TONHC agrees to do the following:**

- A. Provide Medical Direction regarding mass testing and vaccination events for the community. No testing or vaccination events will occur without the express written consent of TONHC by its CEO or his/her designee.
- B. TONHC will provide the COVID-19 viral transport media and swabs for testing events. In the event of a supply chain disruption, PCHD may provide the viral transport media and swabs and TONHC will reimburse PCHD its actual cost for the viral transport media and swabs necessary to facilitate TONHC's testing request.
- C. TONHC will request that the State of Arizona direct a portion of TONHC's COVID-19 vaccine allocation to PCHD in order for PCHD to carry out the vaccination pods contemplated under this Agreement by TONHC.

**2. Confidentiality and Release.**

PCHD is responsible for collecting release and consent forms from a parent or guardian (for individuals tested under age 18) or from individuals 18 and over tested and/or vaccinated under this program. Such forms must include consent to release positive test results to TONHC.

**3. Financial Terms.**

**3.1 Payment.** Each party will be responsible for the costs of services provided under this Agreement. PCHD will pay for staff time spent performing services under this Agreement, as detailed in Section 1.1. TONHC will pay for the costs of testing supplies, and any TONHC staff time spent performing services under this Agreement, as detailed in Section 1.2.

**3.2 Relationship of the Parties.** This Agreement is not intended to establish an employer-employee relationship, joint venture, or partnership, either expressly or by implication, and shall not be construed or interpreted otherwise.

**4. Cooperation.**

**4.1 Generally.** Both Parties shall designate a representative as Primary Contact for purposes of this Agreement. In the event the Primary Contact changes, the party shall provide the other party with written notice within ten days (10) of the change. The Parties agree to

communicate openly and completely about issues that may affect the quality or efficiency of the Services.

**4.2 Assistance with Litigation or Claims.** To the extent claims are made by a third-party or litigation is initiated relating to the Parties' performance of its obligations under this Agreement, the Parties agree to cooperate in responding to such claims, including to make its employees available to testify as witnesses or to make itself otherwise reasonably available to the other Party.

**5. Term and Termination.**

**5.1 Term.** The initial term of this Agreement begins April 7, 2021 and will continue for five (5) years, unless terminated earlier as provided elsewhere in this Agreement.

**5.2 Termination for Convenience.** This Agreement may be terminated for convenience by either Party at any time upon written notice to the other Party. In the event a Party terminates the Agreement for convenience: upon receipt of the Notice of Termination, the Party receiving Notice of Termination will promptly discontinue all contractual performance, unless the Notice provides for a later effective date.

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

**5.4 Non-Appropriation of Funds.** Notwithstanding any other provision in this Agreement, either party may terminate this Agreement if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining either party's or other public entity obligations under this Agreement. In the event of such termination, neither party will have any further obligation to the other party other than to pay for services rendered prior to termination.

**6. Notices.**

Any Notice required to be given under this Agreement shall be delivered by hand or mail to the Parties at their respective addresses. Notice shall be deemed effective upon receipt.

TONHC ATTN: CEO PO Box 548 Sells, AZ 85634	PCHD Theresa Cullen, MD, Director Pima County Health Department 3950 S. Country Club Rd., Suite #100 Tucson, AZ 85714
---	---

## **7. Legal Liability.**

**7.1** Each party shall be responsible for claims, losses, damages and expenses, which may arise out of negligent or wrongful acts or omissions of that party or its agents or employees, acting within the scope of their duties in the performance of this Agreement.

**7.2** Notwithstanding Section 7.1, TONHC is a tribal organization performing functions under a contract with the United States authorized by the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 5301-5423. Consequently, TONHC is deemed to be part of the U.S. Department of Health and Human Services while carrying out any such contract, and its employees are deemed to be employees of the Public Health Service while acting within the scope of their employment in carrying out the contract. As such, they are protected from civil liability by various federal laws, including 25 U.S.C. §§ 5321(d), 1680c(d), section 314 of Public Law 101-512, and the provisions of the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2671-2680), including its defenses and immunities, will apply to TONHC. Nothing in this Agreement shall be construed to prejudice TONHC in any way or waive any of TONHC's rights or privileges pursuant to federal law, including the full protection and coverage of the Federal Tort Claims Act, including its defenses and immunities, nor does it waive TONHC's or the Nation's sovereign immunity from suit, nor does it waive any rights pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 5301-5423, as amended.

## **8. Amendments/Modifications.**

This Agreement may be amended only in writing executed by the Parties.

## **9. Integration.**

This Agreement incorporates and supersedes all prior Agreements by the Parties on the matters contained herein.

## **10. Assignments.**

This Agreement may not be assigned, sold, transferred, or encumbered by either Party without the prior written consent of both Parties. Such consent may be withheld for any reason or no reason. Any attempts to assign this Agreement without consent shall be null and void, and the Agreement shall terminate.

## **11. Force Majeure**

Each Party shall not be liable for its respective failure to perform any of its obligations under this Agreement if prevented from performing such obligation by a cause beyond its respective reasonable control which by the use of due diligence of TONHC or PCHD, as the case may be, shall not have been able to overcome, including, but not limited to: acts of God, natural disaster, civil commotion, quarantine, fire, labor disputes or any action or non-action by the United States Government, including changes in existing legislation affecting the subject matter of this

Agreement or inability of the parties to obtain COVID-19 testing supplies, COVID-19 vaccine or PPE.

**12. Dispute Resolution Process.**

If a dispute should arise over the terms of this Agreement that the Parties are unable to resolve between themselves, the representatives of the Parties shall meet in a formal discussion session to attempt to resolve the dispute.

**13. Compliance with Laws.**

The Parties intend to fully comply with all applicable laws and regulations. The Parties agree that any portion of this Agreement, or any act or practice of the Parties in carrying out this Agreement, that is determined to be out of compliance with law shall be promptly amended or reformed.

**14. Health Insurance Portability and Accountability Act (HIPAA).**

The parties acknowledge that Pima County is a hybrid covered entity as described in 45 C.F.R. §160.103 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and is required to comply with the provisions of HIPAA with respect to safeguarding the privacy, confidentiality and security of protected health information. For purposes of this Agreement, TONHC is the covered entity and Pima County is the Business Associate. Pima County acknowledges that it may obtain confidential personal health information in the course of its performance under the terms of this Agreement. "Confidential personal health information" includes information that could be used to identify a participant, information pertaining to the participant's care, treatment or experience in TONHC's program, and information pertaining to the cost of, payment for, or collections activities related to participant's care, treatment and experience in TONHC's program. Pima County agrees to maintain the privacy, confidentiality and security of information it may obtain in the course of its performance under this Agreement. In the course of performance under this Agreement, Pima County will comply with the Privacy, Security, Breach Notification, and Enforcement Rules of HIPAA, as well as all other applicable federal and state privacy laws. In the event, and to the extent, that Pima County meets the definition of a Business Associate under HIPAA, Pima County also agrees to be bound by the Business Associate Agreement (BAA) attached as **Attachment A** (8 pages) which is incorporated into this agreement. In particular, Pima County agrees that:

**14.1** Any confidential personal health information that Pima County may obtain in the course of performance under this Agreement shall remain the sole property of TONHC; and

**14.2** Pima County shall establish and maintain procedures and controls that are acceptable to TONHC to assure that no confidential personal health information contained in its records or obtained from TONHC or from others in carrying out its functions under this Agreement shall be used by or disclosed by Pima County, its agents, officers, employees or sub-contractors, except as required in the performance of its obligations under the terms of this Agreement; and

**14.3** Pima County shall not remove any confidential personal health information from TONHC premises, if applicable; and

**14.4** Any other information pertaining to individual persons shall not be divulged other than to employees or officers of Pima County as needed for the performance of its duties under this Agreement, or to TONHC.

**15. Authority and Representations.**

Each Party represents and warrants that: (1) it is authorized and empowered to enter into and perform this Agreement; (2) it has approved and authorized the execution, delivery, and performance of this Agreement insofar as it pertains to the obligations of the Party; (3) all action that may be necessary for the approval, execution, and delivery of this Agreement has been taken; and (4) all of the required and necessary approvals, authorizations, and actions are in effect at the time of the execution and delivery of this Agreement.

**16. Counterparts.**

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

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**



17. Signatures.

Tohono O'odham Nation	PCHD
By: _____ (Authorized Representative) Date	By: _____ (Authorized Representative) Date
Printed Name: _____	Printed Name: <u>Sharon Bronson</u>
Title: _____	Title: <u>Chair, Board of Supervisors</u>

ATTEST:

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

\_\_\_\_\_  
Date

APPROVED AS TO CONTENT

  
Department Representative

03/30/2021  
Date

ATTORNEY CERTIFICATION

The foregoing Agreement between Pima County and the Tohono O'odham Nation 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.

\_\_\_\_\_  
Attorney, Tohono O'odham Nation

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

  
Deputy County Attorney  
**Jonathan Pinkney**

\_\_\_\_\_  
Print Name

3/29/21  
Date

## **Business Associate Agreement**

WHEREAS, Tohono O'odham Nation Health Care ("Covered Entity") and Pima County, on behalf of the Pima County Health Department ("Business Associate"), (each, a "Party," and collectively, the "Parties") wish to enter into a Business Associate Agreement to ensure compliance with the Privacy, Security, Breach Notification, and Enforcement Rules of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Privacy and Security Rules") (45 C.F.R. Parts 160 and 164); and

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

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

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

THEREFORE, in consideration of the Parties' continuing obligations under the Underlying Agreement, the Parties agree to the provisions of this Business Associate Agreement ("Agreement").

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

**I. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

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

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

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

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

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

## II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

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

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

1. implement the administrative, physical, and technical safeguards set forth in 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with 45 C.F.R. § 164.316, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in 45 C.F.R. §§ 164.308, 164.310, and 164.312; and
2. report to Covered Entity any Security Incident, and any use or disclosure of PHI that is not provided for by this Agreement, of which Business Associate becomes aware without unreasonable delay and in no case later than thirty (30) calendar days after discovery.

C. Business Associate shall require each subcontractor that creates, receives, maintains, or transmits PHI on its behalf to enter into a business associate agreement or equivalent agreement containing the same restrictions on access, use, and disclosure of PHI as those applicable to Business Associate under this Agreement. Furthermore, to the extent that Business Associate

provides Electronic PHI to a subcontractor, Business Associate shall require such subcontractor to comply with all applicable provisions of 45 C.F.R. Part 164, Subpart C.

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

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

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

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

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

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

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

1. use PHI for marketing or fundraising;
2. use PHI to create a limited data set or to de-identify the information;
3. use PHI to provide data aggregation services relating to the health care operations of Covered Entity; or

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

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

### III. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS

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

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

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

1. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or
2. if the statement is made orally, Business Associate shall document the statement, including the identity of the official making it, and delay such notification for no longer than

thirty (30) days from the date of the oral statement unless the official submits a written statement during that time.

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

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

#### IV. OBLIGATIONS OF COVERED ENTITY

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

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

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

#### V. TERM AND TERMINATION

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

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

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

C. Effect of Termination.

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

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

VI. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**



## VII. Signatures

Tohono O'odham Nation	PCHD
By: _____ (Authorized Representative) Date	By: _____ (Authorized Representative) Date
Printed Name: _____	Printed Name: <u>Sharon Bronson</u>
Title: _____	Title: <u>Chair, Board of Supervisors</u>

ATTEST:

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

\_\_\_\_\_  
Date

APPROVED AS TO CONTENT

EC  
Department Representative

03/30/2021  
Date

### ATTORNEY CERTIFICATION

The foregoing Agreement between Pima County and the Tohono O'odham Nation 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.

\_\_\_\_\_  
Attorney, Tohono O'odham Nation

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

  
Deputy County Attorney

**Jonathan Pinkney**

\_\_\_\_\_  
Print Name

3/29/21  
Date