

**PROFESSIONAL SERVICES AGREEMENT FOR
DOMESTIC VIOLENCE PREVENTION
PROGRAM MENTAL HEALTH SUPPORT SERVICES**

STATE OF TEXAS

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COUNTY OF BEXAR

This Professional Services Agreement (“Agreement”) is entered into between the City of San Antonio (“City”), a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (“Metro Health”), acting by and through its City Manager or designee, and Communities in Schools San Antonio (“CISSA”), hereinafter collectively referred to as the “Parties.”

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"CISSA" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director of the San Antonio Metropolitan Health District (“Metro Health”).

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall start January 1, 2025 and terminate on September 30, 2027. The City shall have the option to renew this Agreement, in writing, for two (2) additional one-year terms (October 1 – September 30) subject to (a) the City’s receipt of additional monies sufficient to fund the renewal term and appropriation; and (b) the Contractor satisfactorily meeting the performance requirements of this Agreement, as solely determined by the Director. The renewals shall be in writing and signed by the Director without further action by the San Antonio City Council. Lack of funding is not and will not be considered a breach of this Agreement; provided, however, that lack of funding will not excuse payment for services rendered.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.

III. SCOPE OF SERVICES

3.1 CISSA agrees to provide the services described in this Article III. entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 CISSA shall provide the following services: CISSA shall engage in mental health counseling and support services to individuals and families affected by bullying, cyberbullying, domestic violence, teen dating violence, gun violence, and sexual violence in the North East Independent School District (NEISD), Northside Independent School District (NISD), San Antonio Independent School District (SAISD), East Central Independent School District (ECISD), and Southside Independent School District (SISD). Mental health services will include behavioral mental health counseling and case management supportive services.

3.2.1 Counseling Services

CISSA shall provide individual counseling sessions to students/families affected by bullying, cyberbullying, domestic violence, teen dating violence, gun violence, and sexual violence. Counseling sessions shall include the use of evidence-based, trauma-informed therapy modalities including, but not limited to: Dialectical Behavioral Therapy, Solution Focused, Person-Centered, Cognitive Behavior Therapy, Motivational Interviewing, Eye Movement Desensitization and Reprocessing (EMDR) and/or Play Therapy and Sandy Tray Techniques. Counseling sessions may be provided to students individually, in groups or with caregivers or family members. Counseling sessions shall be provided at no cost to program participants. There is no cap on the number of sessions CISSA can provide a program participant. CISSA shall ensure required authorizations and consents for services are obtained from program participants and/or parents/guardians for students under the age of 18 years prior to engaging in services. CISSA may receive referrals from external agencies, entities or programs during the contract period to include school counselors, youth serving agencies, the Handle with Care Program, or other healthcare or education professionals, as well as Metro Health. Counseling sessions shall be at least 30 minutes long and can be in person or virtual. For virtual sessions and client record keeping, CISSA shall use a HIPPA compliant platform.

For counseling services, CISSA shall assess clients for progress of mental health symptoms and well-being outlook on the first and fourth counseling session of each participant by utilizing the following assessments:

- The Patient Health Questionnaire-9 for Adolescents (PHQ-9A) for clients ages 12 years old and up for assessment of mental health symptoms; and
- The CYRM (Child Youth Resiliency Measure) for students ages 12 years old and above and ORS (Outcome Rating Scale) for youth ages 13 years and above for assessment of well-being.
- Assessment data results shall be reported on a quarterly basis within the contract period with client-level supporting documentation indicating the

progress/status of mental health symptoms and well-being and detailing the four counseling session dates for clients who have attended four counseling sessions.

CISSA shall submit monthly reports with de-identified client data to include: the number of unduplicated individual clients served, total number of counseling sessions provided, and shall include (as applicable): client identification number, age, gender, race, ethnicity, client's zip code, client's city council district, school district, family income, household size, date of program entry and date of program exit and referral source to the violence prevention program.

3.2.2 Case Management Support Services

Support services shall mean any services provided to the student and their family outside of counseling sessions to include case management services directly relating to basic needs support. Basic needs support include supporting families with access to food, clothing, hygiene items, school supplies, car seats, emergency use cell phones, emergency hotel expenses, electric bill, water bill, rent/mortgage assistance. CISSA shall provide support services to students through case management support services. Case management services may include but are not limited, to domestic violence screenings and interventions, basic needs referrals, basic check-in meetings or phone calls, contacts with schools, academic assistance for the student, and enrichment and engagement activities. Referrals to community resources may be provided to students and families that have needs that should be met outside of counseling. Community resources include but are not limited: to addressing food insecurity and referral to a food pantry or the San Antonio Food Bank, providing referrals to psychiatric services and assessments to Clarity Child Guidance Center or specialty referrals for advocacy such as the Rape Crisis Center. CISSA shall provide basic needs assistance services to students and their families who receive case management services and are identified as needing wrap around support services. Basic needs support services may include up to \$5,000 basic needs assistance/family/period. CISSA shall submit a monthly report with de-identified client data to include: the number of unduplicated individual clients served, case management support services provided to program participants and shall include (as applicable): client identification number, age, gender, race, ethnicity, client's zip code, client's city council district, school district, family income, household size, date of program entry, date of program exit, and referral source to violence prevention program.

3.2.3 Final Reports

CISSA shall submit a Final Report to Metro Health at the end of each Period as defined in the table below. This report shall include (as applicable): total number of individual client counseling sessions, number and type of support services, CISSA will include client identification number, age, gender, race, ethnicity, client's zip code, client's city council district, client's school district, household size, date of program entry, date of program exit, and referral source to violence prevention program. Included in the Final Report shall be reporting on program

participants with a summary on successes, challenges, barriers, and recommendations for future domestic violence programming.

Performance Metrics:

Unduplicated client means a client is counted once per Period, as defined in the table below, and may be counted in each Period for this contract. A client may count as a newly unduplicated client at the start of each Period.

Period	Timeframe	Counseling		Case Management	
		# Unduplicated Clients Served	# of Individual Counseling Sessions	# of Unduplicated Clients Served	# of case management service units
Period 1	1/1/25 - 9/30/25	75	615	75	900
Period 2	10/1/25 - 9/30/26	75	990	75	1500
Period 3	10/1/26 - 9/30/27	75	990	75	1500

3.3 All work performed by CISSA hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by CISSA, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should CISSA's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated in this Agreement, even should City elect not to terminate. City shall notify CISSA in writing of any decision to withhold payment.

IV. COMPENSATION TO CISSA

4.1 In consideration of CISSA’s performance in a satisfactory and efficient manner, as determined solely by the Director, of all services and activities set forth in this Agreement, City agrees to pay CISSA up to \$1,119,000.00 as total compensation, to be paid to CISSA as follows:

1. For Period 1: City shall pay CISSA an amount not to exceed \$319,000.00.
 - a. Counseling Services shall be paid at a rate of \$263.00 per counseling session for a total amount up to \$161,745.00.
 - b. CISSA shall submit monthly invoices for case management support services paid at a rate of \$47.00 per case management service unit for a total amount up to \$42,003.00.
 - c. CISSA shall submit monthly invoices for basic needs assistance on a cost reimbursement basis for an amount up to \$61,949.00 for those services with an associated dollar value of direct assistance to the recipient.

2. For Period 2: City shall pay CISSA an amount not to exceed \$400,000.00.
 - a. Counseling Services: shall be paid at a rate of \$263.00 per counseling session for a total amount up to \$260,370.00.
 - b. CISSA shall submit monthly invoices for case management support services paid at a rate of \$47.00 per case management service unit for a total amount up to \$70,005.00.
 - c. CISSA shall submit monthly invoices for basic needs assistance on a cost reimbursement basis for an amount up to \$69,625.00 for those services with an associated dollar value of direct assistance to the recipient.

3. For Period 3: City shall pay CISSA an amount not to exceed \$400,000.00.
 - a. Counseling Services: shall be paid at a rate of \$263.00 per counseling session for a total amount up to \$260,370.00.
 - b. CISSA shall submit monthly invoices for case management support services paid at a rate of \$47.00 per case management service unit for a total amount up to \$70,005.00
 - c. CISSA shall submit monthly invoices for basic needs assistance on a cost reimbursement basis for an amount up to \$69,625.00 for those services with an associated dollar value of direct assistance to the recipient.

4. Each Additional Renewal Term: City shall pay CISSA an amount not to exceed \$400,000.00.
 - d. Counseling Services: shall be paid at a rate of \$263.00 per counseling session for a total amount up to \$260,370.00.
 - e. CISSA shall submit monthly invoices for case management support services paid at a rate of \$47.00 per case management service unit for a total amount up to \$70,005.00
 - f. CISSA shall submit monthly invoices for basic needs assistance on a cost reimbursement basis for an amount up to \$69,625.00 for those services with an associated dollar value of direct assistance to the recipient.

- 4.2 City and CISSA agree that payment for eligible services shall be made within thirty (30) days after the date on which City receives an invoice which, will be submitted monthly by the 15th of the month for services and activities provided during the previous month with appropriate documentation as required by City, from CISSA for said services.

- 4.3 No additional fees or expenses of CISSA shall be charged by CISSA nor be payable by City. The Parties hereby agree that all compensable expenses of CISSA have been provided for in the total payment to CISSA as specified in section 4.1 above. Total payments to CISSA cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all Parties evidenced in writing and approved consistent with appropriate City policy.

- 4.4 Final acceptance of work products and services require written approval by City.

The approval official shall be Director. Payment will be made to CISSA following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than CISSA, for the payment of any monies or the provision of any goods or services.

- 4.5 All services required under this Agreement will be performed to City's satisfaction, and City will not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been approved by City. The payment for services provided hereunder will not be paid until required reports, data, and documentation have been received and approved by the City.
- 4.6 Invoices shall include Purchase Order number provided by City and submit via email to City's Accounts inbox (Accounts.Payable@sanantonio.gov) with a copy to Jessie.Higgins@sanantonio.gov and SAMHD.Invoices@sanantonio.gov or by mail at the following address with a copy to Jessie.Higgins@sanantonio.gov:

City of San Antonio
Attn: Accounts Payable
PO Box 839976
San Antonio, TX 78283-3976

- 4.7 Final acceptance of work products and services require written approval by City. The approving official shall be the Director. Payment will be made to CISSA following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than CISSA, for the payment of any monies or the provision of any goods or services.
- 4.8 City acknowledges that the compensation to be provided to CISSA by City in this Article IV. Compensation may not be sufficient to cover all CISSA's costs to provide the services and deliverables described in this Agreement. Nothing in this Agreement shall be construed as prohibiting CISSA from obtaining from other sources such additional funds as may be required by CISSA to provide the services and deliverables described in this Agreement.

V. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

- 5.1 Any and all writings, documents or information in whatsoever form and character produced by CISSA pursuant to the provisions of this Agreement are the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by CISSA.
- 5.2 CISSA understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.
- 5.3 In accordance with Texas law, CISSA acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared

to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CISSA pursuant to this Agreement shall be the subject of any copyright or proprietary claim by CISSA. Any intellectual property rights associated with the tool, work product or deliverables developed under this Agreement shall be the property of City, and CISSA shall execute any documents necessary to assign said intellectual property rights to City. CISSA further agrees that any tool or work product developed under this agreement shall be a work-for-hire as defined in Title 17 USC Section 201 and any copyright shall be the property of City.

The term "*local government record*" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

5.4

VI. RECORDS RETENTION

- 6.1 CISSA and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records (including timesheets and certifications) and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established in this Agreement, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 6.2 CISSA shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years or whatever period is determined necessary based on the Records Retention (hereafter referred to as "retention period") guidelines established by applicable law for this Agreement from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CISSA shall retain the records until the resolution of such litigation or other such questions. CISSA acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require CISSA to return the documents to City at CISSA's expense prior to or at the conclusion of the retention period. In such event, CISSA may retain a copy of the documents at its sole cost and expense.
- 6.3 CISSA shall notify City, immediately, in the event CISSA receives any requests for information from a third party, which pertain to the documentation and records

referenced in this Agreement. CISSA understands and agrees that City will process and handle all such requests.

VII. TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement made pursuant to this Agreement, shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. The City may terminate this Agreement without cause upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement, as of the date provided in the notice, in whole or in part, upon the occurrence of one or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
 - 7.3.2 Any material breach of the terms of this Agreement, as determined by City; or
 - 7.3.3 The failure to meet funding agency reporting requirements as set out and determined by City.
- 7.4 Defaults With Opportunity for Cure. Should CISSA default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. CISSA shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CISSA fails to cure the default within such 30-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and City shall have the right to terminate this Agreement and to contract with another CISSA to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new CISSA against CISSA's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.
- 7.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article X. Assignment and Subcontracting;
 - 7.4.2 Bankruptcy or selling substantially all of company's assets;
 - 7.4.3 Failing to perform or failing to comply with any covenant herein required;
 - 7.4.4 Performing unsatisfactorily as determined by City;

- 7.4.5 The failure to meet reporting requirements of the CDC Grant, as set out and determined by City;
 - 7.4.6 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties in this Agreement, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement, is terminated, CISSA shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CISSA, or provided to CISSA, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CISSA in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at CISSA's sole cost and expense. Payment of compensation due or to become due to CISSA is conditioned upon delivery of all such documents, if requested by City.
- 7.7 Within forty-five (45) calendar days of the effective date of completion, termination, or expiration of this Agreement, CISSA shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by CISSA to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by CISSA of any and all right or claims to collect moneys that CISSA may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 7.8 Upon the effective date of expiration or termination of this Agreement, CISSA shall cease all operations of work being performed by CISSA or any of its subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue CISSA for any default hereunder or other action.
- 7.10 City shall pay CISSA for conforming services provided prior to the date of termination, offset by any amounts due and owing from CISSA to City.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice

or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Director
San Antonio Metropolitan Health District
100 W. Houston, 14th Floor
San Antonio, Texas 78205

If intended for CISSA, to:

Communities in Schools San Antonio
Lauren Geraghty, Director of Strategic
Impact Initiatives
1045 Cheever Blvd, Ste. 201
San Antonio, Texas 78217

IX. NON-DISCRIMINATION

- 9.1 As a party to this Agreement, CISSA understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.
- 9.2 CISSA shall comply with all federal, State, or local laws, rules, and orders prohibiting discrimination, and shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Consistent with the foregoing, CISSA agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. CISSA further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CISSA certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
- a) Title VI and VII of the Civil Rights Act of 1964, as amended;
 - b) Section 504 of the Rehabilitation Act of 1973, as amended;
 - c) The Age Discrimination Act of 1975, as amended;
 - d) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);
 - e) Fair Labor Standards Act of 1938, as amended;
 - f) Equal Pay Act of 1963, P.L. 88-38;
 - g) Americans with Disabilities Act of 1990, 42, USC 12101 et seq.;and
 - h) All applicable regulations implementing the above laws.

X. INSURANCE

- 10.1 No later than 30 days before the scheduled service under this agreement, CONTRACTOR must provide a completed Certificate(s) of Insurance to CITY’s Metropolitan Health District. The certificate must be:
- clearly labeled with the legal name of the agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent’s signature, and phone number.
- 10.2 Certificates may be mailed or sent via email, directly from the insurer’s authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY’S Metropolitan Health District. No officer or employee, other than CITY’S Risk Manager, shall have authority to waive this requirement.
- 10.3 If the City does not receive copies of insurance endorsement, then by executing this Agreement, CONTRACTOR certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Agreement.
- 10.4 The City’s Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- 10.5 CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, at CONTRACTOR’S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the CONTRACTOR claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
*1. Workers' Compensation	Statutory
*2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors* f. Sexual Abuse/Molestation	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate,

4. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
*5. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
*If Applicable	

10.6 CONTRACTOR must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of CONTRACTOR and provide a certificate of insurance and endorsement that names CONTRACTOR and CITY as additional insureds. Respondent shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

10.7 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. CONTRACTOR must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio
Attn: San Antonio Metropolitan Health District
P.O. Box 839966
San Antonio, Texas 78283-3966

10.8 CONTRACTOR’s insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY. The endorsement requirement is not applicable for workers’ compensation and professional liability policies.
- Endorsement that the “other insurance” clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY’s insurance is not applicable in the event of a claim.
- Contractor shall submit a waiver of subrogation to include, workers’ compensation, employers’ liability, general liability and auto liability policies in favor of CITY; and
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

10.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of

Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONTRACTOR'S performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- 10.10 In addition to any other remedies CITY may have upon CONTRACTOR'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order CONTRACTOR to stop work and/or withhold any payment(s) which become due to CONTRACTOR under this Agreement until CONTRACTOR demonstrates compliance with requirements.
- 10.11 Nothing contained in this Agreement shall be construed as limiting the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR'S or its subcontractors' performance of the work covered under this Agreement.
- 10.12 CONTRACTOR'S insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.
- 10.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 10.14 CONTRACTOR and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

XI. INDEMNIFICATION

- 11.1 **CISSA covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CISSA'S activities under this Agreement, including any acts or omissions of CISSA, any agent, officer, director, representative, employee, consultant or subcontractor of CISSA, and their respective officers, agents employees, directors and representatives while In the exercise of the rights or performance of the duties under this Agreement. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL OR BODILY INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT CISSA AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN**

ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 11.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CISSA shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CISSA known to CISSA related to or arising out of CISSA'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CISSA's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CISSA of any of its obligations under this paragraph.
- 11.3 Defense Counsel. City shall have the right to approve defense counsel to be retained by CISSA in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CISSA shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CISSA fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CISSA shall be liable for all reasonable costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and rat its own expense, without waiving the foregoing.
- 11.4 Employee Litigation. In any and all claims against any party indemnified hereunder by any employee of CISSA, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CISSA or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

- 12.1 CISSA shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement, shall be the employees or subcontractors of CISSA. CISSA, its employees or its subcontractors shall perform all necessary work.
- 12.2 City understands that this Agreement is made in reliance thereon that CISSA intends to use the following subcontractors: None. Any subcontractors shall be subject to approval and agreement by the Director.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. All expenditures by CISSA or any of its subcontractors must be made in accordance

with all applicable federal, state and local laws, rules and regulations. Compliance by subcontractors with this Agreement and funding source requirements shall be the responsibility of CISSA. City shall in no event be obligated to any third party, including any subcontractor of CISSA, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

- 12.4 Except as otherwise stated in this Agreement, CISSA may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City. As a condition of such consent, if such consent is granted, CISSA shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CISSA, assignee, transferee or subcontractor.
- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement or the performance of any duties hereunder without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CISSA assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of CISSA shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by CISSA shall in no event release CISSA from any obligation under the terms of this Agreement, nor shall it relieve or release CISSA from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

CISSA covenants and agrees that CISSA is an independent contractor and not an officer, agent, servant or employee of City; that CISSA shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of "respondeat superior" shall not apply as between City and CISSA, its officers, agents, employees, contractors, subcontractors and consultants, and nothing in this Agreement shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and CISSA. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with services to be performed by CISSA under this Agreement and that CISSA has no authority to bind the City.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, CISSA represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA

Ordinance. As part of such compliance, CISSA shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CISSA's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

XV. CONFLICT OF INTEREST

15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

15.2 Pursuant to the subsection above, CISSA warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. CISSA further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing,

executed by both City and CISSA, and subject to approval by the City Council, as evidenced by passage of an ordinance. The Director may execute contract amendments on behalf of City without the necessity of seeking any further approval by the City Council in the following circumstances a) modifications to the statement of work listed in the contract so long as the terms of the amendment stay within the parameters set forth in the original statement of work of the agreement; b) budget shift of funds authorized by the funding agency; and c) changes in state or federal regulations or mandated by the funding agency.

XVII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

CISSA warrants and certifies that CISSA's employees, subcontractors and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIII. LAW APPLICABLE

23.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL

OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

- 23.2 Unless this Agreement provides otherwise, all claims, counterclaims, disputes, and other matters in question between City and CISSA arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction.
- 23.3 Venue of any court action brought directly or indirectly as a result of this Agreement shall be in Bexar County, Texas.

XXIV. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXV. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES

This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time

- employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXVI. PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES

This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with

the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXVII. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS PROHIBITED

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. CISSA hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on CISSA's certification. If found to be false, or if CISSA is identified on said list during the course of its contract with City, City may terminate the Contract for material breach.

XXVIII. LEGAL AUTHORITY

The signer of this Agreement for CISSA represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CISSA and to bind CISSA to all of the terms, conditions, provisions and obligations herein contained.

XXIX. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXX. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIX. INCORPORATION OF ATTACHMENTS

Each of the Attachments listed below is an essential part of the Agreement, which governs

the rights and duties of the Parties:

Attachment I- Business Associate Agreement

XXXI. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XVI. Amendments.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

COMMUNITIES IN SCHOOLS SAN ANTONIO

Claude A. Jacob
Health Director
San Antonio Metropolitan Health District

Jessica Weaver

Jessica Weaver
Chief Executive Officer

Date: _____

Date: 12/3/2024

Approved as to Form:

City Attorney

Attachment I

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (**Agreement**) is entered into by and between the City of San Antonio (“**Covered Entity**”), and Communities in Schools San Antonio, a Texas non-profit corporation, a **Business Associate** (“**BA**”), referred to collectively herein as the “**Parties.**”

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract (“**Service Contract**”), executed on _____, whereby BA provides professional services to the Covered Entity; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information (“**PHI**”); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “**HIPAA Regulations**”), Health Information Technology for Economic and Clinical Health Act (“**HITECH Act**”) and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (“**C.F.R.**”), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. **Definitions.** For the purposes of this Agreement, the following terms have the meanings ascribed to them:

- (1) “**Breach**” shall mean an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information. An impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:
 - (a) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
 - (b) the unauthorized person who used the protected health information or to whom the disclosure was made;

- (c) whether the protected health information was actually acquired or viewed; and
 - (d) the extent to which the risk to the protected health information has been mitigated.
- (2) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. 164.501.
 - (3) “Disclosure” with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.
 - (4) “Health Information” is defined in 45 C.F.R. 160.103 as any information, including genetic information, whether oral or recorded in any form or medium that: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
 - (5) “Individual” means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
 - (6) “Individually Identifiable Health Information” is defined in 45 C.F.R. 160.103 as information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
 - (7) “Privacy Rule” shall mean the regulations for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subpart E.
 - (8) “Protected Health Information” or “PHI” shall have the same meaning as the term "protected health information" in 45 C.F.R. 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes “Electronic Protected Health Information” or “EPHI” and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, 164, and under HITECH.
 - (9) "Required By Law" means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in

a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care

providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits. 45 C.F.R 164.103.

- (10) “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.
- (11) “Security Rules” shall mean the Security Standards for the Protection of Electronic Protected Health Information codified at 45 C.F.R. Part 164.
- (12) The Health Information Technology for Economic and Clinical Health (“HITECH”) Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B. BA Obligations and Activities. BA agrees that it shall:

- (1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;
- (2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;
- (3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;
- (4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any Security Incident as defined by 45 C.F.R. 164.304 that BA becomes aware of;
- (5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA:
 - (a) does business, and
 - (b) to whom it provides PHI received from, or created or received by BA on behalf of, Covered Entity; and ensures such agents or subcontractors are

aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;

- (6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;
- (7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;
- (8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity's compliance with the Privacy Rule;
- (9) Document disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (11) Immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and U.S. Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the date of the breach and date of discovery; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;
- (12) Comply with all Security Rules requirements;

- (13) Comply with the Privacy Rule for any obligation Covered Entity delegates to BA;
- (14) Under no circumstances sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA.

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) Notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) Notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) Notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.

- (4) Coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. **Permissible Requests by Covered Entity.**

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the BA may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. **Term and Termination.**

- (1) This Agreement becomes effective on the date it is signed by the last Party. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Service Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.
 - (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
 - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

- (4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.
- G. **Amendment to Comply with Law.** The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.
- H. **Survival.** The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.
- I. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- K. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. ***INDEMNIFICATION. BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICECONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.***
- M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.
- N. **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.
- O. **Assignment.** Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- P. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and

supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Q. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

EXECUTED to be effective _____, by the **City of San Antonio**, signing by and through its program manager.

COVERED ENTITY
By City of San Antonio

BUSINESS ASSOCIATE:

By: _____

Claude A. Jacobs
Health Director
San Antonio Metropolitan Health District

By: *Jessica Weaver* _____

Jessica Weaver
Chief Executive Officer
Communities in Schools San Antonio

APPROVED AS TO FORM:

City Attorney