

This AGREEMENT is entered into by and between the City of San Antonio ("City") on behalf of the San Antonio Metropolitan health District ("Metro Health"), pursuant to Ordinance No.

\_\_\_\_\_ passed and approved on \_\_\_\_\_, 2024, and Family Service Association of San Antonio, Inc., ("FSA"), acting by and through its designated representative, Mary E. Garr, Chief Executive Officer, both of which may be referred to as "Parties" or singularly as "Party."

## I. STATEMENT OF PURPOSE

- 1.1 FSA provides services in connection with the Head Start Program.
- 1.2 Head Start is a federally-funded program whereby FSA provides education, child development, nutrition and social services, health and disability assessment and parent involvement, both on a full and part-time basis.
- 1.3 The City of San Antonio through the Metro Health Oral Health Program will provide oral health services for funded enrolled children in the Family Service Association (FSA) Head Start program (referred to hereinafter as "FSA enrollees"). The Oral Health Program must provide high-quality oral health services that are developmentally, culturally, and linguistically appropriate to support each child's growth and school readiness to be in compliance with Program Performance Standards. Should oral health services not be met per federal requirements, FSA Head Start will not be in compliance with grant requirements. Oral health is necessary to ensure that the children evaluated are channeled into an appropriate health care resource to resolve any health complications found in the assessment.

## II. PERFORMANCE BY CITY

City agrees:

- 2.1 City through the Metro Health Oral Health Program will provide each participating FSA enrollee with an on-site limited oral health evaluation and fluoride varnish application performed by a dentist, which will be conducted within 90 days of the initial startup of the Head Start Program school year.
- 2.2 Metro Health staff will provide case management and referral services for all FSA enrollees identified with "urgent" dental needs (Class I cases).
- 2.3 As needed, Metro Health staff will provide additional support to program staff to ensure that all FSA enrollees with unmet dental needs are connected to a dental home in the community.
- 2.4 Through leverage of Title V Child Dental Health Services grant funding and collaborative agreements with the UT Health Science Center Department of Developmental Dentistry, Metro Health will facilitate care for Head Start FSA enrollees who are uninsured or underinsured for necessary dental treatment. Metro Health will provide all required documentation to the UT Health Dental School to ensure FSA enrollees have access to designated services.
- 2.5 Metro Health will provide oral health education for FSA Head Start program staff, including Teachers, Center Directors, Family Service Workers, and Health Coordinators.

- 2.6 Metro Health will provide FSA Head Start teachers and staff with ongoing training and technical assistance regarding oral health performance standards and the importance of good oral health for Head Start FSA enrollees and families.
- 2.7 Metro Health will provide FSA Head Start Center Directors and Family Service Workers with an Oral Health Training Manual, outlining all oral health performance standards, internal policies and protocols and Oral Health Program forms.
- 2.8 Metro Health will document all service activities provided under this agreement, to include but not limited to, updating its health record database and completing a Dental Evaluation & Fluoride Varnish Form for all FSA enrollees attached hereto and incorporated herein for all purposes as **Attachment I**.
- 2.9 To provide written referral and/or correspondence to the FSA enrollee's parent explaining findings of the dental evaluation. A copy of the dental evaluation documenting the child's oral health status, along with contact information for Metro Health staff, will be given to the appropriate FSA staff to be forwarded to parents/care giver.
- 2.10 Metro Health will make best efforts to provide each FSA enrollee who has provided parental consent, two on-site limited oral evaluations and fluoride varnish applications during the school year.
- 2.11 To utilize available funding to support additional costs related to treatment including, but not limited to facility fees and physician fees not covered by Title V Child Dental Health Services funding. In the event a Head Start child must be treated in a hospital setting, additional services will be coordinated through the UT Health San Antonio School of Dentistry, Department of Pediatric Dentistry. Additional costs incurred by UT Health San Antonio School of Dentistry may be included in reimbursement for services.

### **III. PERFORMANCE BY FSA**

FSA agrees:

- 3.1 To coordinate with Metro Health's Oral Health Program to ensure all funded enrolled FSA enrollees in program receive preventive oral health services.
- 3.2 To obtain required dental consent forms for each FSA enrollee enrolled within the Head Start Program for participation, to include Dental Evaluation and Fluoride Varnish Form from the parent or legal guardian, enabling Metro Health to administer preventive oral health services required and to have dental consent forms present at the time of exam or treatment.
- 3.3 To pay for services rendered by the City within 30 calendar days of receiving a valid and approved Request for Payment.

### **IV. TERM**

- 4.1 This contract shall commence on September 1, 2024 and shall terminate on August 31, 2025 unless extension or earlier termination shall occur pursuant to the terms of this contract. This Agreement may be renewed by mutual consent of the parties for three successive, one year terms. Any renewals shall be in writing and signed by the parties. The City Manager or designee, or the Director of Metro Health shall have the authority to execute renewals on behalf of the City without further City Council action.

## **V. LOCATION**

- 5.1 Services to be provided under this agreement will be provided at the appropriate FSA Head Start Centers or Metro Health Clinic facility as agreed upon by mutual consent of the City and FSA. The type of services to be provided by Metro Health shall dictate at which location said services are to be administered.
- 5.2 In the event that an FSA enrollee needs to be transported to a specific location to receive a certain service, FSA shall arrange for said transportation.

## **VI. BILLING**

- 6.1 FSA agrees that it will pay up to an amount of FORTY-EIGHT THOUSAND NINE HUNDRED SIXTY-NINE DOLLARS (\$48,969.00) to City for services provided under this agreement.
- 6.2 The City will bill FSA on a cost reimbursement basis monthly for expenses incurred as determined by the City.
- 6.3 The City will provide in-kind services in an amount up to NINE THOUSAND SEVEN HUNDRED NINETY-FOUR DOLLARS (\$9,794.00) for the period of the agreement.
- 6.4 FSA shall remain liable for the payment of services rendered under this agreement until all such payments are made and received by City. FSA's liability is not reduced or diminished by any amount by a third party's failure to pay for services rendered hereunder.

## **VII. COMPLIANCE**

- 7.1 City and FSA agree to comply with all federal and state laws regarding nondiscrimination in the execution of this agreement. In addition, the parties shall comply with City laws regarding nondiscrimination and in accordance therewith, City and FSA shall ensure that no person is denied benefits hereunder on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability.

## **VIII. AMENDMENT**

- 8.1 Amendments or modifications to this agreement may be initiated by either Party hereto provided a ten (10) day written notice is given to the other Party. No amendment, modification or alteration of the terms of this agreement shall be binding unless same be in writing, dated subsequent to the date hereof and duly executed and mutually agreed to by the parties to this agreement

## **IX. ASSIGNING INTEREST**

- 9.1 Both parties shall not transfer or assign any interest in this agreement without the prior written consent of the other Party and approval by the San Antonio City Council by means of an ordinance.

## **X. INDEMNITY**

- 10.1 FSA 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 FSA'S activities under this Agreement, including any acts or omissions of FSA, any agent, officer, director, representative, employee, consultant or subcontractor of FSA, 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 negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT FSA 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.

- 10.2 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. FSA shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or FSA known to FSA related to or arising out of FSA's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at FSA's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving FSA of any of its obligations under this paragraph.
- 10.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by FSA in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. FSA 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 FSA fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf and FSA shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 10.4 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of FSA, 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 FSA or any subcontractor under worker's compensation or other employee benefits.

## **XI. RELATIONSHIP OF THEPARTIES**

- 11.1 City and FSA mutually agree that FSA acts in the capacity as an independent contractor and that nothing contained herein shall be construed by either Party hereto or by any third party as creating the relationship of principal and agent, partners, joint venture or any other similar such relationship between the parties hereto.
- 11.2 City and FSA understand and agree that neither Party to this agreement has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

## **XII. TERMINATION**

- 12.1 City and FSA understand and mutually agree that this agreement may be terminated by either Party upon giving thirty (30) days' written notice, by certified mail, to the other Party. Notice is said to be given when the written notice is received by the other Party. The parties agree that the failure to secure adequate funding by FSA to meet the obligations set out within this agreement shall be grounds for immediate termination of this agreement by City.
- 12.2 FSA shall pay City for all services provided prior to the date of termination.
- 12.3 Termination of this agreement for any cause shall be without prejudice to any obligations or liabilities of either Party accrued prior to such termination.

### **XIII. INSURANCE**

- A) No later than 30 days before the scheduled service, FAMILY SERVICE must provide a completed Certificate(s) of Insurance to CITY's Metro Health. 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,

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 Metro Health. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.

If the City does not receive copies of insurance endorsement, then by executing this Agreement, FAMILY SERVICE certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the agreement.

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.

FAMILY SERVICE shall obtain and maintain in full force and effect for the duration of this Agreement, at FAMILY SERVICES 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 FAMILY SERVICE claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

| <b><i>INSURANCE TYPE</i></b>   | <b><i>LIMITS</i></b>  |
|--|---|
| 1. Workers' Compensation   | Statutory   |
| 2. Employers' Liability  | \$500,000/\$500,000/\$500,000   |
| 3. Commercial General Liability Insurance to include coverage for the following:<br>a. Premises/Operations<br>b. Products/Completed Operations<br>c. Personal/Advertising Injury<br>d. Contractual Liability<br>*e. Independent Contractors<br>f. Sexual Abuse/Molestation | For Bodily Injury and Property Damage<br>\$500,000 per occurrence;<br>\$1,000,000 general aggregate |
| 4. Business Automobile Liability<br>a. Owned/leased vehicles<br>b. Non-owned vehicles  | Combined Single Limit for Bodily Injury and Property Damage of \$250,000 per occurrence.            |

|                           |  |
|---------------------------|--|
| c. Hired Vehicles         |  |
| 5. Professional Liability | \$500,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. |
| *If Applicable            |  |

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

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. FAMILY SERVICE 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  
San Antonio Metropolitan Health District  
Attn: Director  
100 W. Houston, 14<sup>th</sup> Floor  
San Antonio, Texas 78205

FAMILY SERVICES 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.

Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, FAMILY SERVICE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend FAMILY SERVICES 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.

In addition to any other remedies CITY may have upon FAMILY SERVICES failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order FAMILY SERVICE to stop work and/or withhold any payment(s) which become due to FAMILY SERVICE under this Agreement until FAMILY SERVICE demonstrates compliance with requirements.

Nothing contained in this Agreement shall be construed as limiting the extent to which FAMILY SERVICE may be held responsible for payments of damages to persons or property resulting from FAMILY SERVICES or its subcontractors' performance of the work covered under this Agreement.

FAMILY SERVICES 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.

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.

FAMILY SERVICE and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

#### **XIV. ACCESS TO RECORDS**

- 14.1 Subject to federal, state and local laws, FSA, City or any duly authorized representative of each shall have access to any records, data or other information directly related to or generated as a result of the services provided hereunder for the purpose of conducting audits or examination.

#### **XV. RETENTION OF RECORDS**

- 15.1 The parties agree to maintain financial records of or concerning the services provided hereunder for a period of four (4) years from the date of termination of this agreement.
- 15.2 City agrees to maintain health records on FSA enrollees served hereunder until said person's twenty-first birthday.

#### **XVI. CONFIDENTIAL INFORMATION**

- 16.1 FSA agrees to maintain confidentiality of client records in accordance with all City, State, and Federal laws and regulations, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) as amended. City and FSA will enter into a business associate agreement concerning transfer of client medical record information which is attached hereto and incorporated herein for all purposes as **Attachment II**.
- 16.2 FSA shall establish a method to secure the confidentiality of records and other information relating to clients in accordance with the applicable Federal and State laws, regulations, and rules. This provision shall not be construed as limiting the City's right of access to recipient case records or other information relating to clients served under this Agreement.

#### **XVII. SUBSTANTIAL INTEREST**

- 17.1 FSA acknowledges that it is informed that Texas law prohibits contracts between City and any local public official such as a City officer or employee, and that the prohibition extends to any officer or employee of City boards and commissions and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity.
- 17.2 FSA certifies, and this agreement is made in reliance thereon, that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this agreement is an officer or employee of the City or any of its agencies, boards or commissions.

#### **XVIII. DEBARMENT**

- 18.1 FSA certifies that FSA is not debarred from entering into this agreement as defined by federal debarment guidelines.

#### **XIX. NOTICES**

- 19.1 For purposes of this agreement, all official communications and notices between the parties shall be deemed sufficient if in writing, mailed, certified mail, postage prepaid, to the addresses set forth below:

**CITY**

San Antonio Metropolitan Health District  
Attention: Claude A. Jacob, DrPH, MPHHealth  
Director  
100 W. Houston, 14<sup>th</sup> floor  
San Antonio, Texas 78205

**FSA**

Family Service Association of San Antonio, Inc.  
Attention: Sandra Garza, Director of Education  
702 San Pedro  
San Antonio, Texas 78212

**XX. FULL AGREEMENT**

- 20.1 This agreement constitutes the final and entire agreement between the parties hereto and contains 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 hereof and duly executed by the parties.

**XXI. AUTHORITY**

- 21.1 The signers of this agreement, by placing their signature below, represent and warrant that they have full authority to execute this agreement on behalf of the respective Party each represents.

**XXII. SEVERABILITY**

- 22.1 In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties further agree 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.

**XXIII. CAPTIONS**

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

IN WITNESS OF WHICH THIS AGREEMENT HAS BEEN EXECUTED ON THE DATES INDICATED BELOW.



**CITY OF SAN ANTONIO**

\_\_\_\_\_  
Claude A. Jacob, Dr.PH, MPH

Health Director

San Antonio Metropolitan Health District

\_\_\_\_\_  
Date

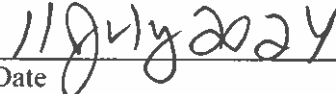
APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**FAMILY SERVICE ASSOCIATION  
OF SAN ANTONIO, INC.**

  
\_\_\_\_\_  
Mary E. Garr

President & Chief Executive Officer

  
\_\_\_\_\_  
Date

**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 Family Service Association of San Antonio, Inc., a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

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 SERVICE CONTRACT, 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 as of the dates indicated by the **City of San Antonio**, signing by and through its program manager.

**COVERED ENTITY**  
**By City of San Antonio**

By: \_\_\_\_\_

Claude A. Jacob, DrPH, MPH  
Health Director  
San Antonio Metropolitan Health District

\_\_\_\_\_  
Date

**BUSINESS ASSOCIATE:**  
**Family Service Association of San Antonio, Inc.**

By: Mary E. Garb

Mary E. Garb  
President & Chief  
Executive Office

11 July 2024  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

