

# MASTER MEMORANDUM OF AGREEMENT

**1. PURPOSE.** The National Foundation for the Centers for Disease Control and Prevention, Inc. ("CDC Foundation") and the City of San Antonio on behalf of the San Antonio Metropolitan Health District ("City") hereby enter into this Master Memorandum of Agreement ("Master MOA") for the purpose of supporting public health workforce staffing initiatives.

**2. SCOPE OF SERVICES.** The Parties are responsible for the obligations and services set forth in Attachment A: "X" (the "Services"). Each new Attachment A: "X" will be numbered in accordance with the assigned CDC Foundation Program Number. Each Attachment during the term of the Master MOA shall be in writing and may be signed by the Director of Metro Health without further action by the San Antonio City Council.

**3. TERM AND TERMINATION**

**3.1 Effective dates.** This Master MOA shall be effective upon execution and shall be effective for a term of five years unless Terminated by either Party, pursuant to the terms in Section 3.2.

**3.2 Termination.**

- a. Either party may terminate this Master MOA by providing thirty (30) days written notice of termination to the other party.
- b. Either party may terminate this Master MOA for cause, default, or negligence at any time, without thirty days advance written notice. The Party initiating the termination may, at its option, allow the other party a reasonable time to cure the default before termination.
- c. The CDC Foundation may immediately terminate this Master MOA in the event payment from the CDC Foundation's funding source ceases. In the event there is a delay in payment from the CDC Foundation's funding source, the CDC Foundation may, in its sole discretion, temporarily cease services or immediately terminate this MOA.

**4. AMENDMENTS.** The Master MOA may only be amended by written agreement of all parties.

**5. CONFIDENTIALITY.**

**5.1.** The CDC Foundation will comply with all confidentiality obligations under federal and state laws and City policies and requirements including but not limited to the Federal Educational Rights and Privacy Act, 20 U.S.C. §1232g, and the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-92, as amended, and regulations (45 CFR Parts 160 and 164), as applicable. Confidential information means information known or maintained in any form, whether recorded or not, consisting of protected health information, other health information, personal information, personal identifying information, confidential business information, and any other information required by law to be treated as confidential, designated as confidential by City, or known or believed by the CDC Foundation or the CDC Foundation's employee or agent to be claimed as confidential or entitled to confidential treatment.

Additionally, CDC Foundation shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in Attachment B, which is intended to protect the privacy and provide for the security of Protected Health Information disclosed pursuant to this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations promulgated thereunder by the U.S. Department of Health and Human Services and other applicable laws. CDC Foundation shall establish specific procedures designed to meet the obligations of this Section, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with CDC Foundation's employees and subcontractors prior to any disclosure of the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. CDC Foundation shall

ensure that its respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

**5.2.** The CDC Foundation will not: 1) access, view, use, or disclose confidential information without written authorization from City; 2) discuss confidential information obtained in the course of its relationship with City with any other person, or in any location outside of its area of responsibility in City; or 3) make any unauthorized copy of confidential information, or remove or transfer this information to any unauthorized location or media.

**5.3.** The CDC Foundation will direct any request it receives for confidential information obtained through performance of services under this Master MOA, including a subpoena, litigation discovery request, court order, or Freedom of Information Act request, to the Metro Health's Contracts Manager as soon as possible, and in every case within one business day of receipt. If the CDC Foundation discloses confidential information pursuant to a properly completed authorization or legal process, order or requirement, the CDC Foundation must document the disclosure and make the documentation and authorization available for City inspection and audit.

**5.4.** The CDC Foundation must immediately notify the Metro Health Compliance Officer unauthorized use or disclosure of confidential information received under this Master MOA:

Name of First Compliance Contact: Ariel Bazaldua  
Phone Number: 210 207-4921  
E-mail Address: ariel.bazaldua.sanantonio.gov

The CDC Foundation will promptly notify City of any suspected or actual breach of security of an individual's personal identifying information under applicable law.

**5.4.** The CDC Foundation's obligations under this provision and any other agreements concerning confidentiality shall survive termination, cancellation, or expiration of the Master MOA.

**6. RECORDKEEPING, AUDITS, & INSPECTIONS.** Each Party shall create and maintain adequate records to document all matters covered by this Master MOA. All such records shall be maintained for seven (7) years or other longer period as may be required by law after termination, cancellation, or expiration of the Master MOA. Each Party must make records available for inspection and audit at any time, with reasonable notice. If any litigation, claim or audit has begun but is not completed at the end of the seven-year period, or if audit findings have not been resolved at the end of the seven-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The parties shall allow for inspection of the facilities and locations where activities under this Master MOA are to be performed on reasonable notice. Unjustified failure to produce any records required under this paragraph may result in immediate termination of this Master MOA.

The parties must dispose of records containing each other's Confidential information in a secure manner such as shredding or incineration once the required retention period has ended. Confidential information means information known or maintained in any form, whether recorded or not, consisting of protected health information, other health information, personal information, personal identifying information, confidential business information, or any other information required by law to be treated as confidential, designated as confidential by the other party.

**7. LIABILITY, NO AGENCY RELATIONSHIP.** Neither party shall be liable for any claims, demands, expenses, liabilities and losses (including reasonable attorney's fees) which may arise out of any acts or failures to act by the other party, its employees or agents, in connection with the performance of services pursuant to this Master MOA. Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or authority to control or direct the activities of the other or the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party, unless expressly authorized in this Master MOA.

**8. NON-DISCRIMINATION.** No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to activities carried out under this contract on the grounds of race, religion, color, sex, age, national origin, disability, or any other basis prohibited by law. This includes the provision of language assistance services to individuals of limited English proficiency eligible for services provided by City.

As a party to this contract, CDC Foundation 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. DRUG FREE WORKPLACE.** By signing this Master MOA, the City certifies that it will comply with all applicable provisions of The Drug-free Workplace Act of 1988, 48 CFR § 52.223-6 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

**10. CHOICE OF LAW.** 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.

**11. DISPUTES.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

**12. INSURANCE.**

No later than 30 days before the scheduled service under this contract, CDC Foundation must provide a completed Certificate(s) of Insurance to CITY's Health District. The certificate must be:

- clearly labeled with the legal name of the contract 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 Health District. 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, CDC Foundation certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Contract.

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.

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

<b>INSURANCE TYPE</b>	<b>LIMITS</b>
1. Workers' Compensation 2. Employers' Liability	Statutory \$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*	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella Liability Coverage.
4. 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.
5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
6. Cyber Liability	\$1,000,000 per claim \$1,000,000 general aggregate, or its equivalent in Umbrella Liability Coverage.
*If Applicable	

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

**14.** 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. CDC Foundation 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: Health  
Department  
P.O. Box 839966  
San Antonio, Texas  
78283-3966

CDC Foundation'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.

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

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

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

CDC Foundation'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.

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.

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

**15. INDEMNIFICATION.** CDC Foundation 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 CDC Foundation's activities under this Agreement, including any acts or omissions of CDC Foundation, any agent, officer, director, representative, employee, consultant or subcontractor of CDC Foundation, 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 CDC Foundation 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.

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. CDC Foundation shall advise the City in writing within 24 hours of any claim or demand against the City or CDC Foundation known to CDC Foundation related to or arising out of CDC Foundation's activities under this Agreement and shall see to the investigation and defense of such claim or demand at CDC Foundation's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving CDC Foundation of any of its obligations under this paragraph.

**15.1. Defense Counsel.** City shall have the right to select or to approve defense counsel to be retained

by CDC Foundation in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CDC Foundation 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 CDC Foundation fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CDC Foundation 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.

**15.2. Employee Litigation.** In any and all claims against any party indemnified hereunder by any employee of CDC FOUNDATION, 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 CDC FOUNDATION or any subcontractor under worker's compensation or other employee benefit acts.

**16. CONFLICT OF INTEREST.** 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.

Pursuant to the subsection above, CDC Foundation warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, CDC Foundation does not cause a City employee or officer to have a prohibited financial interest in the Contract. CDC Foundation further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

**17. LICENSES.** During the term of this Master MOA, each party shall maintain its respective federal and state licenses, certifications, and accreditations required for the provision of services herein. The CDC Foundation will immediately notify City if a board, association, or other licensing authority takes any action to revoke or suspend the license, certification, or accreditation of CDC Foundation or CDC Foundation's employees or agents providing or performing services under this Master MOA.

**18. FINANCIAL RESPONSIBILITY.** Each party shall bear and be responsible solely for its own costs and expenses necessary to comply with this Master MOA.

**19. NON-SUPPLANTING.** The City certifies that federal funds will not be used to supplant State, local, tribal or other non-federal funds that would, in the absence of such federal aid, be made available for any such activities under any Attachment A: "X".

**20. PUBLICITY.** The CDC Foundation and the City shall be entitled to review and approve the text of any proposed publicity relating to the Project or referencing the Parties, prior to its release. Neither Party shall use the name, logo, likeness, trademarks, image or other intellectual property of the other Party, CDC, or HHS for any advertising, marketing, endorsement, or any other purposes without the expressed, written consent of an authorized representative of the Party.

**21. ANTI-TERRORISM STATEMENT.** The City hereby certifies that it does not advocate, support, assist or engage in, and has not advocated, supported, assisted or engaged in, any illegal or terrorist

activity. The City further certifies that it does not employ, support, assist or otherwise associate with any entities, organizations or individuals that the City knows, or has reason to know, support terrorism, or that appear on any official terrorist lists published by the Department of the Treasury Office of Foreign Assets Control Specially Designated Nationals List (OFAC SDN).

**22. COMPLIANCE WITH LAWS.** CDC Foundation shall comply with all applicable laws and regulations in the performance of this Master MOA.

**23. SEVERABILITY.** The invalidity or unenforceability of any provision of this Master MOA shall not affect the validity or enforceability of any other provision, which shall remain in full force and effect.

**IN WITNESS WHEREOF,** the parties have executed this Agreement.

City of San Antonio

CDC Foundation

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

\_\_\_\_\_  
Monique S. Patrick  
Chief Operating Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# MEMORANDUM OF AGREEMENT

## Attachment A: 30601001

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<b><u>City of San Antonio:</u></b>	San Antonio Metropolitan Health District
<b><u>Project Number:</u></b>	30601001
<b><u>Project Name:</u></b>	Workforce Acceleration Initiative
<b><u>Project Description:</u></b>	To leverage modern technology and interoperable data for public health action.

This Attachment A: 30601001 is incorporated into, governed by and made part of the Agreement by and between the CDC Foundation and the City, that was effective upon execution (Master MOA). The City and the CDC Foundation further agree as follows:

### **1. TERM AND TERMINATION**

**1.1. Effective dates.** This Attachment A: 30601001 shall be effective on **June 17, 2024** and will terminate on **June 30, 2025**.

#### **1.2. Termination.**

- a. Either party may terminate this Attachment A: 30601001 by providing thirty (30) days written notice of termination to the other party.
- b. Either party may terminate this Attachment A: 30601001 for cause, default, or negligence at any time, without thirty days advance written notice. The Party initiating the termination may, at its option, allow the other party a reasonable time to cure the default before termination.
- c. The CDC Foundation may immediately terminate this Attachment A: 30601001 in the event payment from the CDC Foundation's funding source ceases.

### **2. SCOPE OF SERVICES.**

**2.1.** City shall be responsible for the following:

- a. Providing access to City facilities and resources to support the Project; and as may be required or necessary, provide CDC Foundation employees who may be required to report to City's worksite with the following access to facilities: on-site workspace, printer access, copy machine access, meeting room access, kitchen/breakroom access, clearance to enter the Central Office, and parking.
- b. Where the CDC Foundation staff is receiving a City issued laptop, the City will ensure access to computer applications and/or databases to accomplish their duties consistent with this Project.
- c. Communicating immediately to CDC Foundation staff's supervisor regarding any all issues with performance and/or conduct requiring managerial oversight or intervention. CDC Foundation supervisor will address all reported issues, in order to improve/rectify the issues.
- d. Providing regular and ongoing technical guidance and training necessary to carry out their duties related to the support of City operations; training must also include safety training regarding use of City's office.



# MEMORANDUM OF AGREEMENT

## Attachment A: 30601001

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- e. Neither requesting, nor allowing CDC Foundation staff to perform work not otherwise incorporated within their respective job descriptions. CDC Foundation staff should only work within the scope of their job descriptions. Any modifications to CDC Foundation staff duties or job descriptions require written approval by the CDC Foundation.
- f. Neither requesting, nor allowing CDC Foundation staff to perform unallowable duties as outlined in the Notice of Award, Uniform Guidance, and all governing federal rules and regulations, including performing duties related to fundraising, lobbying, research, and clinical work.
- g. Ensuring the safety of CDC Foundation employees, including requiring and utilizing safe infection prevention control practices, such as proper personal protective equipment, as set forth by the CDC; and inform the CDC Foundation of CDC Foundation employees that fall ill.
- h. Notifying the CDC Foundation if concerns arise regarding the CDC Foundation employees' ability to complete designated Project assignments.
- i. Working collaboratively with CDC Foundation staff to create and foster a professional, respectful, and productive work environment.
- j. Certifying that federal funds will not be used to supplant State, local, or other non-federal funds that would, in the absence of such federal aid, be made available for any such staffing and related activities within your state, localities, and/or territories.

### **2.2.** The CDC Foundation shall be responsible for the following:

- a. Temporarily assigning employee(s) to the work: from the City remotely. The CDC Foundation employees will comply with the policies and procedures of the CDC Foundation.
- b. Providing CDC Foundation staff assigned to this Project with laptops with Microsoft Office software, as needed based on functions of their position as outlined in their job descriptions. Where CDC Foundation staff is onsite at the City's office, the City will assist with the returning of these laptops, in good working order, back to the CDC Foundation at the Termination of this Agreement.
- c. Providing employees human resources support and training materials for successful onboarding including but not limited to information regarding benefits, instructions for the completion of timesheets and requests for leave.
- d. Providing administrative and managerial oversight of CDC Foundation staff, as well as overseeing related administrative documents. City will cover all costs associated with information technology, infrastructure, training, and equipment related to this Project.
- e. Ensuring that CDC Foundation staff will attend and complete City's trainings necessary to carry out their duties contained within this Agreement.
- f. Working collaboratively with colleagues in the City office to create and foster a professional, respectful, and productive work environment.
- g. The CDC Foundation staff assigned to the City is at all times considered an employee of the CDC Foundation with all the legal rights, responsibilities and obligations that apply.

# MEMORANDUM OF AGREEMENT

## Attachment A: 30601001

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**2.3. Positions/Staff.** CDC Foundation shall provide to City one or more CDC Foundation employees, as requested by City from time to time, and as may be agreed to in writing by CDC Foundation, in its sole discretion.

**2.4. Backfilled Positions.** In the event that a CDC Foundation employee ceases to be employed by CDC Foundation or is no longer available for assignment to the City, the CDC Foundation, may in its sole discretion, agree to backfill the respective position.

**2.5. Approvals.** The CDC Foundation's approval for the items set forth in Section 2.3 and 2.4 must be obtained in writing; however, a formal amendment is not required to increase, decrease, or backfill the CDC Foundation staff or positions assigned to the City. Such agreed upon written terms shall become a part of this Agreement, as amended.

**2.6. Reporting.** City will provide the CDC Foundation with periodic progress reports and a final narrative report detailing the impact of having CDC Foundation employees on staff and how the CDC Foundation employees bolstered the public health workforce in the City. The final report will be due upon the completion of the project.

Except as set forth in this Attachment A: 30601001 , the Master MOA is unaffected and shall continue in full force and effect in accordance with its terms.

**IN WITNESS WHEREOF**, the parties have executed this Agreement.

City of San Antonio

CDC Foundation

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

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Monique S. Patrick,  
Chief Operating Officer

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Date

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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 The National Foundation for the Centers for Disease Control and Prevention, Inc., (CDC Foundation) a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

WHEREAS, the City of San Antonio and BA have entered into an Agreement ("Service Contract"), executed on \_\_\_\_\_, whereby BA provides 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 \_\_\_\_\_, 2024, by the **City of San Antonio**, signing by and through its program manager.

**COVERED ENTITY**  
**BY: CITY OF SAN ANTONIO**

**BUSINESS ASSOCIATE:**  
**CDC FOUNDATION**

\_\_\_\_\_  
Claude A. Jacob, DrPH, MPH  
Health Director

\_\_\_\_\_  
Monique S. Patrick,  
Chief Operating Officer

San Antonio Metropolitan  
Health District

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

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

Approved as to Form:

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