INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF SAN ANTONIO AND THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO

THIS INTERLOCAL AGREEMENT (the Agreement) is made and entered into by and between the CITY OF SAN ANTONIO ("CITY"), a Texas Home Rule Municipality, on behalf of the San Antonio Metropolitan Health District ("Metro Health") acting by and through its City Manager or designee pursuant to Ordinance No. _____ and THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO (UNIVERSITY), an institution of The University of Texas System, an agency of the state of Texas. CITY and UNIVERSITY shall collectively be referred to as "the Parties."

WITNESSETH

WHEREAS, to increase efficiency and effectiveness, Texas Government Code, Chapter 791 authorizes local governments to contract to the greatest extent possible with one another and with agencies of the state; and

WHEREAS, Texas Government Code, section 791.011 provides that a local government may contract with another to perform governmental functions and services, and the definition of "governmental function and services" under Section 791.003(3) includes the areas of public health and welfare; and

WHEREAS, while the City's Public Health Laboratory provides testing for suspected or confirmed diseases and infections, it lacks sequencing capability and capacity for DNA sequencing to identify SARS-CoV-2 variants in circulation; and

WHEREAS, UNIVERSITY conducts genetic sequencing of positive specimens for SARS-CoV-2 to identify other variants; and

NOW THEREFORE, this Agreement defines the terms between the City and UNIVERSITY for the provision of DNA sequencing to identify SARS-CoV-2 variants in circulation; and

I.
PURPOSE/DEFINITIONS

1.1 The purpose of this Interlocal Agreement is to establish the terms and conditions under which UNIVERSITY will provide CITY with certain specified public health services for genetic sequencing of positive specimens for SARS-CoV-2 to identify other variants. This Agreement shall also establish the CITY's and UNIVERSITY's obligations, costs, and the manner and method of payment for provided services.

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

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

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

"Director" shall mean the director of City's Metro Health.

"Project or Program" shall mean the general scope of services of this Agreement.

II.
TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2022, and shall terminate on September 30, 2023. This Agreement may be renewed by mutual consent of the Parties for up to four (4), one (1) year terms (a "Renewal Term"). Any renewals shall be in writing and signed by the Parties. The Director shall have the authority to execute renewals on behalf of the City without further City Council action, subject to appropriation of funds therefore.

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

2.3 It is expressly understood and agreed by the City and UNIVERSITY that City's obligations under this Agreement are contingent upon the actual receipt of adequate funds to meet the City's liability hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. If City does not receive adequate funds to pay obligations under this Agreement, then this Agreement shall terminate and neither UNIVERSITY nor City shall have any further obligations hereunder.

III.
SCOPE OF SERVICES

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

3.2 UNIVERSITY shall perform the following services:

UNIVERSITY shall use Next-Generation Sequencing (NGS) capability to conduct genetic sequencing of polymerase chain reaction (PCR) positive specimens for SARS-CoV-2 and identify Centers for Disease Control and Prevention (CDC) "Variants of Concern" and "Variants of Interest." Genetic sequencing activities shall include:

a. Obtaining PCR positive SARS-CoV-2 samples from tests performed by UNIVERSITY and University Health.

b. Accepting direct test samples from Metro Health and other agencies of public health interest submitted to UNIVERSITY for sequencing to characterize local circulating SARS-CoV-2 variants if applicable.

c. All submitted PCR positive samples collected in viral transport media (VTM) or universal transport media (UTM) with a cycle threshold (CT) value below 30 will meet the criteria for NGS testing. Submitted samples will be accompanied with patient data, including name, date of birth, address, phone number and case history if available.

d. Conducting sequencing runs minimally every three weeks based on available positive sample volume and in consideration of predicted change in circulating variants.

e. Submitting de-identified SARS-CoV-2 Bexar County variant data to international databases (GISAID and GenBank) to further contribute to local, state-wide, and national surveillance efforts.

f. Conducting SARS-CoV-2 variant data analysis to be submitted in final de-identified SARS-CoV-2 Bexar County variant surveillance data reports to Metro Health.

Frequency of report delivery shall be every two weeks but minimally monthly based on available sample volume.

g. Updating the established and public-facing "Bexar County SARS-CoV-2 Whole Genome Sequencing Surveillance Dashboard" with the most current available SARS-CoV-2 run data.

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

IV.
COMPENSATION TO UNIVERSITY

4.1 In consideration of UNIVERSITY's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay UNIVERSITY an amount not to exceed TWO HUNDRED THOUSAND DOLLARS AND 00/100THS ($200,000.00) as total compensation to be paid to UNIVERSITY as follows: City will pay UNIVERSITY for complete NGS service at $160.00/sample and $50.00/sample for RT-PCR and extraction only service.

4.2 UNIVERSITY shall submit invoices on a quarterly basis. The invoice shall outline the work completed in accordance with the stated scope of work for the contract term described in Article III. above and the amount due and owing. The total payments hereunder shall not exceed the amount set forth in Section 4.1 above, without prior approval and agreement of all parties, evidenced in writing.

4.3 Invoices shall be submitted to: Accounts.Payable@sanantonio.gov and copy to SAMHD.Invoices@sanantonio.gov or by mail to City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, San Antonio Metropolitan Health District, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.4 No additional fees or expenses of UNIVERSITY shall be charged by UNIVERSITY nor be payable by City. The parties hereby agree that all compensable expenses of UNIVERSITY have been provided for in the total payment to UNIVERSITY as specified in Section 4.1 above. Total payments to UNIVERSITY cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all Parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.5 Final acceptance of work products and services require written approval by City, as determined by the Director as the City's approval official. Payment will be made to UNIVERSITY following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than UNIVERSITY, for the payment of any monies or the provision of any goods or services.

4.6 All services required under this Agreement will be performed to City's satisfaction, and City will not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been approved by City. The payment for services provided hereunder will not be paid until

required reports, data, and documentation have been received and approved by the City, as determined by the Director as the City's approval official.

4.7 The Parties agree that any payment by either Party for the performance of governmental functions or services must make those payments from current revenues available to the paying Party.

V.
OWNERSHIP OF INTELLECTUAL PROPERTY AND DOCUMENTS AND PUBLICATION RIGHTS

5.1 Subject to the UNIVERSITY'S right to publish derivative works from the results generated by UNIVERSITY, any and all writings, documents or information in whatsoever form and character produced by UNIVERSITY pursuant to the provisions of this Agreement is the exclusive property of CITY**;** and no such writing, document or information shall be the subject of any copyright or proprietary claim by UNIVERSITY**.**

5.2 UNIVERSITY understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, CITY has the right to use all such writings, documents and information as CITY desires, without restriction.

5.3 All right, title and interest in the work product, including intellectual property right therein, is exclusively owned by City. UNIVERSITY will have no rights in or ownership of the work product or any other property of City. Any and all work product that is copyrightable under United States copyright law is deemed to be "services" owned by City. To the extent that work product does not qualify as a " services" under applicable federal law, UNIVERSITY hereby irrevocably assigns and transfers to City, its successors and assigns, the entire right, title, and interest in and to the work product, including any and all intellectual property rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the work product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. UNIVERSITY agrees to execute all papers and to perform such other acts as City may deem necessary to secure for City or its designee the rights herein assigned.

5.4 In accordance with Texas law, UNIVERSITY acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, UNIVERSITY agrees that no such local government records produced by or on the behalf of UNIVERSITY pursuant to this Contract shall be the subject of any copyright or proprietary claim by UNIVERSITY. UNIVERSITY acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement, shall belong to and be the property of City and shall be made available to the City at any time. UNIVERSITY further agrees to make such records available to City at any time and to turn over all such records to City upon termination of this Agreement. UNIVERSITY agrees that it shall not, under any circumstances, release any records created during the course of performance of this Agreement to any entity without the written permission of the Director, unless required to do so by a court of competent jurisdiction. UNIVERSITY shall notify City of such request as set forth in Article VIII, of this Agreement.

5.5 City grants to UNIVERSITY a non-exclusive, non-transferable, non-sublicensable, worldwide, perpetual license to use the UNIVERSITY results or any portion thereof to create derivative works upon written notice provided to City prior to each use. Each use by UNIVERSITY must be accompanied with a proper copyright notice that acknowledges appropriate ownership of the licensed work and shall acknowledge ELC grant support. City reserves all rights not specifically granted to UNIVERSITY in this provision.

5.6. UNIVERSITY shall have the right to utilize any UNIVERSITY results of its performance hereunder for internal noncommercial research, education and patient care in addition to the publication rights in 5.5 above.

VI.
REQUESTS FOR AND RETENTION OF RECORDS

6.1 UNIVERSITY and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 UNIVERSITY shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement, or as may be required by the grantor of funds. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, UNIVERSITY shall retain the records until the resolution of such litigation or other such questions. UNIVERSITY acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require UNIVERSITY to return said documents to City prior to or at the conclusion of said retention; however, UNIVERSITY can keep a copy for its records.

6.3 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if UNIVERSITY receives inquiries regarding documents within its possession pursuant to this Contract, UNIVERSITY shall within one business day of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to state or federal law, the UNIVERSITY shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of UNIVERSITY's receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other

Party.

VII.
TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause**.** This Agreement may be terminated by City upon thirty (30) calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or

7.3.2 Any material breach of the terms of this Agreement as determined solely by City.

7.4 Defaults With Opportunity for Cure. Should UNIVERSITY default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. UNIVERSITY shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If UNIVERSITY fails to cure the default within such ten-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against UNIVERSITY's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law. Any one or more of the following events shall be deemed an "event of default" hereunder:

7.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;

7.4.2 Bankruptcy or selling substantially all of UNIVERSITY's assets;

7.4.3 Failing to perform or failing to comply with any material covenant herein required;

7.4.4 Performing the services unsatisfactorily, as determined by the Director;

7.4.5 The failure to meet reporting requirements as set out and determined by City; or

7.4.6 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, UNIVERSITY shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by UNIVERSITY**,** or provided to UNIVERSITY**,** hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by UNIVERSITY in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at UNIVERSITY's sole cost and expense. Payment of compensation due or to become due to UNIVERSITY is conditioned upon delivery of all such documents, if requested by City.

7.7 Within thirty (30) calendar days of the earlier of the following: the effective date of completion, or termination or expiration of this Agreement, UNIVERSITY shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by UNIVERSITY to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a Waiver by UNIVERSITY of any and all right or claims to collect moneys that UNIVERSITY may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, UNIVERSITY shall cease all operations of work being performed by UNIVERSITY or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue UNIVERSITY for any default hereunder or other action.

7.10 City shall pay UNIVERSITY for conforming goods delivered and services provided prior to the date of termination, offset by any amounts due and owing from UNIVERSITY to City.

VIII.
NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If to City, to:

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

If intended for UNIVERSITY, to:

The University of Texas Health Science Center at San Antonio
Attn: Marjorie David
Director Molecular Diagnostic Laboratory
7703 Floyd Curl Drive, Mail Code 7750
San Antonio, TX 78229

With a copy to:
The University of Texas Health Science Center at San Antonio
Office of Sponsored Programs
Atten: Director
7703 Floyd Curl Drive, MSC 7828
San Antonio, Texas 78229

IX.
RESERVED

X.
AUDIT

10.1 The City reserves the right to conduct or cause to be conducted an audit or review of all funds received under this Agreement during normal business hours with advanced written notice as deemed necessary by City. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, UNIVERSITY agrees to make available to City all accounting and Project records. UNIVERSITY acknowledges that this provision shall not limit the City from additional follow-up to audits or reviews, as necessary, or from investigating items of concern that may be brought to the City's attention which are other than routine.

10.2 UNIVERSITY shall during normal business hours with advance written notice, make available to City the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of four (4) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after Agreement termination, save and except there is litigation or if the audit report covering such agreement has not been accepted, then the UNIVERSITY shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by UNIVERSITY in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

10.3 When an audit or examination determines that the UNIVERSITY has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the UNIVERSITY shall be notified and provided an opportunity to address the questioned expenditure or costs.

10.4 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the UNIVERSITY will promptly refund such amount to the City no later than thirty (30) business days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such undisputed claims from subsequent reimbursements under this Agreement; however, in the absence of prior notice by City of the exercise of such option, UNIVERSITY shall provide to City a full refund of such amount no later than thirty (30) business days from the date of notification of such disapproval or disallowance by the City. If UNIVERSITY is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by check, cashier's check or money order. Should the City, at its sole discretion, deduct such undisputed claims from subsequent reimbursements, the UNIVERSITY is forbidden from reducing Project expenditures and UNIVERSITY must use its own funds to maintain the Project.

10.5 UNIVERSITY agrees and understands that all expenses, fees, and penalties associated with the collection of delinquent debts owed by UNIVERSITY shall be the sole responsibility of the UNIVERSITY and shall not be paid from any Project funds received by the UNIVERSITY under this Agreement. Delinquent debts that would otherwise be identified as allowable costs may be paid with Project funds with approval of Metro Health.

XI.
ADMINISTRATION OF AGREEMENT AND RESTRICTIONS ON USE OF FUNDS

11.1 Metro Health is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with general or grant funds, including the Project covered by this Agreement. Therefore, UNIVERSITY agrees to permit City and/or State to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Agreement and to assess UNIVERSITY's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the UNIVERSITY shall furnish to Metro Health and the Grantor of the Funds, if applicable, such statements, reports, records, data, all policies and procedures and information as may be requested by Metro Health and shall permit the City and Grantor of the Funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement. UNIVERSITY agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the UNIVERSITY of any liability to the City for failure to comply with the terms of the Project or the terms of this Agreement.

11.2 Unless disclosure is authorized by the City, UNIVERSITY agrees to maintain in confidence the materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. UNIVERSITY shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, UNIVERSITY shall, where possible, give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. UNIVERSITY certifies that it has established specific procedures designed to meet the obligations of this Article, including but not limited to execution of agreements regarding the treatment of Confidential Information with UNIVERSITY’s subcontractors prior to any disclosure of the Confidential Information. This Article shall not be construed to limit the State's or the City's or its authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, UNIVERSITY upon

written request shall return to City all provided copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations. The foregoing shall not apply when, after and to the extent the Confidential Information disclosed, as documented by competent evidence:

A. is not disclosed in writing or reduced to writing and marked with an appropriate confidentiality legend within thirty (30) days after disclosure; is already in the recipient party's possession at the time of disclosure as evidenced by written records in the possession of the receiving party prior to such time;

B. is or later becomes part public domain through no fault of recipient party;

C. is received from a third party having no obligations of confidentiality to the disclosing party;

D. is independently developed by the recipient party by its personnel having no access to the Confidential Information.

11.3 UNIVERSITY shall comply with standard practices of confidentiality of patient information as required by Metro Health and mandated by The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws. UNIVERSITY will enter into a Business Associate Agreement with the City, which is attached hereto as **Attachment I** and incorporated herein as part of this Agreement for all purposes.

11.4 Confidentiality regarding authorization for access to confidential information and review of medical records will be followed by UNIVERSITY. UNIVERSITY assumes full responsibility for any breach of confidence by its staff or its participating medical professionals with regard to activities under this Agreement.

11.5 Prohibited Political Activity. UNIVERSITY agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

11.6 UNIVERSITY agrees that no funds provided under this Agreement may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

11.7 The prohibitions set forth in Sections 11.5 and 11.6 above include, but are not limited to, the following:

(A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;

(B) working or directing other personnel to work on any political activity during paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;

(C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and

(D) using facilities or equipment paid for, in whole or in part with City funds for political purposes, including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.

11.8 UNIVERSITY agrees that in any instance where an investigation of the above is ongoing or has been confirmed, fees paid to the UNIVERSITY under this Agreement may, at the City's discretion, be withheld until the situation is resolved, or the appropriate member of the UNIVERSITY's personnel is reprimanded or terminated.

11.9 Sections 11.5 through 11.8 shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, UNIVERSITY and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with Agreement funds.

11.10 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the UNIVERSITY agrees to that under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.

XII.
INSURANCE

12.1 It is the policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the State who are acting within the scope of their employment. Rather, third parties must look to the Texas Tort Claims Act for relief with respect to property damage, personal injury, and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment as more fully set out above. Notwithstanding the foregoing, each component of the University of Texas System may enroll qualified personnel into the UT Systems Professional Medical Liability Benefit Plan, under the authority of Chapter 59, Texas Education Code. A copy of the plan can be found at: http://www.utsystem.edu/ogc/health/homepage.htm. UNIVERSITY has and will maintain in force during the term of this agreement adequate insurance to cover its indemnification obligations, including worker's compensation/employer's liability coverage provided at statutory minimum coverage.

XIII.
INDEMNIFICATION

13.1 UNIVERSITY and City acknowledge they are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

XIV.
SMALL BUSINESS ECONOMIC DEVELOPMENT AD ADVOCACY (SBEDA)

14.1 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the UNIVERSITY represents and certifies that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, UNIVERSITY shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. UNIVERSITY's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. UNIVERSITY shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

XV.
ASSIGNMENT AND SUBCONTRACTING

15.1 UNIVERSITY shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of UNIVERSITY. UNIVERSITY, its employees or its subcontractors shall perform all necessary work.

15.2 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of UNIVERSITY. City shall in no event be obligated to any third party, including any subcontractor of UNIVERSITY**,** for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

15.3 Except as otherwise stated herein, UNIVERSITY may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City. As a condition of such consent, if such consent is granted, UNIVERSITY shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor UNIVERSITY, assignee, transferee or subcontractor.

15.4 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should UNIVERSITY assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of UNIVERSITY shall thereupon cease and terminate, in accordance with Article VII. Termination,

notwithstanding any other remedy available to City under this Agreement. The violation of this provision by UNIVERSITY shall in no event release UNIVERSITY from any obligation under the terms of this Agreement, nor shall it relieve or release UNIVERSITY from the payment of any damages to City, which City sustains as a result of such violation.

XVI.
INDEPENDENT CONTRACTOR

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

XVII.
NONDISCRIMINATION POLICY

17.1 Non-Discrimination. As a party to this contract, UNIVERSITY 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.

17.2 The UNIVERSITY shall comply with all federal, State, or local laws, rules, and orders prohibiting discrimination, and shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Consistent with the foregoing, UNIVERSITY agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. UNIVERSITY further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, UNIVERSITY certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

a) Title VI and VII of the Civil Rights Act of 1964, as amended;

b) Section 504 of the Rehabilitation Act of 1973, as amended;

c) The Age Discrimination Act of 1975, as amended;

d) American with Disabilities Act of 1990, as amended;

e) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);

f) Fair Labor Standards Act of 1938, as amended;

g) Equal Pay Act of 1963, P.L. 88-38; and

h) All applicable regulations implementing the above laws.

XVIII.
CONFLICT OF INTEREST

18.1 UNIVERSITY acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. 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 parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a collaborator or a parent or subsidiary business entity.

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

XIX.
AMENDMENTS

19.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and UNIVERSITY.

19.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this agreement and that any such changes shall be automatically incorporated into this contract without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law.

XX.
SEVERABILITY

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

XXI.
LICENSES/CERTIFICATIONS

21.1 UNIVERSITY represents and certifies that UNIVERSITY and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXII.
COMPLIANCE

22.1 UNIVERSITY shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XXIII.
NONWAIVER OF PERFORMANCE

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

XXIV.
LAW APPLICABLE

24.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

24.2 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.

XXV.
LEGAL AUTHORITY

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

XXVI.
PARTIES BOUND

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

XXVII.
CAPTIONS

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

XXVIII.
PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

28.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

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

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

28.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

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

XXIX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES

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

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

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm

on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

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

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

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

30.1 This section only applies to a contract that:

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

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

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

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

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

XXXI.
PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

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

XXXII.
ENTIRE AGREEMENT

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

EXECUTED and **AGREED** to this the _____ day of _____, 2022.

CITY OF SAN ANTONIO

_____
Claude A. Jacob
Health Director
San Antonio Metropolitan Health District

_____
Date

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO

_____
Chris G. Green, CPA
Sr. Director, Sponsored Programs

_____
Date

Approved as to Form:

_____
City Attorney

Attachment I

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (**Agreement**) is entered into by and between the City of San Antonio ("**Covered Entity**"), and the University of Texas Health Science Center at San Antonio, a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

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

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

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

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

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

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

(1) "Breach" shall mean an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information. An impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:

(a) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;

(b) the unauthorized person who used the protected health information or to whom the disclosure was made;

(c) whether the protected health information was actually acquired or viewed; and

(d) the extent to which the risk to the protected health information has been mitigated.

(2) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. 164.501.

(3) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(4) "Health Information" is defined in 45 C.F.R. 160.103 as any information, including genetic information, whether oral or recorded in any form or medium that: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

(5) "Individual" means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(6) "Individually Identifiable Health Information" is defined in 45 C.F.R. 160.103 as information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(7) "Privacy Rule" shall mean the regulations for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subpart E.

(8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes "Electronic Protected Health Information" or "EPHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, 164, and under HITECH.

(9) "Required By Law" means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care

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

(10) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

(11) "Security Rules" shall mean the Security Standards for the Protection of Electronic Protected Health Information codified at 45 C.F.R. Part 164.

(12) The Health Information Technology for Economic and Clinical Health ("HITECH") Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

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

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any Security Incident as defined by 45 C.F.R. 164.304 that BA becomes of 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. <u>Permitted Uses and Disclosures by BA</u>.

(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* and Covered Entity acknowledge they are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.**

M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

O. **Assignment.** Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.

P. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract

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

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

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

COVERED ENTITY
By City of San Antonio

By: _____

Claude A. Jacob
Health Director
San Antonio Metropolitan Health District

BUSINESS ASSOCIATE:

By: _____

Chris G. Green, CPA
Sr. Director, Sponsor

APPROVED AS TO FORM:

_____
City Attorney