

ORDINANCE

2022-12-15-0983

AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT FOR THE REFERRAL OF PATIENTS OF THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S STD PREVENTION & CONTROL PROGRAM TO THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON FOR POSSIBLE PARTICIPATION IN A CONGENITAL SYPHILIS DIAGNOSTICS CLINICAL STUDY AT NO COST, FOR A TERM ENDING SEPTEMBER 30, 2024, WITH THE OPTION TO RENEW FOR THREE, ONE-YEAR TERMS.

* * * * *

WHEREAS, there is an urgent need for improved diagnostics to identify congenital syphilis at birth and understand the long-term effects of congenital syphilis; and

WHEREAS, to this end, the University of Texas Health Science Center at Houston (UT Health Houston) is conducting a multicenter, clinical trial to directly compare performance of new diagnostic tests to current Centers for Disease Control and Prevention (CDC) guidelines for the diagnosis of congenital syphilis; and

WHEREAS, the clinical trial is a prospective observational cohort of women and their newborns at risk for infection; and

WHEREAS, through this study, the University of Texas Health Science Center at Houston (UT Health Houston) will leverage the resulting cohort to more accurately define adverse neurodevelopmental outcomes associated with congenital syphilis; and

WHEREAS, this study will be one of the first large prospective studies evaluating a potential new diagnostic test that can bring equity to the underserved populations that often lack the resources to return to all recommended follow up for their newborns; and

WHEREAS, participation in this project will give the San Antonio Metropolitan Health District an opportunity to be part of the effort to identify a highly sensitive diagnostic test and more accurately define adverse neurodevelopmental outcomes associated with congenital syphilis; **NOW THEREFORE:**


BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or designee, or the Director of the San Antonio Metropolitan Health District or designee, is hereby authorized to execute a Memorandum of Agreement for the referral of patients of the San Antonio Metropolitan Health District's STD Prevention & Control Program to the University of Texas Health Science Center at Houston for possible participation in a congenital syphilis diagnostics clinical study at no cost, for a term ending September 30, 2024, with the option to renew for three, one-year terms. A copy of the agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 3. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 15th day of December 2022.



M A Y O R
Ron Nirenberg

ATTEST:



Debbie Racca-Sittre, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council Meeting December 15, 2022

43.

2022-12-15-0983

Ordinance approving a Memorandum of Agreement for the referral of patients of the San Antonio Metropolitan Health District's STD Prevention & Control Program to the University of Texas Health Science Center at Houston for possible participation in a congenital syphilis diagnostics clinical study at no cost, for a term ending September 30, 2024, with the option to renew for three, one-year terms. [Erik Walsh, City Manager; Claude A. Jacob, Director, Health]

Councilmember Rocha Garcia moved to Approve on the Consent Agenda. Councilmember Castillo seconded the motion. The motion carried by the following vote:

Aye: Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Sandoval, Pelaez, Courage, Gallagher

Attachment I

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF SAN ANTONIO
AND
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON**

This Memorandum of Agreement (hereinafter MOA) is by and between The University of Texas Health Science Center at Houston, a member institution of The University of Texas System and an agency of The State of Texas (hereinafter "UTHSCH") and the City of San Antonio (hereinafter "City"), on behalf of the San Antonio Metropolitan Health District (hereinafter "Metro Health").

WHEREAS, there is an urgent need for improved diagnostics to identify congenital syphilis at birth and understand the long-term effects of congenital syphilis; and

WHEREAS, UTHSCH is proposing a multicenter, prospective cohort trial to directly compare test performance of novel molecular tests to current Centers for Disease Control and Prevention (CDC) guidelines for the diagnosis of congenital syphilis in a prospective observational cohort of women and their newborns at risk for infection (the "Study"); and

WHEREAS, through this Study, UTHSCH will leverage the resulting cohort to more accurately define adverse neurodevelopmental outcomes associated with congenital syphilis; and

WHEREAS, this Study will be one of the first large prospective studies evaluating a potential new diagnostic test that can bring equity to the underserved populations that often lack the resources to return to all recommended follow up for their newborns; and

WHEREAS, participation in this Study will give us an opportunity to be part of the effort to identify a highly sensitive diagnostic test and more accurately define adverse neurodevelopmental outcomes associated with congenital syphilis because of congenital syphilis follow up and Bayleys neurodevelopmental testing at 18 months with contracted experts; and

WHEREAS, Bexar County is one of the high incidence regions and failure to successfully be a part of this National Institutes of Health (NIH) funded Study will greatly impact our efforts to have a test with good diagnostic sensitivity and have the appropriate neurodevelopment testing and follow up for infected newborns; and

WHEREAS, UTHSCH shall appoint Dr. Irene Stafford ("Principal Investigator") to be responsible for the conduct of the Study by UTHSCH; and

WHEREAS, Metro Health is the primary public health entity serving the City of San Antonio and unincorporated Bexar County and charged with responsibility for health assessment, assurance and policy development; and

WHEREAS, Metro Health will refer pregnant women who have executed a consent to the UTHSCH for possible participation in said Study to be conducted by Principal Investigator; and

WHEREAS, the parties understand that this MOA is to facilitate collaboration between the parties during the Study for the referral of potential participants to the Study; and

WHEREAS, Metro Health has access to clients who may qualify for participation in the Study; and

WHEREAS, UTHSCH, by and through Principal Investigator, desires Metro Health's collaboration in the implementation of this Study; and

WHEREAS, this MOA between the CITY and UTHSCH will promote the coordination and access to these clients who may qualify for participation in the Study; **NOW THEREFORE**:

1. **UTHSCH agrees that Principal Investigator will:**

- A. Contact the interested clients that have executed consents for disclosure of information and obtain required consents for enrollment in the Study.
- B. Perform the appropriate follow up and testing of the newborns for up to 18 months consistent with Study protocols.
- C. Adhere to and treat all Study enrollees according to standard of care.
- D. Share all data collected by UTHSCH investigators from Metro Health clients with Metro Health – including contacts, infection related data and all newborn data in order to assist with public health surveillance.
- E. Communicate and update key Metro Health personnel on Study status.
- F. Liaise with UTHSCH Institutional Review Board and supervise the studies.
- G. UTHSCH shall comply with standard practices of confidentiality of patient information as required by Metro Health and by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws. UTHSCH shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in **Attachment I**, 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.

2. City through Metro Health will:

Present a flyer or one-pager with Study information to pregnant clients with syphilis. If the client is interested and the client executes a consent form, Metro Health will provide the client information (name & contact information) to the UTHSCH study coordinator via weekly phone calls.

3. Both parties agree:

- A. To maintain a commercial or self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.
- B. That each party be responsible for the acts and negligence of its employees under state and federal law.

4. Term/Termination. This MOA will be effective upon execution by the Parties and will terminate on September 30, 2024 unless sooner terminated by the parties. The City shall have the option to renew this Agreement for three, one-year terms. The renewals shall be in writing and signed by the Health Director, or designee, without further action by the San Antonio City Council.

Either party may terminate this Agreement upon 30 days written notice to the other party. Notices to each party will be in accordance with Section 9. Notice.

5. Indemnification. UTHSCH 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.

6. Confidentiality: UTHSCH acknowledges that in connection with the activities or services to be performed under this Agreement by UTHSCH, UTHSCH and its employees may be acquiring and making use of certain confidential information of the City and Metro Health which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists/health information, and other materials or records of a proprietary nature ("Confidential Information"). Therefore, in order to protect the Confidential Information, UTHSCH and its employees shall not use the Confidential Information except in connection with the performance of activities or services pursuant to this Agreement, or divulge the

Confidential Information to any third party, unless the City consents in writing to such use or divulgence or disclosure is required by law. In the event UTHSCH receives a request or demand for the disclosure of Confidential Information, UTHSCH shall immediately provide written notice to the City of such request or demand, including a copy of any written element of such request or demand. UTHSCH further agrees to adequately instruct its employees, physicians and all personnel that may provide services or engage in activities pursuant to this Agreement regarding the confidentiality and privacy of patients and patients' medical records. All such instructions shall be in accordance with the formal policies and rules of UTHSCH and with all federal and state laws and regulations regarding patient and medical record confidentiality. UTHSCH assumes full responsibility for any breach of confidence by its employees or its staff with regard to the provision of services under this Agreement.

7. Ownership of Documents: In accordance with Texas law, UTHSCH acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code.

All documents, including any original drawings, estimates, specifications and all other documents and data, produced by UTHSCH in the course of the Study shall remain the property of UTHSCH. However, it is understood that City shall have access to all such UTHSCH information and City is granted the right to make and retain copies of UTHSCH's drawings, estimates, specifications and all other documents and data in connection with the activities or services to be performed under this Agreement.

Any materials or data previously owned by City and provided to UTHSCH pursuant to this Agreement shall remain property of City, and nothing herein shall be construed to grant any right or license to UTHSCH in or to any material or data. UTHSCH agrees and covenants to protect any and all proprietary rights of City in any materials and data provided to UTHSCH. Additionally, any materials or data provided to UTHSCH by City shall not be released to any third party without the consent of City and shall be returned intact to City, or destroyed if instructed by City to do so, upon termination or completion of this Agreement.

All previously owned intellectual property of UTHSCH, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by UTHSCH or its suppliers hereunder, and any know-how, methodologies or processes used by UTHSCH to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of UTHSCH or its suppliers.

8. Compensation: No fees or expenses shall be exchanged between the City and UTHSCH for the activities set out under this Agreement. The City will not be charged for any activities or services performed by UTHSCH in connection with the activities covered by this Agreement or have any obligation to pay the salaries or expenses of any UTHSCH personnel.

9. Notice: All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; or (c) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below:

City:

City of San Antonio
San Antonio Metropolitan Health District
Attn: Claude A. Jacob, Health Director
100 W. Houston, 14th Floor
San Antonio, TX 78205

UTHSCH:

The University of Texas Health Science Center at
at Houston
Sponsored Projects Administration
7000 Fannin St., UCT 1000
Houston, TX 77030

10. Independent Contractor: UTHSCH is an independent contractor, and neither UTHSCH nor any of its agents, representatives, staff or employees shall be considered agents, representatives, or employees of the City. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relations between the parties hereto. UTHSCH shall be liable for its own debts, obligations, acts and

omissions, including the payment of all required withholding, social security and other taxes or benefits. City shall not provide UTHSCH staff any salaries, insurance or other benefits.

11. **Non-Discrimination**: As a party to this contract, UTHSCH 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

12. **Amendments**: Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be affected by amendment, in writing, executed by both City and UTHSCH.

It is understood and agreed by 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 Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law.

13. **Licenses/Certifications**: UTHSCH warrants and certifies that UTHSCH 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.

14. **Compliance**: UTHSCH shall provide and perform all activities and services under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations and shall comply with standards, guidelines, and policies of the City and Metro Health.

Notwithstanding any other provisions contained in this Agreement, the Parties shall comply in all material respects with the applicable provisions, if any, of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, "HIPAA"), and agree to enter into any such other agreements between the Parties as may be required in order to evidence such compliance with HIPAA.

15. **Assignment**: This Agreement is not assignable by either party without the prior written consent of the other party. Any assignment without such written consent shall be void.

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

17. **Texas Law to Apply**: This Agreement shall be construed under and in accordance with the laws of the United States and the State of Texas. If legal action is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

18. **Legal Construction**: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

19. **Entire Agreement**: The final and entire Memorandum of Agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

In witness whereof, the parties have caused this MOA to be executed as of the day and year listed below.

**The University of Texas Health
Science Center at Houston**

City of San Antonio

DocuSigned by:



Valerie Bomben, Ph.D.
Director, Sponsored Contracts

Claude A. Jacob
Health Director
San Antonio Metropolitan Health District

12/6/2022

Date

Date

APPROVED AS TO FORM:

City Attorney

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 Houston an Institution of The University of Texas System and an agency of the State of Texas, a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

WHEREAS, the City of San Antonio and BA have entered into a Memorandum of Agreement ("**MOA**"), executed on _____; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the MOA, 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 MOA 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 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 MOA, 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 MOA or, if the BA does not cure the breach or end the violation within the time for cure specified in the MOA, end the violation and terminate this Agreement and the MOA; or (b) immediately terminate this Agreement and the MOA 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 MOA 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 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.
- 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 MOA or any such later agreement(s), the terms of this Agreement shall control unless the terms of the MOA 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 _____, 2022, by the **City of San Antonio**, signing by and through its program manager.

COVERED ENTITY
By City of San Antonio

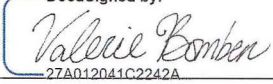
By: _____

Claude A. Jacob
Health Director
San Antonio Metropolitan Health District

APPROVED AS TO FORM:

City Attorney

BUSINESS ASSOCIATE:

DocuSigned by:
By:  12/6/2022
27A012041C2242A

Valerie Bomben, Ph.D.
Director, Sponsored Contracts