

SKAMANIA COUNTY BOARD OF HEALTH

Agenda for June 14, 2022

1:30 PM

Skamania County Courthouse

240 NW Vancouver Avenue, Room 18

Stevenson, WA 98648

Board of Health Meetings are open to the public in person or by ZOOM using the numbers listed below.

1 346 248 7799 US

1 312 626 6799 US

1 646 558 8656 US

1 669 900 9128 US

1 253 215 8782 US

1 301 715 8592 US

Meeting ID: 889 0632 1210 – New Meeting ID as of 6/01/2020

Join Zoom Meeting

- Audio only from your computer <https://us02web.zoom.us/j/88906321210>

WRITTEN PUBLIC COMMENTS ACCEPTED AND ENCOURAGED BY MONDAY PRECEDING THE MEETING AT NOON. If you wish written comments to be listed on the agenda, they need to be submitted to the Clerk of the Board by noon on Thursday preceding the Tuesday/Wednesday meeting, otherwise they will be held for the following Tuesday/Wednesday. slack@co.skamania.wa.us When a holiday falls on Monday, the regular meeting is held on Wednesday of that week.

Tuesday, June 14, 2022

11:30 PM Call to Order
Public Comment (3 minutes)

Consent Agenda - Items will be considered and approved on a single motion. Any Commissioner may, by request, remove an item from the agenda prior to approval.

1. Minutes for meeting May 10, 2022
2. Contract with Clark County Public Health for Communicable Disease Prevention and Control and Healthy Communities/Chronic Disease Prevention services

Community Health Report – Tamara Cissell, Community Health Director

Health Officer Report - Dr. Alan Melnick, Health Officer

Environmental Health report – Alan Peters, Community Development Director

Adjourn

MINUTES OF SKAMANIA COUNTY BOARD OF HEALTH MEETING

May 10, 2022

Skamania County Courthouse
240 NW Vancouver Avenue, Room 18
Stevenson, WA 98648

The meeting was called to order at 11:30 p.m. on May 10, 2022, at the Skamania County Courthouse, 1st Floor Meeting Room, 240 NW Vancouver Avenue in Stevenson, with Board of Health Commissioner T.W. Lannen present, and Commissioner Richard Mahar, Chair attending via ZOOM. Commission

There was no public comment.

Commissioner Mahar moved, seconded by Commissioner Lannen and the motion carried unanimously to approve the Consent Agenda as follows:

1. Minutes for meeting April 12, 2022
2. Ratify Contract Amendment #2 with Department of Health for 2022-2024 Consolidated Contract
3. Ratify Contract Amendment #3 with Department of Health for 2022-2024 Consolidated Contract
4. Contract Amendment #4 with Department of Health for 2022-2024 Consolidated Contract

Tamara Cissell, Community Health Director discussed the expanded Board of Health. The advertisement for three open positions on the Board will in the paper of record, Skamania County Pioneer on May 18th and 25th, 2022. An attachment A to Ordinance 2022-02 will be on the May 17th Board of County Commissioners agenda. The application window will close on June 7th at 1:00 p.m. and a workshop will be held the same day to discuss the applications received. On June 15, 2022, interviews with selected applicants will be held, with appointments on June 23, 2022. The Tribal Health Commission has been sent a letter asking for an appointment from them. The new Board of Health will be in place for the first meeting in July, which is scheduled for July 12th. She also discussed the latest COVID 19 case report, and availability of over-the-counter test kits.

Dr. Steven Krager, Deputy Health Officer reported on COVID 19 including the Omicron peak, vaccination and immunity, the rise in hospital rates, testing, self-tests, and age comparison for hospitalization. He also spoke about Avian Influenza. Philip Watness, Skamania County Pioneer how the Avian Influenza might affect the County Fair. If cases are known the birds should be left at home or separated. The doctor mentioned that Pacific and Spokane Counties have known cases of Avian Influenza at the time

Alan Peters, Environmental Health Director was not available for a report.

The meeting adjourned at 12:06 p.m.

SKAMANIA COUNTY BOARD OF HEALTH

Chair – Richard Mahar

Attest:

Commissioner – T.W. Lannen

Clerk of the Board of Health – Debbie Slack

Commissioner – Robert Hamlin

Aye _____
Nay _____
Abstain _____
Absent _____

COUNTY FACE SHEET FOR CONTRACTS/LEASES/AGREEMENTS

1. Contract Number _____

2. Contract Status: (Check appropriate box) Original Renewal Amendment

3. Contractor Information: Contractor: Clark County Public Health
Contact: Holly Barnfather
Title: Grants and Contracts Management Analyst
Address: PO Box 9825
Address: Vancouver, WA 98666
Phone: 564-397-8226
Email: cntyhealthgrantcontract@clark.wa.gov

4. Brief description of purpose of the contract and County’s contracted duties:
Contract with Clark County Public Health for Communicable Disease Prevention & Control and Healthy Communities/Chronic Disease Prevention services.

5. Term of Contract: From: November 1, 2021 To: June 30, 2022

6. Contract Award Process: (Check appropriate box)
General Purchase of materials, equipment or supplies - RCW 36.32.245 & 39.04.190

- Exempt (Purchase is \$2,500 or less upon order of the Board of Commissioners)
- Informal Bid Process (Formal Quotes between \$2,500 and \$25,000)
- Formal Sealed Bid Process (Purchase is over \$25,000)
- This contract was awarded under RCW 39.29 or Skamania County Code _____. Please provide a summary of the competitive process by which this contract was awarded or the exemption and why it applies. *Single source contractor for Public Health services*

Public Works Construction & Improvements Projects – RCW 36.32.250 & 39.04.155 (Public Works, B&G, Capital Improvements Only)

- Small Works Roster (PW projects up to \$200,000)
- Exempt (PW projects less than \$10,000 upon order of the Board of Commissioners)


7. Original Contract Amount: \$ 174,685 Source: PH Contracts
Future Budget Funds Committed: \$ Source: PH Contracts
TOTAL FUNDS COMMITTED: \$ 174,685

8. County Contact Person: Name: Allen Esaacson
Title: Data & Finance Manager

9. Department Approval: 
Department Head or Elected Official Signature

Special Comments:
Please email a signed pdf to Holly at cntyhealthgrantcontract@clark.wa.gov

COMMISSIONER'S AGENDA ITEM COMMENTARY

<u>SUBMITTED BY</u>	Community Health Department	Signature 
<u>AGENDA DATE</u>	BOH, 6/14/2022	
<u>SUBJECT</u>	Clark County contract for FPHS Services	
<u>ACTION REQUESTED</u>	BOH Signature	

SUMMARY/BACKGROUND

Contract with Clark County Public Health for Communicable Disease Prevention & Control and Healthy Communities/Chronic Disease Prevention services.

FISCAL IMPACT

\$174,685

RECOMMENDATION

Sign Contract at the next BOH meeting.

LIST ATTACHMENTS

Face Sheet
Contract

**INTERLOCAL AGREEMENT
HDC.1791**
between
CLARK COUNTY
P.O. Box 9825, Vancouver, WA 98666
and
SKAMANIA COUNTY
P.O. Box 790, Stevenson, WA 98648

Project: Skamania County FPHS Services
 Service Description: Communicable Disease Prevention & Control and Healthy Communities/Chronic Disease Prevention FPHS services to Skamania County.
 Contract Name: CCPH Skamania County FPHS Interlocal HDC.1791
 Contract Period: July 1, 2022 – June 30, 2022
 Total Contract Amount: \$174,685

Clark Contacts		
Program	Fiscal	Contract
See Exhibit A, Section 3	Kayla Mobley 564.397.8235 Kayla.Mobley@clark.wa.gov	Holly Barnfather 360.949.6965 GCT@clark.wa.gov

Agency Contacts		
Program	Fiscal	Contract
Tamara Cissell 509.427.3850 tamarac@co.skamania.wa.us	Allen Esaacson 509.427.3856 allene@co.skamania.wa.us	Allen Esaacson 509.427.3856 allene@co.skamania.wa.us

This contract for governmental services, where both parties are public agencies, pursuant to RCW 39.34.080 is entered into between Clark County, hereinafter referred to as “Clark,” and Skamania County, hereinafter referred to as “Agency.” Clark and Agency agree to all terms and conditions, exhibits, and requirements of this contract.

**SKAMANIA COUNTY BOARD
BOARD OF HEALTH:**

CLARK COUNTY:

Commissioner Date

Kathleen Otto, County Manager Date

Commissioner Date

APPROVED AS TO FORM ONLY:

Commissioner Date

Amanda Migchelbrink Date
Deputy Prosecuting Attorney

ATTEST:

Clerk of the Board

Adam Kick Date
Skamania County Prosecuting Attorney

TERMS AND CONDITIONS

1. Services. Shall perform services as set forth in Exhibit A.
2. Time. The contract shall be effective beginning July 1, 2022, and ending June 30, 2023. Clark reserves the right to extend the contract for five (5) one (1) year periods, with the same terms and conditions, by service of a written notice of its intention to do so prior to the contract termination date.
3. Compensation. Clark will submit an invoice to Agency each quarter for actual costs incurred that includes the contract number for reference. Agency shall pay Clark for performing said services upon receipt of an invoice. The parties mutually agree that in no event may the amount billing exceed \$174,685 without prior written approval.
4. Termination. Either party may terminate this Contract immediately upon any breach by either party in the duties as set forth in Contract. The waiver by either party of one or more breaches shall not be construed as a waiver of any subsequent breach or breaches. Either party may terminate this Contract without cause with ninety (90) days prior written notice.
5. Independent Contractor. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.
6. Indemnification / Hold Harmless. Agency shall defend, indemnify and hold Clark, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the negligent acts, errors or omissions of Agency in performance of this Contract, except for injuries and damages caused by the sole negligence of Clark. Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Agency, its officers, officials, employees, and volunteers, Agency's liability,

including the duty and cost to defend, hereunder shall be only to the extent of the Agency's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Agency's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this contract.

7. Wage and hour compliance. Both parties shall comply with all applicable provisions of the Fair Labor Standards Act and any other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall always save Agency free, clear and harmless from all actions, claims, demands and expenses arising out of said act and the rules and regulations that are or may be promulgated in connection therewith. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
8. Social Security and Other Taxes. Agency assumes full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, federal or state legislation that is now or may during the term of this contract be enacted as to all persons employed by the Clark in performance of the work pursuant to this contract and shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules and regulations that are now and may be promulgated in connection therewith.
9. Contract Documents: Other documents included in this contract include Exhibit A, Scope of Work, Exhibit B, Budget Summary, and Exhibit C, Business Associate Agreement. If there is a conflict between the provisions of these documents, the provisions of this contract shall control.
10. Equal Employment Opportunity: Agency and Clark will not discriminate against any employee or applicant for employment because of race, color, religion, gender, gender identity, sexual orientation, age, disability, marital status or national origin.
11. Changes: Either party may, from time to time, require changes to contract total or the scope of the services to be performed hereunder. Such changes including any increase or decrease in the amount of the Clark's compensation which are mutually agreed upon by and between Clark and the Agency, shall be in writing, signed by both parties and incorporated in the written amendments to the contract.

12. Public Records Act: Notwithstanding the provisions of this contract to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, RCW Chapter 42.56, as may hereafter be amended, each party agrees to maintain all records constituting public records and to produce or assist both parties in producing such records, within the time frames and parameters set forth in state law. Each party further agrees that upon receipt of any written public record request from the public, shall, within two business days, notify the other party of receipt of the request by providing a copy of the request to the other party's Public Records Officer.
13. Governing Law. This contract shall be governed by the laws of the State of Washington. Venue for any litigation shall be in Superior Court for the State of Washington in Clark County, Washington.
14. Confidentiality. With respect to all information relating to each party that is confidential and clearly so designated, each party agrees to keep such information confidential. Each party shall comply with all applicable provisions of RCW 70.24, 70.28, and any other state law applicable to confidentiality of information.
15. Conflict of Interest. Both parties' covenants that it has had no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder. Both parties' further covenants that no person having such interest shall be employed by or shall perform services as an independent contractor with it, in the performance of this contract.
16. Insurance. Each party shall each be responsible for providing worker's compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.
17. Consent and Understanding. This contract contains a complete and integrated understanding of the contract between the parties and supersedes any understandings, contract, or negotiations, whether oral or written, not set forth herein or in written amendments hereto duly executed by both parties.
18. Force Majeure. Neither party will be liable for failure or delay to perform obligations under this contract, which have become practicably impossible because of circumstances beyond the

reasonable control of the applicable party. Such circumstances include without limitation natural disasters or acts of God; acts of terrorism; labor disputes or stoppages; war; government acts or orders; epidemics, pandemics, or outbreak of communicable disease; quarantines; national or regional emergencies; or any other cause, whether similar in kind to the foregoing or otherwise, beyond the party's reasonable control. Written notice of a party's failure or delay in performance due to force majeure must be given to the other party no later than five (5) business days following the force majeure event commencing, which notice shall describe the force majeure event and the actions taken to minimize the impact thereof. All delivery dates under this contract affected by force majeure shall be tolled for the duration of such force majeure. The parties hereby agree, when feasible, not to cancel but reschedule the pertinent obligations and deliverables for mutually agreed dates as soon as practicable after the force majeure condition ceases to exist.

19. Access to Records. Each party shall have reasonable access to the books, documents, and other records of the other which are related to this agreement for the purpose of examination, copying and audit unless otherwise limited by law.
20. Severability. If any provision of this contract is held invalid, the remainder would then continue to conform to the terms and requirements of applicable law.
21. COVID-19 Vaccination Requirement. Clark has reviewed and understands Contractor's obligations as set forth in Proclamation 21-14 – COVID-19 Vaccination Requirement (dated August 9, 2021), as amended by Proclamation 21-14.1 – COVID-19 Vaccination Requirement (dated August 20, 2021). Clark has developed a COVID-19 Vaccination Verification Plan that complies with the above-referenced Proclamation and has operational procedures in place to ensure that any contract activities that occur on-site at Agency premises (other than only for a short period of time during a given day and where any moments of close proximity to others on-site will be fleeting – e.g., a few minutes for deliveries) that are performed by Clark personnel will be performed by personnel who are fully vaccinated or properly exempted as required by the above-referenced Proclamation. Clark will provide to Agency, upon request, COVID-19 Vaccination Verification Plan and related records, except as prohibited by law, and will cooperate with any investigation or inquiry pertaining to the same.

**EXHIBIT A
STATEMENT OF WORK**

1. Background/Overview

Clark County Public Health to assist in supporting additional Public Health staff which includes the following: Epidemiologist, Public Health Nurse, Program Coordinator, and Office Assistant. These positions will support Communicable Disease Prevention & Control and Chronic Disease Prevention services.

2. Scope of Work

2.1. Communicable Disease Prevention & Control Services

2.1.1. Communicable Disease Investigations (general CD, STD, COVID-19)

2.1.1.1. General CD investigations.

2.1.1.1.1. Respond to provider disease-specific questions.

2.1.1.1.2. Conduct case and contact investigations as applicable.

2.1.1.1.3. Provide control measure recommendations to facilities where exposure occurred.

2.1.1.1.4. Conduct outbreak investigations and response follow-up.

2.1.1.1.5. Conduct facility investigations (including schools, businesses, and other congregate settings as appropriate).

2.1.1.2. STI investigations (GC, CT, Syphilis, and HIV, surveillance only for herpes).

2.1.1.2.1. Respond to provider disease-specific questions.

2.1.1.2.2. Conduct case and contact investigations as applicable.

2.1.1.2.3. Conduct syphilis &/or HIV field testing.

2.1.1.3. COVID-19 facility investigations.

2.1.1.3.1. Respond to COVID-specific questions.

2.1.1.3.2. Conduct facility investigations (schools, businesses, and other entities as appropriate).

2.1.1.4. Operational support.

2.1.1.4.1. Review and update CD-related policies/procedures/protocols, including foodborne and waterborne illness investigation processes, in coordination with Skamania staff.

2.1.1.4.2. Assist with developing and implementing school STI/CD outreach and education.

2.1.2. TB Case Management

2.1.2.1. Respond to provider questions.

2.1.2.2. Support suspect case evaluation including testing as needed.

2.1.2.3. Provide case management services for all active cases of TB disease:

2.1.2.3.1. Electronic daily observed therapy (eDOT)/ daily observed therapy (DOT)

2.1.2.3.2. Provide medications

2.1.2.4. Conduct contact investigations for infectious cases.

2.1.3. Illness Complaint Follow-up & Outbreak Investigation

- 2.1.3.1. Conduct illness-compliant interviews.
- 2.1.3.2. Provide recommendations to Food or Water Safety teams on the need for an Environmental Assessment or recommendation for a prioritized inspection. Coordinate with EPH division(s) as appropriate.
- 2.1.3.3. Provide outbreak investigation support and epidemiology services.

2.1.4. Epidemiology Support

- 2.1.4.1. State surveillance & investigation-related systems management and data stewards (may include WDRS, PHIMS, and other data systems).
- 2.1.4.2. Routine data audits and data clean-up.
- 2.1.4.3. Routine and ad hoc epidemiology product generation.
- 2.1.4.4. Outbreak data management support.

2.1.5. Vaccine Support

- 2.1.5.1. Provide immunizations within Skamania County schools, health care providers, and other community partners.

2.1.6. Additional nursing support

- 2.1.6.1. In coordination with Health Officer, assist with yearly assessment and annual review of department's standing orders, policies, and procedures related to community health.
- 2.1.6.2. Assist with conducting yearly community health assessment.
- 2.1.6.3. Assist with the development and revisions to clinical competency skills assessment tools and perform evaluation clinical department procedures as needed.

2.1.7. Positions

- 2.1.7.1. Epidemiologists
- 2.1.7.2. Program Managers
- 2.1.7.3. Public Health Nurses
- 2.1.7.4. Community Health Worker
 - 2.1.7.4.1. Costs will only be incurred for this position to provide in-person DOT services in the event of a TB case.
- 2.1.7.5. Disease Intervention Specialists

2.2. Healthy Communities

2.2.1. Health Assessment and Evaluation Services

- 2.2.1.1. Program Coordinator will work with regional stakeholders to provide the following services:
 - 2.2.1.1.1. Conduct regular, comprehensive community health assessments.
 - 2.2.1.1.2. Identify health priorities based on information collected from the CHA, including analysis of health disparities, health inequities, and the social determinants of health.
 - 2.2.1.1.3. Facilitate and participate in the collaborative development of a Community Health Improvement Plan (CHIP), an implementation

cycle that devises, implements, and evaluates the impact of health improvement strategies for priority health issues identified in the CHA.

3. Clark County Program Contacts

Communicable Disease Prevention & Control Services	
General CD Investigations and Operation Support, TB Case Management, Illness Complaint Follow-up & Outbreak Investigation, Epidemiology Support, Vaccine Support, Additional Nursing Support	Monica Czapla Program Manager II 564.397.8002 Monica.Czapla@clark.wa.gov
COVID-19 Facility Investigations	Dana Nguyen BSN, RN, CIC Program Manager II 564.397.7272 Dana.Nguyen@clark.wa.gov
STI Investigations	Rachel Vinson BSN, RN Program Manager I 360.949.6146 Rachel.Vinson@clark.wa.gov

Healthy Communities	
Health Assessment and Evaluation	Andrea Pruett, Program Manager III 564.397.8112 Andrea.Pruett@clark.wa.gov

EXHIBIT B BUDGET SUMMARY

POSITION DESCRIPTION	ESTIMATED FTE	AMOUNT
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Epidemiologist	0.40	\$36,226
Program Manager	0.05	\$7,779
Public Health Nurse II	0.20	\$17,785
Office Assistant II	0.25	\$14,123
Community Health Worker	0.10	\$2,574
Disease Intervention Specialist	0.25	\$18,100
Program Coordinator I	0.50	\$42,630
Travel/Mileage		\$2,000
Indirect Expense (23.7%)		\$33,468
Total		\$174,685

**EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT**

Recitals

A. Business Associate provides certain legal services to Covered Entity (the "Services") which sometimes may involve (i) the use or disclosure of Protected Health Information (as defined below) by Business Associate, (ii) the disclosure of Protected Health Information by Covered Entity (or another business associate of Covered Entity) to Business Associate, or (iii) the creation, receipt, maintenance, or transmission of Electronic Protected Health Information (as defined below) by Business Associate. Accordingly, the use, disclosure, transmission, or maintenance of Protected Health Information by Business Associate is subject to the privacy regulations (the "HIPAA Privacy Regulations") and the security regulations (the "HIPAA Security Regulations") promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and 45 C.F.R. Parts 160 and 164 with respect to such Services. This Agreement is intended to document the business associate assurances required by the HIPAA Privacy Regulations (at 45 C.F.R. 164.504(e)), and the HIPAA Security Regulations (at 45 C.F.R. 164.314(a)).

B. This Agreement will govern the terms and conditions under which Covered Entity may disclose or have disclosed to Business Associate, and Business Associate may create, use, disclose, maintain, transmit or receive, Protected Health Information on behalf of Covered Entity. This Agreement will also govern the terms and conditions under which Covered Entity may disclose or have disclosed to Business Associate, and Business Associate may create, receive, maintain or transmit, EPHI on behalf of Covered Entity.

Agreement

1. **Definitions.** Capitalized terms used in this Agreement, but not otherwise defined in this Agreement, shall have the same meanings as those terms in the HIPAA Privacy Regulations and the HIPAA Security Regulations. Unless otherwise stated, a reference to a "Section" is to a Section in this Agreement. For purposes of this Agreement, the following terms shall have the following meanings.

1.1 **Breach.** "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. 164.402.

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

1.3 **Electronic Protected Health Information or EPHI.** "Electronic Protected Health Information" or "EPHI" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.4 **Individual.** "Individual" shall mean the person who is the subject of Protected Health Information as provided in 45 C.F.R. 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

1.5 **Individually Identifiable Health Information.** "Individually Identifiable Health Information" shall have the same meaning as the term "individually identifiable health information" in 45 C.F.R. 160.103.

1.6 Protected Health Information or PHI. “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 Business Associate from or on behalf of Covered Entity.

1.7 Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. 164.103.

1.8 Secretary. “Secretary” shall mean the Secretary of the federal Department of Health and Human Services or that person’s designee.

1.9 Security Incident. “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. 164.304.

1.10 Unsecured Protected Health Information. “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

2. Permitted Uses and Disclosures by Business Associate.

2.1 General. Except as otherwise specified in this Agreement, Business Associate may use or disclose PHI to perform its obligations for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the HIPAA Privacy Regulations if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.

2.2 Other Permitted Uses. Except as otherwise limited by this Agreement, Business Associate may use PHI it receives or creates in its capacity as a business associate of Covered Entity, if necessary:

2.2.1 for the proper management and administration of Business Associate;

2.2.2 to carry out the legal responsibilities of Business Associate;

2.2.3 to provide Data Aggregation services to Covered Entity which relate to the health care operations of Covered Entity in accordance with 65 F.R. 82505-06; or

2.2.4 to de-identify the PHI in accordance with 45 CFR 164.514(a)-(c).

2.3 Other Permitted Disclosures. Except as otherwise limited by this Agreement, Business Associate may disclose to a third-party PHI it receives or creates in its capacity as a business associate of Covered Entity for the proper management and administration of Business Associate, provided that:

2.3.1 The disclosure is required by law; or

2.3.2 Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that (i) the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and (ii) the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 De-Identified Information. Health information that has been de-identified in accordance with the requirements of 45 C.F.R. 164.514 and 164.502(d) and is therefore not Individually Identifiable Health Information (“De-Identified Information”) is not subject to the

provisions of this Agreement. Covered Entity may disclose PHI to Business Associate to use for the purpose of creating De-Identified Information, whether or not the De-Identified Information is to be used by Covered Entity.

3. Obligations and Activities of Business Associate Regarding PHI.

3.1 Limitations on Uses and Disclosures. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.

3.2 Safeguards. Business Associate will use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI other than as provided for by this Agreement.

3.3 Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

3.4 Reporting. Business Associate will report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware.

3.5 Agents and Subcontractors. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate will ensure that any agent, including any subcontractor, to whom Business Associate provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

3.6 Access. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity, Business Associate will make such PHI available to Covered Entity or, as directed by Covered Entity to an Individual, that is necessary for Covered Entity to respond to Individuals' requests for access to PHI about them in accordance with 45 C.F.R. 164.524. Business Associate will provide such PHI in an electronic format upon request by Covered Entity unless it is not readily producible in such format in which case Business Associate will provide Covered Entity a standard hard copy format.

3.7 Amendment of PHI. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity or an Individual, Business Associate will make any requested amendment(s) or correction(s) to PHI in accordance with 45 C.F.R. 164.526.

3.8 Disclosure Documentation. Business Associate will document its disclosures of PHI and information related to such disclosures as would be required for 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.

3.9 Accounting of Disclosures. Within thirty (30) days of receiving a request from Covered Entity, Business Associate will provide to Covered Entity information collected in accordance with Section 3.8 of this Agreement, as necessary to permit Covered Entity to make an accounting of disclosures of PHI about an Individual in accordance with 45 C.F.R. 164.528.

3.10 Access to Business Associate's Internal Practices. Except to the extent that it violates or interferes with attorney-client privilege, the duty of client confidentiality, or the applicable rules of professional responsibility, Business Associate will make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of (a) PHI received from, or created or received by Business Associate on behalf of, Covered Entity; and (b) EPHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, available to the Secretary or to Covered Entity, in a time and manner designated by the Secretary or reasonably specified by Covered Entity, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Privacy Regulations and HIPAA Security Regulations.

3.11 Breach Notification. Business Associate, following the discovery of a Breach of Unsecured Protected Health Information, shall notify Covered Entity of such breach. Except as otherwise required by law, Business Associate shall provide such notice without unreasonable delay, and in no case later than thirty (30) calendar days after discovery of the Breach.

3.11.1 Notice to Covered Entity required by this Section 3.11 shall include: (i) to the extent possible, the names of the individual(s) whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Breach; (ii) a brief description of what happened including the date of the Breach and the date of the discovery of the Breach, if known; (iii) a description of the types of Unsecured Protected Health Information that were involved in the Breach; (iv) a brief description of what Business Associate is doing or will be doing to investigate the Breach, to mitigate harm to the individual(s), and to protect against further Breaches; and (v) any other information that Covered Entity determines it needs to include in notifications to the individual(s) under 45 C.F.R. 164.404(c).

3.11.2 After receipt of notice, from any source, of a Breach involving Unsecured Protected Health Information used, disclosed, maintained, or otherwise possessed by Business Associate or of a Breach, involving Unsecured Protected Health Information, for which the Business Associate is otherwise responsible, Covered Entity may in its sole discretion (i) require Business Associate, at Business Associate's sole expense, to use a mutually agreed upon written notice to notify, on Covered Entity's behalf, the individual(s) affected by the Breach, in accordance with the notification requirements set forth in 45 C.F.R. 164.404, without unreasonable delay, but in no case later than sixty (60) days after discovery of the Breach; or (ii) elect to provide notice to the individual(s) affected by the Breach.

4. Obligations of Covered Entity.

4.1 Requested Restrictions. Covered Entity shall notify Business Associate, in writing, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, which permits an Individual to request certain restrictions of uses and disclosures, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.2 Changes in or Revocation of Permission. Covered Entity will notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.

4.3 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Regulations and HIPAA Security Regulations if done by Covered Entity, except to the extent that Business Associate will use or disclose PHI for Data Aggregation or management and administrative activities of Business Associate.

5. Security Restrictions on Business Associate.

5.1 General. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security Regulations.

5.2 Agents; Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom Business Associate provides EPHI agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of such EPHI.

5.3 Reporting of Security Incidents. Business Associate shall report to Covered Entity any Security Incident affecting EPHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, of which Business Associate becomes aware. This Section constitutes notice to Covered Entity of routine and ongoing attempts to gain unauthorized access to Business Associate's information systems (each an "Unsuccessful Attack"), including but not limited to pings, port scans, and denial of service attacks, for which no additional notice shall be required provided that no such incident results in unauthorized access to Electronic PHI.

5.4 HIPAA Security Regulations Compliance. Business Associate agrees to comply with Subpart C of 45 CFR 164.308, 164.310, 164.312, and 164.316.

6. Term and Termination.

6.1 Term. This Agreement shall take effect on the Effective Date (as defined above), and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section 6.

6.2 Termination for Cause. If Covered Entity determines that Business Associate has breached a material term of this Agreement, Covered Entity will provide written notice to Business Associate which sets forth Covered Entity's determination that Business Associate breached a material term of this Agreement, and Covered Entity may:

6.2.1 Provide written notice to Business Associate which provides an opportunity for Business Associate to cure the breach or end the violation, as applicable. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, then Covered Entity may immediately thereafter terminate this Agreement; or

6.2.2 Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

6.2.3 If neither termination nor cure are feasible as provided in Sections 6.2.1 and 6.2.2 of this Agreement, Covered Entity will report the violation to the Secretary.

6.3 Effect of Termination.

6.3.1 Except as provided in Section 6.3.2 of this Agreement, upon termination of this Agreement, for any reason, Business Associate will return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision also applies to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of the PHI.

6.3.2 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate will provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon reasonable determination that return or destruction of PHI is infeasible, Business Associate will extend the protections of this Agreement and continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, for so long as Business Associate retains such PHI.

7. Qualified Service Organization Agreement. Covered Entity and Business Associate hereby acknowledge that Business Associate and its agents and employees have, as applicable, complied, and will comply, with 42 USC 290dd-2 and 42 CFR Ch. 1, part 2, 2.11 et seq. (the "Federal Drug and Alcohol Regulations") in that:

7.1 The parties acknowledge that if Business Associate receives, processes, reviews, or otherwise deals with any Covered Entity patient records during the course of the Services Business Associate and its employees will be providing to Covered Entity, that each and every one of said employees will be fully bound by the Federal Drug and Alcohol Regulations;

7.2 Each of Business Associate's employees and agents will maintain Covered Entity's patient identifying information in accordance with federal and state confidentiality rules governing drug and alcohol treatment records;

7.3 Each of Business Associate's employees and agents will comply, as applicable, with the limitations on disclosure, redisclosure and use set forth in 42 CFR Ch. 1, part 2, 2.16 and 2.53; and

7.4 If necessary, each of Business Associate's employees and agents will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Federal Drug and Alcohol Regulations.

8. Miscellaneous.

8.1 Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy Regulations or the HIPAA Security Regulations means the section as in effect or as amended.

8.2 Amendment. If any new state or federal law, rule, regulation, or policy, or any judicial or administrative decision, affecting the use or disclosure of PHI is enacted or issued, including but not limited to any law or regulation affecting compliance with the requirements of the HIPAA Privacy Regulations or the HIPAA Security Regulations, the parties agree to take such action in a timely manner and as is necessary for Covered Entity and Business Associate to comply with such law, rule, regulation, policy or decision. If the parties are not able to agree on the terms of such an amendment, either party may terminate this Agreement on at least thirty (30) days' prior written notice to the other party.

8.3 Survival. The respective rights and obligations of Business Associate under Section 6.3 of this Agreement ("Effect of Termination") shall survive the termination of this Agreement.

8.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the Federal Drug and Alcohol Regulations. The section and paragraph headings of this Agreement are for the convenience of the reader only and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves.

8.5 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 Business Associate

and Covered Entity and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

8.6 Assignment. This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld; provided that no such consent shall be required for either party's assignment or transfer of this Agreement in connection with a sale or transfer of all or substantially all of the business or assets of the assigning party. This Agreement shall be binding on and inure to the benefit of the parties hereto and their permitted successors and assigns.

8.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior communications, representations, and agreements, oral or written, of the parties with respect to its subject matter.

8.8 Severability and Waiver. The invalidity of any term or provision of this Agreement will not affect the validity of any other provision. Waiver by any party of strict performance of any provision of this Agreement will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision of this Agreement.

8.9 Counterparts. This Agreement may be executed in multiple counterparts, all of which together will constitute one agreement, even though all parties do not sign the same counterpart.