

TULARE COUNTY AGREEMENT NO. 32026

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF TULARE  
AND  
COLLEGE OF THE SEQUOIAS**

**THIS MEMORANDUM OF UNDERSTANDING ("MOU")** is entered into as of December 17, 2024 between the **COUNTY OF TULARE**, a political subdivision of the State of California ("COUNTY"), and **COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT ("COLLEGE")**. COUNTY and COLLEGE are each a "PARTY" and together are the "PARTIES" to this MOU to provide an Internship Program (PROGRAM) for students (INTERNS) within the Department of Social Science Divisions of COLLEGE. This MOU will establish and/or ratify existing relationships and procedures between PARTIES effective the date of execution.

**A. WHEREAS** COLLEGE is committed to serving the community through various means, including providing established internship programs for students to gain work experience through field education, service learning, research, and other activities that integrate academic study with practical experience.

**B. WHEREAS** COLLEGE needs the appropriate space and equipment to offer PROGRAM and COUNTY has said facilities.

**C. WHEREAS** providing PROGRAM to INTERNS serves as a mutual benefit of COLLEGE and COUNTY hereto.

**D. NOW, THEREFORE** in consideration of the mutual promises set forth below, PARTIES agree as follows:

**I. COUNTY's Responsibilities:**

- A. Provide a supervisor who agrees to regularly meet with and facilitate the work/learning experience; provide support; review progress on assigned tasks; verify service hours; provide feedback; and oversee the safety and supervision of INTERNS while on site.
- B. Provide INTERNS with an orientation that includes a site tour and introduction to staff; provide INTERNS with written information detailing work assignments and how to keep track of work hours; an overview of the department operations and a description of any potential characteristics and/or risks associated with the department's operations, services, and/or clients; training on safety and emergency policies and procedures.
- C. Provide the setting, including the workspace, equipment, and materials necessary for PROGRAM; provide INTERNS with appropriate training on proper equipment use.
- D. COUNTY may request that COLLEGE remove any INTERN from PROGRAM whose performance falls below the level required to maintain appropriate practice standards; or whose conduct inhibits desirable relationships COUNTY has in place; and/or fails to follow the COUNTY's administrative policies, procedures, and regulations. COLLEGE agrees to remove such INTERNS upon receiving written notification from COUNTY.
- E. Provide INTERNS with a Live-Scan fingerprinting service, including paying fees for such service, to conduct background checks.
- F. The COUNTY will notify the appropriate COLLEGE program coordinator in writing, within 24 hours of any unusual and/or uncontrolled health & safety hazards and/or incidents of violence that occur at the COUNTY during the contract period.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF TULARE  
AND  
COLLEGE OF THE SEQUOIAS**

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**II. COLLEGE's Responsibilities:**

- A. Plan and provide PROGRAM offered to INTERNS under this MOU, in consultation and coordination with COUNTY's representatives.
- B. Provide periodic conferences between appropriate representatives from COLLEGE and COUNTY to evaluate PROGRAM.
- C. Designate the number of INTERNS who are enrolled in COLLEGE to PROGRAM, as mutually agreed upon by both COLLEGE and COUNTY.
- D. Oversee PROGRAM given at COUNTY, which includes providing supervisory instructors, if applicable, and maintaining all attendance and academic records of participating INTERNS.
- E. Advise each INTERN participating in PROGRAM about their responsibility to adhere to COUNTY policies, procedures, regulations, and PROGRAM requirements and restrictions, as mutually agreed upon by COUNTY and COLLEGE.
- F. Certify to COUNTY, at the time each INTERN first reports at COUNTY, that INTERN has complied with the following:
  - a. Completed any training necessary for participation in the PROGRAM at COUNTY. The COLLEGE will maintain records documenting this training.
  - b. If applicable to the PROGRAM, the COLLEGE shall require INTERNS to show proof that each INTERN has been immunized against common communicable diseases. This includes proof of immunizations for varicella, rubella, tetanus, and Hepatitis B (if student is to provide direct patient care).
  - c. If applicable to the PROGRAM, complete a Tuberculosis test that resulted in a negative tuberculin skin test or negative chest x-ray.

**III. INTERNS Responsibilities:**

- A. Participate in all training required by COUNTY.
- B. Exhibit professional, ethical, and appropriate behavior when on COUNTY property and/or when participating in PROGRAM.
- C. Complete all assigned tasks and responsibilities in a timely and efficient manner.
- D. Abide by COUNTY's rules, including the confidentiality of COUNTY's proprietary information, records, and information concerning its clients.
- E. Agree to review and sign the following:
  - a. Tulare County Internship Program Agreement
  - b. Personnel Rule 14: Equal Employment/Discrimination/Sexual Harassment Policy
  - c. Personnel Rule 20: Dress Code Policy
  - d. Personnel Rule 21: Drug-Free Workplace Policy
  - e. Tulare County Probation Department HIPAA Policy
  - f. Tulare County Probation Department Confidentiality Policy
  - g. Tulare County Information Technology (IT) Policy
  - h. Tulare County Policies on Preventing Violence in the Workplace and Code of Safe Practices
  - i. Tulare County Probation Department policy on mandated reporting

TULARE COUNTY AGREEMENT NO. \_\_\_\_\_

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF TULARE  
AND  
COLLEGE OF THE SEQUOIAS

---

**IV. General Provisions**

**Term:** This MOU shall be effective as of September 1, 2024, and shall terminate on June 30, 2029. This MOU may be terminated at any time by the written agreement or upon thirty (30) days advance written notice by one PARTY to another, provided that in no event shall termination take effect with respect to currently enrolled INTERNS, who shall be permitted to complete their training for any semester in which termination would otherwise occur. This provision shall not operate to prevent the COUNTY from exercising its ability to remove an INTERN pursuant to Section I, E, of this MOU.

- A. **Indemnification:** Each PARTY (as "Indemnitor") shall hold harmless, defend, and indemnify the other PARTY ("Indemnitee") and its respective agents, officers, volunteers, and employees from and against any liability, claims, actions, costs, damages, or losses of any kind, including death or injury to any person and/or direct, indirect, or consequential loss or damage to property, arising out of the activities of Indemnitor or its agents, officers, employees, and independent subcontractors under this MOU, including any claims made against Indemnitee alleging civil rights violations by Indemnitor under Government Code section 12900, et seq. (California Fair Employment and Housing Act). This indemnification obligation will continue beyond the term of this MOU as to any acts or omissions occurring under this MOU or any extension of this MOU. This paragraph will survive the expiration or termination of this MOU.
- B. **Insurance:** Prior to approval of this MOU by COUNTY, COLLEGE shall provide evidence of insurance as set forth in the attached Exhibit A, which outlines the minimum scope, specifications, and limits of insurance required under this MOU. Additional insured endorsements required as outlined in Exhibit A shall not be used to reduce limits available to COUNTY as an additional insured from the COLLEGE's full policy limits. Insurance policies shall not be used to limit liability or to limit the indemnification provisions and requirements of this or act in any way to reduce the policy coverage and limits available from the insurer(s). Failure to maintain or renew coverage or to provide evidence of renewal may be considered a material breach of this MOU.
- C. **Educational Purpose:** PARTIES expressly understand and agree that INTERNS enrolled in PROGRAM are in attendance for educational purposes only and are not considered employees of either COUNTY or COLLEGE for any purposes, including, but not limited to, compensation for services, welfare, and pension benefits. INTERNS will participate in PROGRAM in exchange for course credit and/or externship hours, with the understanding that participation in PROGRAM is not a guarantee of employment with COUNTY and does not confer any employment rights to INTERNS.
- D. **Intern Supervision:** COUNTY shall permit INTERNS to perform services for clients only when under the supervision of assigned COUNTY personnel. INTERNS shall assist staff, perform assignments, and participate in research, etc. INTERNS are to be regarded as student interns, not employees and are not to replace the COUNTY's staff. INTERNS should have no expectation of employment by COUNTY after completion of PROGRAM.
- E. **Workers' Compensation Insurance for Interns:** INTERNS participating in PROGRAM will be considered as volunteers for COUNTY, and COUNTY agrees to provide workers' compensation insurance coverage to INTERNS for any injury or disease arising out of an INTERN's participation in PROGRAM.
- F. **Intern Professional Liability Insurance:** COLLEGE acknowledges and agrees that it will be responsible for procuring and maintaining in force professional liability insurance for each INTERN participating in PROGRAM during the full period of any internship with COUNTY. Professional Liability Insurance shall be in amounts reasonably necessary to protect INTERN against liability arising from any and all negligent acts or incidents caused by INTERN. Coverage under such professional liability insurance shall not be less than

TULARE COUNTY AGREEMENT NO. \_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF TULARE  
AND  
COLLEGE OF THE SEQUOIAS**

---

one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) in the aggregate. Such coverage is to be obtained from a carrier rated A or better by AM Best and shall be provided to COUNTY upon request.

- G. **Right to use Name or Logo:** Nothing contained in this MOU confers on either PARTY the right to use the other PARTY's name or logo without prior written permission or constitutes an endorsement of any commercial product or service by COLLEGE.
- H. **No Monetary Obligation:** COLLEGE and COUNTY have no monetary obligation to each other.
- I. **No Employment Relationship Intended:** This MOU is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, landlord/tenant, or association between COLLEGE and COUNTY and their employees, INTERNS, or agents, but rather is an MOU by and between two independent parties. Duties performed by an INTERN are not performed as an employee of COUNTY but rather in fulfillment of the academic requirements of his/her educational experience and are performed under field supervision by COUNTY personnel. COLLEGE acknowledges that nothing in this MOU shall be construed to confer any right upon the COLLEGE or COLLEGE Personnel to participate in, control, or direct operations at COUNTY. As COLLEGE and/or INTERNS are not COUNTY employees, no compensation will be exchanged between the COUNTY and COLLEGE. COLLEGE is responsible for paying any and all applicable required state and federal taxes for its employees. In particular, COUNTY will not:
  - a. Make state or federal unemployment insurance contributions on COLLEGE's behalf
  - b. Make disability insurance contributions on behalf of COLLEGE
  - c. Obtain unemployment compensation insurance on behalf of COLLEGE
  - d. Notwithstanding this MOU, COUNTY shall have the right to monitor and evaluate the performance of COLLEGE to ensure compliance with this MOU
- J. **Health Insurance Portability and Accountability Act (HIPAA)**
  - 1. COLLEGE shall comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement, as set forth in Exhibit B attached.
  - 2. At termination of this MOU, COLLEGE shall, if feasible, return or destroy all protected health information received from, or created or received by, COLLEGE on behalf of COUNTY that COLLEGE still maintains in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protection of this MOU to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information feasible.
  - 3. COUNTY may immediately terminate this MOU if COUNTY determines that COLLEGE has violated a material term of this Section IV.K.
- K. **Amendments:** This MOU may not be altered unless both PARTIES agree in writing. PARTIES agree to follow all applicable federal, state, and local laws and regulations, including but not limited to laws prohibiting discrimination and harassment. Additionally, this MOU is not legal and binding upon any of the PARTIES concerned until signed on behalf of the Trustees by COLLEGE, and COUNTY.



TULARE COUNTY AGREEMENT NO. \_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF TULARE  
AND  
COLLEGE OF THE SEQUOIAS**

- L. **Notices:** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission, or sent by first-class mail, postage prepaid and addressed as follows:

**COUNTY:**

Marichu Moles, Fiscal Manager  
3241 West Noble Avenue  
Visalia, CA 93277-1841  
Phone No. (559) 608-9005  
Fax No. (559) 370-6288

**With a Copy to:**

COUNTY ADMINISTRATIVE OFFICE  
2800 West Burrell Avenue  
Visalia, CA 93291-4582  
Phone No. (559) 636-5005  
Fax No. (559) 733-6318

**COLLEGE OF THE SEQUOIAS**

Brent Calvin  
Superintendent/President  
915 S. Mooney Blvd.  
Visalia, CA 93277  
Phone No. (559) 730-3745  
[BrentC@cos.edu](mailto:BrentC@cos.edu)

- M. **Compliance with Law:** COLLEGE must provide services in accordance with applicable Federal, State, and local laws, regulations, and directives. With respect to COLLEGE's employees, COLLEGE must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, social security, disability insurance, workers' compensation insurance, and discrimination in employment.
- N. **Governing Law:** This MOU shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The PARTIES agree that this contract is made in and shall be performed in Tulare County, California.
- O. **Conflict of Interest:**
1. PARTIES will meet as necessary and/or COLLEGE agrees to immediately notify COUNTY about any known conflicts so that a mutually beneficial resolution can be determined.
  2. At all times during the performance of this MOU, COLLEGE must comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations, and laws previously referenced include but are not limited to, prohibitions against any public officer or employee, including COLLEGE for this purpose, from making any decision on behalf of COUNTY in which the officer, employee, or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee, or consultant/contractor participates in or influences any COUNTY decision that has the potential to confer any pecuniary benefit on COLLEGE or any business firm in which COLLEGE has an interest, with certain narrow exceptions.
  3. COLLEGE agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interest laws, it will immediately inform COUNTY and provide all information needed for the resolution of this question.
- P. **Assignment/Subcontracting:** Unless otherwise provided in this MOU, no part of this MOU may be assigned or subcontracted by COLLEGE without the prior written consent of COUNTY, which consent COUNTY may grant, delay, deny, or condition in its absolute discretion.
- Q. **Further Assurances:** Each PARTY will execute any additional documents and perform any further acts that may be reasonably required to affect the purposes of this MOU.
- R. **Construction:** This MOU reflects the contributions of all PARTIES and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

TULARE COUNTY AGREEMENT NO. \_\_\_\_\_

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF TULARE  
AND  
COLLEGE OF THE SEQUOIAS

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- S. **Headings:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.
- T. **No Third-Party Beneficiaries Intended:** Unless specifically set forth, PARTIES to this MOU do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
- U. **Waivers:** The failure of either PARTY to insist on strict compliance with any provision of this MOU will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either PARTY of either performance or payment will not be considered a waiver of any preceding breach of the MOU by the other PARTY.
- V. **Exhibits and Recitals:** The recitals and the exhibits to this MOU are fully incorporated into and are integral parts of this MOU.
- W. **Conflict with Laws or Regulations/ Severability:** This MOU is subject to all applicable laws and regulations. If any provision of this MOU is found by any court or other legal authority or is agreed by PARTIES to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the MOU to either PARTY is lost, then the MOU may be terminated at the option of the affected PARTY. In all other cases, the remainder of the MOU will continue in full force and effect.


TULARE COUNTY AGREEMENT NO. \_\_\_\_\_

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF TULARE  
AND  
COLLEGE OF THE SEQUOIAS

THE PARTIES, having read and considered the above provisions, indicate their MOU by their authorized signatures below.

COLLEGE OF THE SEQUOIAS

Date: 11/18/2024

By   
Ron Ballesteros-Perez (Nov 18, 2024 09:59 PST)

Print Name Ron Ballesteros-Perez

Title Vice President, Administrative Services

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

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

[Pursuant to Corporations Code section 313, County policy requires that contracts with a **Corporation** be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities) unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a **Limited Liability Company** be signed by at least two managers unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date: 12/17/2024

By   
Chair, Board of Supervisors

ATTEST: JASON T. BRITT  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By   
Deputy Clerk



COUNTY COUNSEL Approved as to Form

By David J. Ganez 12/3/2024  
Deputy

Matter # 20241656

**EXHIBIT A**  
**PROFESSIONAL SERVICES CONTRACTS**  
**INSURANCE REQUIREMENTS**

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Commercial General Liability coverage of \$1,000,000 on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury (occurrence Form CG 00 01). If a general aggregate applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of no less than \$1,000,000 per accident for bodily injury and property damage. If an annual aggregate applies it must be no less than 2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate

1. If any of the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:
  - a. *The COUNTY OF TULARE, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations*



*performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.*

- b. For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance at least as broad as ISO CG 20 01 01 13 as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
- c. CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of the CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.*
- d. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled, except after written notice has been provided to the COUNTY.*

- 3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the COUNTY Risk Manager for approval.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements affecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

TULARE COUNTY AGREEMENT NO. \_\_\_\_\_

WAIVERS:

I represent and attest that I am a person authorized to make representations on behalf of the CONTRACTOR, and represent the following:

(mark X if applicable)

☐

Automobile Exemption: I certify that \_\_\_\_\_ does not own nor use vehicles in the performance of the agreement for which this insurance requirement is attached.

☐

Workers' Compensation Exemption: I certify that \_\_\_\_\_ is not required to carry workers' compensation coverage or has filed an exemption with the State of California as required by law.

I acknowledge and represent that we have met the insurance requirements listed above.

Print Name Ron Ballesteros-Perez Date: 11/18/2024

Contractor Name College of the Sequoias

Signature  Ron Ballesteros-Perez (Nov 18, 2024 09:59 PST)

## EXHIBIT B

### HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

This Exhibit shall constitute the Business Associate Agreement (the "Exhibit") between Contractor, (the "Business Associate") and the County of Tulare (the "Covered Entity"), and applies to the functions Business Associate will perform on behalf of Covered Entity (collectively, "Services"), that are identified in the Agreement (as defined below).

Business Associate acknowledges and agrees that all Protected Health Information ("PHI") that is created or received by Covered Entity and disclosed or made available in any form, including but not limited to paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

**1. Purpose.** This Exhibit is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to PHI (as defined below) that the Business Associate may create, receive, use, or disclose in connection with the Services to be provided by the Business Associate to the Covered Entity. Such safeguards will be consistent with the standards set forth in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("HITECH Act") and amendments to include HIPAA's Administrative Simplification provisions.

**2. Regulatory References.** All references to regulatory Sections, Parts and Subparts in this Exhibit are to Title 45 of the Code of Federal Regulations, parts 160 and 164 (the "HIPAA Privacy Rule" and the "HIPAA Security Rule") as in effect or as amended, and for which compliance is required, unless otherwise specified.

**3. Definitions.** Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings ascribed in the HIPAA Regulations; provided that PHI shall mean Protected Health Information, as defined in 45 C.F.R. section 160.103, limited to the Protected Health Information Business Associate received from, created, or received on behalf of Covered Entity as its Business Associate.

#### 4. Obligations and Activities of Business Associate.

Business Associate agrees to:

- a. Acknowledge that it is required by Sections 13401 and 13404 of the HITECH Act to comply with the HIPAA Security Rule, Sections 164.308 through 164.316, including the Security Rule's Administrative, Physical and Technical safeguard requirements and the use and disclosure provisions of the HIPAA Privacy Rule, Sections 164.502 and 164.504.
- b. Not use or further disclose PHI other than as permitted or required by this Exhibit, or as required by law.
  1. Use appropriate safeguards to maintain the security, including compliance with Subpart C of 45 CFR Part 164, with respect to electronic PHI, to prevent use or disclosure of the PHI other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary rules, regulations and statutes.
  2. To the extent practicable, Business Associate will secure all PHI by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with any applicable standards or guidance issued by the Department of Health and Human Services under Section 13402 of the HITECH Act.
- c. Report breach disclosures immediately to Covered Entity. Business associate: 1) shall report to Covered Entity any use or disclosure of PHI not provided for by this Agreement on the first day the Business Associate knows or should have known about it; 2) notify the Covered Entity of any and all breaches of PHI, and provide detailed information to the Covered Entity about the

## EXHIBIT B

### HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

breach, along with the names and contact information, when available, of all individuals whose PHI was involved. **(See Section 6 of this Exhibit for further detail.)** 3) agrees that such notification will meet the requirements of Section 13402 of the HITECH Act and § 164.410 of the amended HIPAA regulations.

- d. Enter into a written agreement with any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, pursuant to which such agent or subcontractor agrees to be bound by the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) if applicable. **(See Section 11 of this Exhibit for further detail.)**
- e. Make internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI available to the Covered Entity or to the Secretary of the United States Department of Health and Human Services ("Secretary"), for purposes of determining Business Associate's compliance with the HIPAA Privacy Rule and Security Rule. **(See Section 12 of this Exhibit for further detail.)**
  - 1. Business Associate shall concurrently provide to the Covered Entity a copy of any PHI that Business Associate provides to the Secretary.
- f. Maintain and make available the information required to provide an accounting of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual for an account of disclosures of PHI in accordance with 45 CFR § 164.528.

#### 5. Permitted Uses and Disclosures by Business Associate.

- a. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).

Unless otherwise limited in this Exhibit, Business Associate may:

- b. Use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered

Entity as necessary to perform the services described in Exhibit A to the Agreement, or as otherwise specified in the Master Exhibit, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

- c. Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- d. Disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains the appropriate medical release from the person whose PHI is being disclosed and the person to whom the PHI is disclosed provides reasonable assurances in writing that 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 person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- e. Use PHI to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).

#### 6. Reporting Unauthorized Uses and Disclosures.

- a. Business Associate agrees to notify Covered Entity of any breach, or security incident involving PHI of which it becomes aware, including any access to, or use or disclosure of PHI not permitted by this Exhibit. Such notification will be made immediately after discovery and will include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the PHI involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by Business Associate. Business Associate will also provide to Covered Entity any other available

## EXHIBIT B

### HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

information that the Covered Entity is required to include in its notification to the individual under Section 164.404(c) at the time of the initial report or within three (3) days of the information becoming available.

- b. In the event of a request by law enforcement under Section 164.412, Business Associate may delay notifying Covered Entity for the applicable timeframe.
- c. A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.
- d. In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Exhibit, it is understood and agreed that Business Associate is at all times acting as an independent contractor in providing services pursuant to this Exhibit and the Agreement.

#### 7. Mitigation of Harmful Effects.

- a. Business Associate agrees to mitigate, to the greatest extent possible, any harm that results from the following actions: breach, security incident, or unauthorized access, use or disclosure of PHI by Business Associate or its employees, officers, subcontractors, agents, or other representatives.
- b. Following the actions listed in Section 7(a) of this Exhibit, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make said documentation available to Covered Entity.
- c. Except as required by law, Business Associate agrees that it will not inform any third party of a

breach or unauthorized access, use or disclosure of PHI without obtaining the Covered Entity's prior written consent. Covered Entity hereby reserves the sole right to determine whether and how such notice is to be provided to any individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice.

#### 8. Indemnification.

Business Associate agrees to:

- a. Hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 7 of this Exhibit.
- b. Assume responsibility for any and all costs associated with the Covered Entity's notification of individuals affected by a breach or unauthorized access, use or disclosure by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.
- c. Hold harmless, defend at its own expense and indemnify Covered Entity and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Exhibit or from any acts or omissions related to this Exhibit by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorney's fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any

## EXHIBIT B

### HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

Indemnified Party shall survive the expiration or termination of the Agreement.

#### 9. Individuals' Rights.

Business Associate agrees to:

- a. Provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, 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 under Section 164.524.
- b. Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an individual, and in the time and manner designated by the Covered Entity.
- c. Document such 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 Section 164.528.
- d. Provide to Covered Entity or an individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 9(c) of this Exhibit, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.
- e. Comply with any restriction to the use or disclosure of PHI that Covered Entity agrees to in accordance with Section 164.522.

#### 10. Obligations of Covered Entity.

Covered Entity shall:

- a. Provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.
- b. Provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

- c. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

#### 11. Agents and Subcontractors of Business Associate.

- a. Business Associate agrees to ensure that any agent, subcontractor, or other representative to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions, conditions and requirements that apply through this Exhibit to Business Associate with respect to such information, including the requirement to promptly notify the Business Associate of any instances of unauthorized access to or use or disclosure of PHI of which it becomes aware. Upon request, Business Associate shall provide copies of such agreements to Covered Entity.
- b. Business Associate shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

#### 12. Audit, Inspection, and Enforcement.

- a. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.
- b. With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of PHI to determine compliance with the terms of this Exhibit. Business Associate shall promptly correct any violation of this Exhibit found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any



## EXHIBIT B

### HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under the Agreement.

13. **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 Privacy Rule if done by Covered Entity.

14. **Term and Termination.**

- a. The terms of this Exhibit shall remain in effect for the duration of all services provided by Business Associate under the Agreement and for so long as Business Associate remains in possession of any PHI received from, or created or received by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this section that it is not feasible to return or destroy all PHI.
- b. Upon termination of the Agreement, Business Associate shall recover any PHI relating to the Agreement and this Exhibit in its possession and in the possession of its subcontractors, agents or representatives. Business Associate shall return to Covered Entity, or destroy with the consent of Covered Entity, all such PHI, in any form, in its possession and shall retain no copies. If Business Associate believes it is not feasible to return or destroy the PHI, Business Associate shall so notify Covered Entity in writing. The notification shall include: (1) a statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (2) the specific reasons for such determination. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Agreement and this Exhibit shall be extended to any PHI for so long as Business Associate maintains such PHI, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.
- c. Covered Entity may immediately terminate the Agreement if it determines that Business

Associate has violated a material term of this Exhibit.

15. **Amendment.** The Parties agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Privacy and Security Rules and the HITECH Act.

16. **Lost Revenues; Penalties/Fines.**

- a. Lost Revenues. Business Associate shall make Covered Entity whole for any revenues lost arising from an act or omission in billing practices by Business Associate.
- b. Penalties/Fines for Failure to Comply with HIPAA. Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.
- c. Penalties/Fines (other). Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

17. **Entire Agreement.** This Exhibit constitutes the entire HIPAA Business Associate Agreement between the parties, and supersedes any and all prior HIPAA Business Associate Agreements between them.

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