



## UTAH DEPARTMENT OF HEALTH & HUMAN SERVICES MEMORANDUM OF UNDERSTANDING

PO Box 144003, Salt Lake City, Utah 84114  
288 North 1460 West, Salt Lake City, Utah 84116

**251691202**

DHHS Log Number

1. MOU NAME: The name of this agreement is General Provisions and Business Associate Agreement San Juan County.
2. PARTIES TO MOU: This agreement is between Utah Department of Health & Human Services and San Juan County.
3. GENERAL PURPOSE OF MOU: For agreements with DHHS, the parties agree:
  1. For subrecipient agreements, Attachment A Utah Department of Health and Human Services Subrecipient Terms apply.
  2. For grants with only state funds, Attachment B Utah Department of Health and Human Services State Funds Grant Terms apply.
  3. For non-subrecipient grants with federal funds (or with federal and state funds), Attachment C Utah Department of Health and Human Services Public Entity Non-Subrecipient Federal Grant Terms apply.
  4. For procurement contracts, Attachment D Utah Department of Health and Human Services Public Entity Terms apply.
  5. For agreements with protected health information subject to HIPAA, Attachment E Business Associates Agreement applies in addition to the applicable general provisions.
  6. For any agreement with general provisions attached, the general provisions that are attached to the agreement apply instead of the terms outlined in this agreement.
4. MOU PERIOD: The service period of this agreement is 01/01/2025 through 06/30/2028, unless terminated or extended by agreement in accordance with the terms and conditions of this agreement.
5. AGREEMENT INQUIRIES: Inquiries regarding this agreement shall be directed to the following individuals:

**San Juan County**

Grant Sunada  
(435) 587-3838  
gsunada@sanjuancounty.org  
735 S 200 W, Ste 2  
Blanding, UT 84511

**DHHS**

Finance and Administration  
DFA - Office of Procurement and Contract  
Management  
(833) 353-3447  
dhhscontracts@utah.gov

6. REFERENCE TO ATTACHMENTS INCLUDED AS PART OF THIS AGREEMENT:

Attachment A: Utah Department of Health and Human Services Subrecipient Terms

Attachment B: Utah Department of Health and Human Services State Funds Grant Terms

Attachment C: Utah Department of Health and Human Services Public Entity Non-Subrecipient Federal Grant Terms

Attachment D: Utah Department of Health and Human Services Public Entity Terms

Attachment E: Utah Department of Health and Human Services Business Associate Agreement

7. This agreement, its attachments, and all documents incorporated by reference constitute the entire agreement between the parties and supersedes all prior written or oral agreements between the parties relating to the subject matter of this contract.

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**MOU between Utah Department of Health & Human Services and San Juan County , Log # 251691202**

IN WITNESS WHEREOF, the parties enter into this agreement.

**San Juan County**

Signature

**Signed by:** \_\_\_\_\_

\_\_\_\_\_

Jamie Harvey  
County Commission Chair

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

# Attachment A: Utah Department of Health and Human Services Subrecipient Terms

## 1. Definitions

**"Authorized Persons"** means the Subrecipient's employees, officers, partners, subcontractors, or other agents of the Subrecipient who need to access State Data to enable the Subrecipient to perform its responsibilities under this agreement.

**"Agreement Signature Page(s)"** means the DHHS cover page(s), including the page(s) signed by the parties.

**"C.F.R."** means the Code of Federal Regulations.

**"DHHS"** means the Utah Department of Health and Human Services.

**"Federal Pass Through Money"** means federal money received by the Subrecipient through a subaward or agreement but does not include federal money received as payment for goods or services purchased by DHHS.

**"Local Money"** means money that is owned, held or administered by a political subdivision of the State that is derived from fee or tax revenues but does not include money received as payment for goods or services purchased or contributions or donations received by the political subdivision.

**"State"** means the state of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.

**"State Data"** means all confidential information, non-public data, personal data, and protected health information that is created or in any way originating with the State whether such data or output is stored on the State's hardware, the Subrecipient's hardware, or exists in any system owned, maintained or otherwise controlled by the State or by the Subrecipient. State Data includes any federal data that DHHS controls or maintains, that is protected under federal laws, statutes, and regulations. DHHS may identify, during and after this agreement, additional reasonable types of categories of information that must be kept confidential under federal and State laws.

**"State Money"** means money that is owned, held, or administered by a State agency and derived from State fee or tax revenues but does not include contributions or donations received by the State agency.

**"Subrecipient"** means the non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program as per 2 C.F.R. § 200.1.

**"Uniform Guidance"** means Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for the specified federal awarding agency set forth in Title 2 of the Code of Federal Regulations.

2. **Governing Law and Venue:** This agreement is governed by the laws, rules, and regulations of Utah. Any action or proceeding arising from this agreement must be brought in a court of competent jurisdiction in the State. Venue is in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **Federal Award:** The Subrecipient shall comply with the terms of the federal award(s).
4. **Nonprofit Registration:** If the Subrecipient is a nonprofit corporation that receives an amount of money requiring an accounting report under the Utah Code, it shall register and maintain the nonprofit corporation's registration as a limited purpose entity in accordance with code requirements.
5. **Amendments:** Amendments to this agreement must be in writing and signed by the parties except for the following for which written notification from DHHS will constitute an amendment to the agreement without the Subrecipient's signature: 1) changes in the total agreement amount or rates; and 2) changes to financial reporting requirements.

- 6. No Automatic Renewals:** This agreement will not automatically renew.
- 7. Laws and Regulations:** The Subrecipient shall comply with all applicable federal, state, and local laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. Any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will take precedence over any conflict with this Attachment A.
- 8. Conflict of Interest:** The Subrecipient represents that none of its officers or employees are officers or employees of DHHS or the State, unless written disclosure has been made to DHHS. The Subrecipient shall comply and cooperate in good faith with all conflict of interest and ethic laws.
- 9. Independent Capacity:** The Subrecipient and any subcontractors, in the performance of this agreement, shall act in an independent capacity and not as officers, employees, or agents of DHHS.
- 10. Reporting Receipt of Federal and State Funds.**
- 10.1.** If the Subrecipient is a nonprofit corporation and receives Federal Pass Through Money or State Money, the Subrecipient shall disclose to DHHS, annually and in writing, whether it has received in the previous fiscal year or anticipates receiving any of the following amounts: (i) revenues or expenditures of Federal Pass Through Money, State Money that is not payment for goods or services purchased from the Subrecipient, and Local Money in the amount of \$750,000 or more; (ii) revenues or expenditures of Federal Pass Through Money, State Money that is not payment for goods or services purchased from the Subrecipient, and Local Money at least \$350,000 but less than \$750,000; or (iii) revenues or expenditures of Federal Pass Through Money, State Money that is not payment for goods or services purchased from the Subrecipient, and Local Money of at least \$100,000 but less than \$350,000. This disclosure must be made when entering into this agreement and annually thereafter no later than six months after the end of the Subrecipient's fiscal year.
- 10.2.** The Subrecipient shall provide to DHHS a written description and itemized report at least annually detailing the expenditure of State Money, and the intended expenditure of any State Money that has not been spent. The Subrecipient shall provide to DHHS a final written itemized report when all the State Money is spent. DHHS may require the Subrecipient to return an amount of money that is equal to the State Money expended in violation of the terms of this section. Reports must be submitted no later than July 31<sup>st</sup> of each year and no later than 30 days after the expenditure of all State funds, whichever is earlier.
- 10.3.** The Subrecipient shall comply with all federal and State reporting requirements, including as applicable, but not limited to, 2 C.F.R. 200 and Utah Code sections 51-2a-201, 51-2a-201.5, and 63G-6b-201.
- 10.4.** Reports that are required to be sent to DHHS must be sent to [dhhsfinancialreports@utah.gov](mailto:dhhsfinancialreports@utah.gov).
- 11. Timely Reporting:** The Subrecipient shall timely submit all reports and back-up data required by this agreement or requested by the federal awarding agency or DHHS.
- 12. Invoicing:** Unless otherwise stated in the scope of work, the Subrecipient shall submit invoices along with any supporting documentation within 20 days following the last day of the month in which the expenditures were incurred or the services provided. The Subrecipient shall list this agreement number on all invoices and correspondence relating to this agreement. The Subrecipient shall submit all final billings under this agreement within 14 days of expiration or termination of this agreement, regardless of the Subrecipient's billing period. Notwithstanding the foregoing, the Subrecipient shall submit all billings for services performed on or before June 30th of a given fiscal year no later than July 14th of the following fiscal year, regardless of Subrecipient's billing period or the expiration or termination date of this agreement. DHHS may reject any invoice or claim for payment or reimbursement if received by DHHS after the requirements stated in this agreement, but in no case will DHHS pay for items billed later than twelve months after the fiscal year ending June 30th that the Subrecipient's services were provided or expected under the agreement, or for agreements with Medicaid, later than Medicaid deadlines.

- 13. Supporting Documentation:** The Subrecipient shall maintain documentation necessary to support the costs billed by the Subrecipient and shall submit the documentation with the billings, if requested. The Subrecipient shall store and file required documentation in a systematic and consistent manner.
- 14. Questioned Costs:** DHHS may question any billing by the Subrecipient if the billing is not supported by proper documentation.
- 15. Payment:**
- 15.1.** Payment to the Subrecipient will be based on allowable costs incurred by the Subrecipient in providing services pursuant to this agreement. The Subrecipient shall maintain documented expenditures that comply with federal cost principles and any attached budget. Expenditures must be reasonable and necessary to carry out agreement requirements. The Subrecipient shall be responsible for any expenditures DHHS finds to be improper or unallowable, including personal expenses, and shall repay these expenditures from funds other than those provided pursuant to this agreement or any other agreement between DHHS and the Subrecipient. The Grantee consents to a follow-up audit and clawback of any state grant funds if an audit shows that such grant funds were inappropriately used. This provision will survive the expiration or termination of this agreement.
  - 15.2.** DHHS shall make payments within 30 days after a correct invoice is received. All payments to the Subrecipient will be remitted by mail, electronic funds transfer, or the State's purchasing card. If payment has not been made after 60 days from the date a correct invoice is received by DHHS, then interest may be added by the Subrecipient as prescribed in the Utah Prompt Payment Act. The acceptance by the Subrecipient of final payment, without a written protest filed with DHHS within 10 business days of receipt of final payment, will release DHHS and the State from all claims and all liability to the Subrecipient. DHHS's payment for the services will not be deemed an acceptance of the services and is without prejudice to any and all claims that DHHS or the State may have against the Subrecipient. The Subrecipient shall not charge end users electronic payment fees of any kind.
  - 15.3.** If funding to DHHS is reduced due to an order by the legislature or the governor, or is required by State law, or if applicable federal funding is not provided to DHHS, DHHS shall reimburse the Subrecipient for products delivered and services performed through the date of cancellation or reduction, and DHHS shall not be liable for any future commitments, penalties, or liquidated damages.
  - 15.4.** Upon 30 days written notice, the Subrecipient shall reimburse DHHS for funds DHHS is required to reimburse a third party funding source resulting from the actions of the Subrecipient or its subcontractors.
- 16. Related Party Payments.** The Subrecipient shall not make payments to Related Parties in any category of expenditure (administrative costs, capital expenditures, or program costs) without the prior written consent of DHHS. Among other items, payments to Related Parties include: salaries, wages, compensation under employment or service agreements, or payments under purchase, lease, or rental agreements. Payments made by the Subrecipient to Related Parties without prior written consent may be disallowed and require repayment to DHHS. **"Related Parties"** means (a) any person related to the vendor's representative by blood or marriage including, but not limited to, father, mother, husband, wife, son, daughter, sister, brother, grandfather, grandmother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, uncle, aunt, nephew, niece, grandson, granddaughter, or first cousin; and (b) all business associates of the vendor: (i) who are partners, directors, or officers in the same business entity as the vendor; (ii) who have authority to make decisions or establish policies in the same business entity as the vendor; or (iii) who directly or indirectly own 10% or more in the same business entity as the vendor.
- 17. Repayment:** Upon written request by DHHS, any overpayments, disallowed expenditures, excess payments, or questioned costs will be immediately due and payable by the Subrecipient. In the alternative, DHHS may withhold any or all subsequent payments pursuant to this agreement until DHHS fully recoups these funds. In such cases, the Subrecipient shall not reduce the level of services required by this agreement.

- 18. Budget Adjustments:** If this agreement is budget based, the budget attached to this agreement will be the basis for DHHS's payments to the Subrecipient. The Subrecipient shall not transfer budgeted funds from program costs to either administrative costs or capital expenditures without DHHS's prior written approval. The Subrecipient shall not transfer budgeted funds between administrative costs and capital expenditures without DHHS's prior written approval. The Subrecipient may transfer funds from administrative costs or capital expenditures to program costs without prior approval. The Subrecipient may transfer funds between subcategories within each major category without prior approval if there are no restrictions on expenditures within those subcategories.
- 19. Excessive Expenditures:** If this agreement requires a budget, DHHS may question any amounts in excess of the total amount budgeted in either administrative costs or capital expenditures and may require the Subrecipient to refund the excesses to DHHS. Amounts in excess of the total amount budgeted in program costs will not normally result in questioned costs unless DHHS has placed restrictions on subcategories within this major category. If this agreement restricts expenditures within defined subcategories, DHHS will consider any unapproved excesses to be a questioned cost.
- 20. Nonappropriation of Funds, Reduction of Funds, or Changes in Law:** Upon 30 days written notice delivered to the Subrecipient, DHHS may terminate this agreement in whole or in part, or proportionately reduce the services and the amounts due, if DHHS reasonably determines that: (i) a change in federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this agreement; or (ii) a change in appropriations, available funds, or budgets affects DHHS's ability to pay under this agreement. A change of available funds as used in this paragraph includes, but is not limited to, a change in federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this section, DHHS shall reimburse the Subrecipient for the services properly ordered until the effective date of said notice. DHHS will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
- 21. Cost Accounting System:** The Subrecipient shall maintain an accounting system that provides a general ledger and cost accounting records adequate to assure that costs incurred are reasonable, allowable, allocable to agreement objectives, and separate from costs associated with other business activities of the Subrecipient. The Subrecipient shall ensure that its accounting system meets required reporting requirements and timely development of cost data in the required form.
- 22. Insurance:**
- 22.1.** The Subrecipient shall at all times carry and maintain commercial general liability ("**CGL**") insurance from an insurance company authorized to do business in the State. The limits of the CGL insurance policy must be no less than \$1,000,000 per occurrence and \$3,000,000 aggregate.
  - 22.2.** If the Subrecipient will use a vehicle in the performance of this agreement, the Subrecipient shall at all times carry and maintain commercial automobile liability ("**CAL**") insurance from an insurance company authorized to do business in the State. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in the performance of this contract whether owned, non-owned, leased, or hired. The minimum liability limit must be at least \$1,000,000 per occurrence, combined single limit.
  - 22.3.** The Subrecipient shall provide proof of the CGL insurance policy and other required insurance policies to DHHS within 30 days of contract award. The Subrecipient shall add the State as an additional insured with notice of cancellation.
  - 22.4.** Failure to provide proof of insurance as required will be deemed a material breach of this contract. The Subrecipient's failure to maintain this insurance requirement for the term of this contract will be grounds for immediate termination of this agreement.



**23. Suspension of Work:** DHHS shall give the Subrecipient written notice should DHHS suspend the Subrecipient's responsibilities under this agreement. The Subrecipient's responsibilities may be reinstated upon advance written notice from DHHS.

**24. Indemnification:**

- 24.1.** If the Subrecipient is a governmental entity, the parties mutually agree that each party assumes liability for the negligent and wrongful acts committed by its own agents, officials, or employees, regardless of the source of funding for this agreement. Neither party waives any rights or defenses otherwise available under the Governmental Immunity Act.
- 24.2.** If the Subrecipient is a non-governmental entity, the Subrecipient shall be fully liable for the actions of its agents, employees, officers, partners, and subcontractors. The Subrecipient shall fully indemnify, defend, and save harmless DHHS and the State from all claims, losses, suits, actions, damages, and costs of every name and description arising out of the Subrecipient's performance of this agreement caused by any intentional act or negligence of the Subrecipient, its agents, employees, officers, partners, or subcontractors, without limitation; provided, however, that the Subrecipient shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of DHHS. The Subrecipient is solely responsible for all payments owed to any subcontractor arising from the Subrecipient's performance under this agreement and will hold DHHS harmless from any such payments owed to the subcontractor. This provision survives the expiration or termination of this agreement.
- 24.3.** The parties agree that if there are any limitations of the Subrecipient's liability, including a limitation of liability clause for anyone for whom the Subrecipient is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.

**25. Intellectual Property Indemnification:** The Subrecipient shall indemnify and hold DHHS and the State harmless from and against any and all damages, expenses (including reasonable legal fees), claims, judgments, liabilities, and costs in any action or claim brought against DHHS or the State for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of the Subrecipient's liability, such limitations of liability will not apply to this section.

**26. No Subrogation or Contribution:** The Subrecipient has no right of subrogation or contribution from the State or DHHS for any judgment rendered against the Subrecipient.

**27. Debarment:** DHHS may immediately terminate this agreement if DHHS determines that the Subrecipient has been debarred, suspended, or otherwise lawfully excluded from participating in any agreement issued by a governmental entity, including but not limited to, being determined ineligible as a subcontractor of any governmental entity. The Subrecipient certifies that it is not currently suspended, debarred, or otherwise prohibited to enter this agreement. The Subrecipient shall immediately notify DHHS if the Subrecipient becomes suspended, debarred, or otherwise ineligible for this or any other agreement issued by a governmental entity.

**28. Termination and Default:**

- 28.1. Termination for Convenience.** DHHS may terminate this agreement without cause, upon 30 days written notice to the Subrecipient. If the Subrecipient terminates this agreement without cause, DHHS may treat the Subrecipient's action as a default under this agreement.
- 28.2. Termination for Cause.** Each party may terminate this agreement with cause. If the cause for termination is due to the default of a party, the non-defaulting party shall give written notice to the defaulting party of its intent to terminate. The defaulting party may cure the default within 10 days of the notice. If the default is not cured within the 10 days, the party giving notice may terminate this agreement 40 days from the date of the initial notice of default or at a later date. Time allowed for cure will not diminish or eliminate the Subrecipient's liability for damages.

**28.3. Miscellaneous Grounds for Termination.** In addition to other grounds for termination, DHHS may immediately terminate this agreement if DHHS receives a notice of a lien against the Subrecipient's payments or if the Subrecipient becomes debarred, becomes insolvent, files for bankruptcy or reorganization proceedings, is subject to IRS withholding, sells 30% or more of the company's assets or corporate stock, or gives notice of its inability to perform its obligations under this agreement. The Subrecipient shall provide DHHS with proof of financial viability upon request.

**28.4. Payment After Termination.** DHHS shall pay the Subrecipient for the services properly performed under this agreement up to the effective date of the notice of termination. The Subrecipient agrees that in the event of termination, the Subrecipient's sole remedy and monetary recovery from DHHS or the State is limited to full payment for all services properly performed as authorized under this agreement up to the date of termination, as well as any reasonable monies owed as a result of the Subrecipient having to terminate other contracts necessarily and appropriately entered into by the Subrecipient pursuant to this agreement.

**28.5. Default.** Any of the following events will constitute cause for DHHS to declare the Subrecipient in default of this agreement: (i) the Subrecipient's non-performance of its contractual requirements and obligations under this agreement; or (ii) the Subrecipient's material breach of any term or condition of this agreement. If the Subrecipient defaults in any manner in the performance of any obligation under this agreement, or if audit exceptions are identified, DHHS may either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. Default and audit exceptions for which payment may be adjusted or withheld include disallowed expenditures of federal or State funds as a result of the Subrecipient's failure to comply with federal regulations or State rules. In addition, DHHS may withhold amounts due the Subrecipient under this agreement, any other current agreement between DHHS and the Subrecipient, or any future payments due the Subrecipient to recover the funds. DHHS shall notify the Subrecipient of DHHS's action in adjusting the amount of payment or withholding payment. This agreement is executory until such repayment is made.

**29. Remedies:** In addition to terminating this agreement upon default or breach of the Subrecipient, DHHS may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) impose liquidated damages; (iii) debar or suspend the Subrecipient from receiving future contracts from DHHS or the State; and (iv) demand a full refund of any payment DHHS has made to the Subrecipient for services that do not conform to this agreement.

**30. Reviews:** DHHS may perform plan checks or reviews and require changes when needed. Such reviews do not waive the requirement of the Subrecipient to meet all of the terms and conditions of this agreement.

**31. Performance Evaluation and Remediation:** DHHS may conduct a performance evaluation of the Subrecipient's services, including the Subrecipient's subcontractors. DHHS may make the results of any evaluation available to the Subrecipient. DHHS may make scheduled and announced visits. The Subrecipient shall allow DHHS monitors and auditors to have access to any records related to this agreement. The Subrecipient shall cooperate with all monitoring and audits. DHHS may require remediation. The Subrecipient shall comply with any remediation plan required by DHHS. The Subrecipient's failure to comply with a DHHS remediation plan will be deemed a material breach of this agreement.

**32. Public Information:** The Subrecipient agrees that this agreement, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State's Government Records Access and Management Act ("**GRAMA**"). DHHS and the State are not obligated to inform the Subrecipient of any GRAMA requests.

**33. Publicity:** The Subrecipient shall not advertise or publicize matters relating to this agreement, or publicly use DHHS's name, without the prior written approval of DHHS. The Subrecipient shall impose this restriction on its

subawardees and subcontractors, and shall require subawardees and subcontractors to impose this restriction on each lower tier of subawardees and subcontractors.

**34. Information Ownership:** Except for confidential medical records held by direct care providers, DHHS shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this agreement. The Subrecipient shall not use or disclose, except in meeting its obligations under this contract, information gathered, reports developed, or conclusions reached in performance of this agreement without prior written consent from DHHS. DHHS will own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by the Subrecipient under this agreement. The Subrecipient shall not use confidential federal, state, or local government information without prior written consent from DHHS, and shall bind any subcontractor to the same requirement.

**35. Information Practices:** The Subrecipient shall establish, maintain, and practice information procedures and controls that comply with federal and State law including, as applicable, Utah Code Title 26B and the privacy and security standards promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") & the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"). DHHS may require the Subrecipient to enter into a business associate agreement if applicable. The Subrecipient shall receive or request from DHHS only information about an individual that is necessary to the Subrecipient's performance of its duties and functions. The Subrecipient shall use the information only for purposes of this agreement.

**36. Secure Protection and Handling of State Data:**

- 36.1.** If the Subrecipient is given access to or will be storing State Data as part of this agreement, the protection of State Data must be an integral part of the business activities of the Subrecipient to ensure that there is no inappropriate or unauthorized use of State Data. The Subrecipient shall safeguard the confidentiality, integrity, and availability of the State Data. The Subrecipient agrees to not copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this agreement. The improper use or disclosure of confidential information is strictly prohibited.
- 36.2.** Any and all transmission or exchange of State Data must take place via secure means. The Subrecipient shall create, store, and maintain any State Data on secure or encrypted computing devices or portable storage mediums. The Subrecipient agrees to protect and maintain the security of State Data with security measures including, but not limited to, maintaining secure environments that are patched and up to date with all appropriate security updates, network firewall provisioning, and intrusion detection. The Subrecipient agrees that any computing device or portable medium that has access to DHHS's network or stores any non-public State Data is equipped with strong and secure password protection.
- 36.3.** The Subrecipient shall: (i) limit disclosure of any State Data to Authorized Persons who have a need to know such information in connection with the current or contemplated business relationship between the parties to which this agreement relates, and only for that purpose; (ii) advise its Authorized Persons of the proprietary nature of the State Data and of the obligations set forth in this agreement and require Authorized Persons to keep the State Data confidential; (iii) keep all State Data strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (iv) not disclose any State Data received by it to any third parties, except as permitted by this agreement or otherwise agreed to in writing by DHHS.
- 36.4.** The Subrecipient shall promptly notify DHHS of any misuse or misappropriation of State Data that comes to the Subrecipient's attention. The Subrecipient shall be responsible for any breach of this duty of confidentiality by any of its officers, agents, employees, subcontractors at any tier, and any of its respective representatives, including any required remedies or notifications under applicable law (Utah

Code Ann. §§ 13- 44-101 through 301). This duty of confidentiality is ongoing and survives the term of this agreement. Notwithstanding the foregoing, if there is a discrepancy between a signed business associate agreement and this provision, the business associate agreement language will take precedence.

- 37. Artificial Intelligence:** The Subrecipient shall not use State Data in any generative artificial intelligence (“GAI”) queries, training, or program creation without prior written permission from DHHS. The Subrecipient attests that its GAI models use only properly licensed material. The Subrecipient shall fully indemnify and hold DHHS harmless from all claims, loss, or damages related to the Subrecipient’s use of GAI. Should the Subrecipient learn that State Data has been used in GAI queries without DHHS permission, the Subrecipient shall immediately notify DHHS. The Subrecipient shall inform DHHS of any GAI in the Goods or Services being contracted for prior to providing those Goods or Services to DHHS. The Subrecipient shall include annotations sufficient to comply with DTS Policy 4000-0008 (Generative AI Policy) when utilizing GAI in the creation of Goods and Services with the potential to impact DHHS intellectual property rights.
- 38. Ownership, Protection, and Return of Documents and Data upon Agreement Termination or Completion:** Except for records that must be retained for a longer period under section 42.2 and for confidential medical records held by direct care providers, all documents and data pertaining to work required by this agreement will be the property of DHHS, and must be returned to DHHS or disposed of within 30 days after termination or expiration of this agreement, regardless of the reason for agreement termination, and without restriction or limitation to future use. If such return or destruction is not feasible, the Subrecipient shall notify DHHS. The Subrecipient shall extend any protections, limitation, and restrictions of this agreement to any information retained after the termination of this agreement and shall limit further uses and disclosures to those purposes that make the return or destruction of the data infeasible. Any disposal of State Data must be disposed of in such a manner that it cannot be recovered or recreated. Notwithstanding the foregoing, if there is a discrepancy between a signed business associate agreement and this provision, the business associate agreement language will take precedence.
- 39. Intellectual Property Ownership:** DHHS and the Subrecipient recognize that each has no right, title, or interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by the Subrecipient prior to the execution of this agreement, but specifically created or manufactured under this agreement, is considered work made for hire, and the Subrecipient shall transfer any ownership claim to DHHS.
- 40. Equipment Purchase:** The Subrecipient shall obtain prior written DHHS approval before purchasing any equipment, as defined in the Uniform Guidance, with agreement funds.
- 41. Standard of Care:** The services of the Subrecipient and its subcontractors must be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services, which similarities include the type, magnitude, and complexity of the services that are the subject of this agreement. The Subrecipient shall be liable to DHHS and the State for claims, liabilities, additional burdens, penalties, damages, or third party claims, to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
- 42. Record Keeping, Audits, and Inspections:**
- 42.1.** For financial reporting, the Subrecipient shall comply with the Uniform Guidance and Generally Accepted Accounting Principles (“GAAP”).
  - 42.2.** The Subrecipient shall maintain or supervise the maintenance of all records necessary to properly account for the Subrecipient’s performance and the payments made by DHHS to the Subrecipient under this agreement. The Subrecipient shall maintain all supporting documents, financial and statistical records, and other records related to this agreement and the federal award for six years from the date of submission of the final expenditure report or, for federal awards that are renewed quarterly or

annually, from the date of submission of the quarterly or annual financial report as reported to DHHS, with the exception of those situations identified in 2 C.F.R. §200.333. DHHS shall have access to these records for as long as the records exist. This provision survives the expiration or termination of this agreement. The Subrecipient agrees to allow, at no additional cost, the State, federal auditors, and DHHS's staff, access to all such records. The Subrecipient shall retain these records as required by GAAP, federal or state law, or specific program requirements, whichever is longer. The Subrecipient shall allow, at no additional cost, the State, federal auditors, and DHHS staff, access to all such records.

**42.3.** The Subrecipient shall retain all records which relate to disputes, litigation, audits, and claim settlements arising from agreement performance or cost or expense exceptions, until all disputes, litigation, audits, claims, or exceptions are resolved.

**42.4.** The Subrecipient shall comply with federal and state regulations concerning cost principles, audit requirements, and agreement administration requirements, including, but not limited to, the Uniform Guidance. Unless specifically exempted in the scope of work, the Subrecipient shall comply with applicable federal cost principles and agreement administration requirements if State funds are received. Counties, cities, towns, and school districts are subject to the State Legal Compliance Audit Guide. The Subrecipient shall send copies of required reports to [dhhsfinancialreports@utah.gov](mailto:dhhsfinancialreports@utah.gov).

**43. Employment Practices:** The Subrecipient shall abide by the following employment laws, as applicable: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 C.F.R. § 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; (v) Utah Executive Order No. 2006-0012, dated December 13, 2006, which prohibits unlawful harassment in the work place; (vi) Utah Code Ann. § 26B-7-503, Utah Indoor Clean Air Act which prohibits smoking in enclosed public places; (vii) Utah Executive Order No. 2006-0012 which prohibits all unlawful harassment in any workplace in which State employees and employees of public and higher education must conduct business; (viii) 41 CFR part 60, Equal Employment Opportunity, and the Executive Order 11246, as amended by Executive Order 11375, which implements those regulations; (ix) 45 C.F.R. part 83, which prohibits the extension of federal support to any entity that discriminates on the basis of sex in the admission of individuals to its health manpower and nurse training programs; and (x) 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5), Agreement Work Hours and Safety Standards Act, for contracts that involve the employment of mechanics or laborers. The Subrecipient further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of the Subrecipient's employees or persons served.

**44. Federal Requirements:** The Subrecipient shall abide by the following federal statutes, regulations, and requirements: 2 C.F.R. § 200.326, Agreement Provisions as applicable; 45 C.F.R. § 46, 42 U.S.C. § 2899, 21 C.F.R. 50, & 21 C.F.R. 56 Protection of Human Subject in research activities; 45 C.F.R. part 84, prohibits discrimination of drug or alcohol abusers or alcoholics who are suffering from mental conditions from admission or treatment by any private or public hospital or outpatient facility that receives support or benefit from a federally funded program; 42 C.F.R. parts 2 and 2a which implements the Public Health Service Act, sections 301(d) and 543, which requires certain medical records that relate to drug abuse prevention be kept confidential when the treatment or program is directly or indirectly assisted by the federal government; 42 U.S.C. §§ 7401-7971q., the Clean Air Act and 33 U.S.C. §§ 1251-1387, the Federal Water Pollution Control Act, and all applicable standards, orders or related regulations; 31 U.S.C. § 1352, Byrd Anti-Lobbying Amendment; 42 U.S.C § 4331, the National Environmental Policy Act of 1969; 2 C.F.R. § 200.322, Procurement of recovered materials which outlines section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; 37 C.F.R. § 401, Rights to Inventions Made; 42 C.F.R. part 50, Subpart B, Sterilizations; 42 C.F.R. part 50, Subpart C, Abortions and Related Medical Services; 59 FR 46266, Recombinant DNA and Institutional Biosafety; 7 U.S.C. § 2131, Animal Welfare; 42 C.F.R. part 92, Misconduct in Science; 42 U.S.C. §§ 4728-4763, Merit System Standards for governmental entities only; 42 U.S.C. §§ 6101-6107 & 45 C.F.R. Part 91 Age Discrimination Act of 1975; 42 U.S.C. § 12101 et seq. & 28

C.F.R. Part 35, Part 39 Americans with Disabilities Act; 45 C.F.R. Part 80, 42 U.S.C. § 2000d et. seq. Civil Rights Act of 1964 as amended Title VI; 40 U.S.C. §§ 3701-3704 & 29 C.F.R. Part 5 Contract Work Hours and Safety Standards Act; 45C.F.R. 2543.82, 18 U.S.C. § 874 & 29 C.F.R. Part 3 Copeland Anti-Kickback Act; 40 U.S.C. § 3142 & 29 C.F.R. Part 5 Davis-Bacon Act; 41 U.S.C. § 701 through 707, Drug Free Workplace Act of 1988; 20 U.S.C. § 1681et. seq. & 45 C.F.R. Part 86, Education Amendments of 1972, Title IX; 8 U.S.C. § 1324a, Employment Eligibility Verification; 29 U.S.C. § 206(d) Equal Pay Act; 29 U.S.C. § 201 et seq. Fair Labor Standards Act; 8 U.S.C. § 1324 Immigration Control and Reform Act; 42 U.S.C. § 10801 et seq. Protection and Advocacy for Individuals with Mental Illness Act; 45 C.F.R. Part 84.53 Public Health Service Act, Section 522 and Section 526; 29 U.S.C. § 794 & 45 C.F.R. Part 84 Rehabilitation Act of 1973, as amended, Section 504; 42 U.S.C. § 6322 Energy Policy and Conservation Act; 42 U.S.C. § 4106 Flood Disaster Act of 1973 and other flood hazard provisions; 42 U.S.C. § 4321 et seq. & 40 C.F.R. Part 1500 et seq. National Environmental Policy Act of 1969; 42 U.S.C. §§ 7181-7184, Pro-Children Act of 2001; 31 U.S.C. § 3729-3733 and Chapter 38 Civil False Claims Act; Public L. 109-171 (2006) Deficit Reduction Act of 2005; P.L. 109-282, as amended by Section 6202 of P.L. 110-252 FFATA; 5 U.S.C. § 1501, et. seq. Hatch Act; 42. U.S.C. § 290dd-2; 42 C.F.R. § 2 and 2a Substance Abuse and Mental Health confidentiality; 45 C.F.R. Part 75 HHS Award requirements; and the Subrecipient shall include in any contracts termination clauses for cause and convenience, along with administrative, contractual, or legal remedies in instances where subcontractors violate or breach agreement terms and provide for such sanctions and penalties as may be appropriate.

- 45. Background Screening:** The Subrecipient and any individuals associated with the Subrecipient shall comply with the background screening requirements in Utah Code §26B-2-120 and Utah Administrative Code R501-14.
- 46. Provider Code of Conduct:** If the Subrecipient and any individuals associated with the Subrecipient will be working with DHHS clients, the Subrecipient shall follow and enforce the DHHS Provider Code of Conduct. Before allowing any employee or volunteer to work with clients, the Subrecipient shall: 1) provide a current copy of the DHHS Provider Code of Conduct to each employee or volunteer currently working for the Subrecipient and to new employees or volunteers; and 2) retain in each employee's or volunteer's file a signed and dated statement in which that person certifies that he or she has read, understands, and will comply with the DHHS Provider Code of Conduct. Annually, the Subrecipient shall obtain the current DHHS Provider Code of Conduct poster and display the poster where its employees and volunteers can see it.
- 47. Abuse Reporting:** The Subrecipient shall comply with abuse reporting requirements in Utah Code §§ 80-2-602 and 26B-6-205.
- 48. Waiver:** A waiver of any right, power, or privilege will not be construed as a waiver of any subsequent right, power, or privilege.
- 49. Legal Fees:** In the event of any judicial action to enforce rights under this agreement, the prevailing party will be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
- 50. Subawards, Subcontracts and Assignment:** The Subrecipient shall not assign, sell, transfer, subcontract, subaward, or sublet rights or delegate responsibilities under this agreement, in whole or part, without the prior written consent of DHHS. The Subrecipient retains ultimate responsibility for performance of all terms, conditions, and provisions of this agreement that are subcontracted or performed by a subcontractor. When subcontracting, the Subrecipient agrees to use written subcontracts that conform to federal and State laws. The Subrecipient shall request DHHS approval for any assignment at least 20 days prior to its effective date.
- 51. Force Majeure:** Neither party will be held responsible for delay or default caused by fire, riot, acts of God, or war which is beyond the party's reasonable control. DHHS may terminate this agreement after determining that the delay or default will likely prevent successful performance of this agreement.
- 52. Severability:** The invalidity or unenforceability of any provision, term, or condition of this agreement will not affect the validity or enforceability of any other provision, term, or condition of this agreement, which will remain in full force and effect.

- 53. Survival of Terms:** Termination or expiration of this agreement will not extinguish or prejudice DHHS's right to enforce this agreement with respect to any default or defect in the services that has not been cured.
- 54. Notice:** Notice must be in writing and sent to dhhscontracts@utah.gov.
- 55. Order of Precedence:** The terms of this agreement will be reasonably interpreted and construed to avoid any conflict among the provisions. If there is any conflict between this agreement's terms, or the terms of the federal award or applicable federal regulation, the order of precedence (listed in order of descending precedence) among the terms is: (1) the terms of the federal award and any applicable federal regulations; (2) Agreement Signature Page(s); (3) this Attachment A; (4) DHHS scope of work; (5) Any other attachments.
- 56. Time is of the Essence:** The Subrecipient shall complete services by any deadline stated in this agreement. For all services, time is of the essence. The Subrecipient shall be liable for all reasonable damages to DHHS and the State, and anyone for whom the State may be liable, as a result of the Subrecipient's failure to timely perform the services required under this agreement.
- 57. Dispute Resolution:** DHHS and the Subrecipient shall attempt to resolve agreement disputes through available administrative remedies prior to initiating any court action. Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. DHHS, after consultation with the Subrecipient, may appoint an expert or panel of experts to assist in the resolution of a dispute. If DHHS appoints such an expert or panel, DHHS and the Subrecipient agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
- 58. Prohibited Discriminatory Practices:** The Subrecipient shall not use contract funds for any prohibited discriminatory practice as defined by Utah Code 53B-1-118.
- 59. Certification:** As required by 2 CFR 200.415, whenever the Subrecipient applies for funds, requests payment, and submits financial reports regarding federal awards under this agreement, the Subrecipient hereby certifies as follows: "I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729-3730 and 3801-3812."
- 60. Entire Agreement:** This agreement constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revised: 1/21/2025)

## Attachment B: Utah Department of Health and Human Services State Funds Grant Terms

### 1. Definitions:

**"Authorized Persons"** means the Grantee's employees, officers, partners, subcontractors, or other agents of the Grantee who need to access State Data to enable the Grantee to perform its responsibilities under this agreement.

**"Agreement Signature Page(s)"** means the DHHS cover page(s), including the page(s) signed by the parties.

**"DHHS"** means the Utah Department of Health and Human Services.

**"Local Money"** means money that is owned, held or administered by a political subdivision of the State that is derived from fee or tax revenues but does not include money received as payment for goods or services purchased or contributions or donations received by the political subdivision.

**"State"** means the state of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.

**"State Data"** means all confidential information, non-public data, personal data, and protected health information that is created or in any way originating with the State whether such data or output is stored on the State's hardware, the Grantee's hardware, or exists in any system owned, maintained or otherwise controlled by the State or by the Grantee. State Data includes any federal data that DHHS controls or maintains, that is protected under federal laws, statutes, and regulations. DHHS may identify, during and after this agreement, additional reasonable types of categories of information that must be kept confidential under federal and State laws.

**"State Money"** means money that is owned, held, or administered by a State agency and derived from State fee or tax revenues but does not include contributions or donations received by the State agency.

**"Uniform Guidance"** means Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for the specified federal awarding agency set forth in Title 2 of the Code of Federal Regulations.

- 2. Governing Law and Venue:** This agreement is governed by the laws, rules, and regulations of Utah. Any action or proceeding arising from this agreement must be brought in a court of competent jurisdiction in the State. Venue is in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
- 3. Nonprofit Registration:** If the Grantee is a nonprofit corporation that receives an amount of money requiring an accounting report under the Utah Code, it shall register and maintain the nonprofit corporation's registration as a limited purpose entity in accordance with code requirements.
- 4. Amendments:** Amendments to this agreement must be in writing and signed by the parties except for the following for which written notification from DHHS will constitute an amendment to the agreement without the Grantee's signature: 1) changes in the total agreement amount or rates; and 2) changes to financial reporting requirements.
- 5. No Automatic Renewals:** This agreement will not automatically renew.
- 6. Laws and Regulations:** The Grantee shall comply with all applicable federal, state, and local laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
- 7. Conflict of Interest:** The Grantee represents that none of its officers or employees are officers or employees of DHHS or the State, unless written disclosure has been made to DHHS. The Grantee shall comply and cooperate in good faith with all conflict of interest and ethic laws.



- 8. Independent Capacity:** The Grantee and any subcontractors, in the performance of this agreement, shall act in an independent capacity and not as officers, employees, or agents of DHHS.
- 9. Reporting Receipt of Federal and State Funds.**
- 9.1.** If the Grantee is a nonprofit corporation and receives State Money, the Grantee shall disclose to DHHS, annually and in writing, whether it has received in the previous fiscal year or anticipates receiving any of the following amounts: (i) revenues or expenditures of State Money that is not payment for goods or services purchased from the Grantee, and Local Money in the amount of \$750,000 or more; (ii) revenues or expenditures of State Money that is not payment for goods or services purchased from the Grantee, and Local Money at least \$350,000 but less than \$750,000; or (iii) revenues or expenditures of State Money that is not payment for goods or services purchased from the Grantee, and Local Money of at least \$100,000 but less than \$350,000. This disclosure must be made when entering into this agreement and annually thereafter no later than six months after the end of the Grantee's fiscal year.
- 9.2.** The Grantee shall provide to DHHS a written description and itemized report at least annually detailing the expenditure of State Money, and the intended expenditure of any State Money that has not been spent. The Grantee shall provide to DHHS a final written itemized report when all the State Money is spent. DHHS may require the Grantee to return an amount of money that is equal to the State Money expended in violation of the terms of this section. Reports must be submitted no later than July 31<sup>st</sup> of each year and no later than 30 days after the expenditure of all State funds, whichever is earlier.
- 9.3.** The Grantee shall comply with all federal and State reporting requirements, including as applicable, but not limited to, 2 C.F.R. 200 and Utah Code sections 51-2a-201, 51-2a-201.5, and 63G-6b-201.
- 9.4.** Reports that are required to be sent to DHHS must be sent to [dhhsfinancialreports@utah.gov](mailto:dhhsfinancialreports@utah.gov).
- 10. Timely Reporting:** The Grantee shall timely submit all reports and back-up data required by this agreement or requested by DHHS.
- 11. Invoicing:** Unless otherwise stated in the scope of work, the Grantee shall submit invoices along with any supporting documentation within 20 days following the last day of the month in which the expenditures were incurred or the services provided. The Grantee shall list this agreement number on all invoices and correspondence relating to this agreement. The Grantee shall submit all final billings under this agreement within 14 days of expiration or termination of this agreement, regardless of the Grantee's billing period. Notwithstanding the foregoing, the Grantee shall submit all billings for services performed on or before June 30th of a given fiscal year no later than July 14th of the following fiscal year, regardless of Grantee's billing period or the expiration or termination date of this agreement. DHHS may reject any invoice or claim for payment or reimbursement if received by DHHS after the requirements stated in this agreement, but in no case will DHHS pay for items billed later than twelve months after the fiscal year ending June 30th that the Grantee's services were provided or expected under the agreement, or for agreements with Medicaid, later than Medicaid deadlines.
- 12. Supporting Documentation:** The Grantee shall maintain documentation necessary to support the costs billed by the Grantee and shall submit the documentation with the billings, if requested. The Grantee shall store and file required documentation in a systematic and consistent manner.
- 13. Questioned Costs:** DHHS may question any billing by the Grantee if the billing is not supported by proper documentation. The Grantee shall provide documentation as requested by DHHS.
- 14. Payment:**
- 14.1.** Payment to the Grantee will be based on allowable costs incurred by the Grantee in providing services pursuant to this agreement. The Grantee shall maintain documented expenditures that comply with federal cost principles and any attached budget. Expenditures must be reasonable and necessary to carry out agreement requirements. The Grantee shall be responsible for any expenditures DHHS finds to be improper or unallowable, including personal expenses, and shall repay these expenditures from funds

other than those provided pursuant to this agreement or any other agreement between DHHS and the Grantee. The Grantee consents to a follow-up audit and clawback of the grant funds if an audit shows that the grant funds were inappropriately used. This provision will survive the expiration or termination of this agreement.

**14.2.** DHHS shall make payments within 30 days after a correct invoice is received. All payments to the Grantee will be remitted by mail, electronic funds transfer, or the State's purchasing card. If payment has not been made after 60 days from the date a correct invoice is received by DHHS, then interest may be added by the Grantee as prescribed in the Utah Prompt Payment Act. The acceptance by the Grantee of final payment, without a written protest filed with DHHS within 10 business days of receipt of final payment, will release DHHS and the State from all claims and all liability to the Grantee. DHHS's payment for the services will not be deemed an acceptance of the services and is without prejudice to any and all claims that DHHS or the State may have against the Grantee. The Grantee shall not charge end users electronic payment fees of any kind.

**14.3.** If funding to DHHS is reduced due to an order by the legislature or the governor, or is required by State law, DHHS shall reimburse the Grantee for products delivered and services performed through the date of cancellation or reduction, and DHHS shall not be liable for any future commitments, penalties, or liquidated damages.

**14.4.** Upon 30 days written notice, the Grantee shall reimburse DHHS for funds DHHS is required to reimburse a third party funding source resulting from the actions of the Grantee or its subcontractors.

**15. Related Party Payments.** The Grantee shall not make payments to Related Parties in any category of expenditure (administrative costs, capital expenditures, or program costs) without the prior written consent of DHHS. Among other items, payments to Related Parties include: salaries, wages, compensation under employment or service agreements, or payments under purchase, lease, or rental agreements. Payments made by the Grantee to Related Parties without prior written consent may be disallowed and require repayment to DHHS. **"Related Parties"** means (a) any person related to the vendor's representative by blood or marriage including, but not limited to, father, mother, husband, wife, son, daughter, sister, brother, grandfather, grandmother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, uncle, aunt, nephew, niece, grandson, granddaughter, or first cousin; and (b) all business associates of the vendor: (i) who are partners, directors, or officers in the same business entity as the vendor; (ii) who have authority to make decisions or establish policies in the same business entity as the vendor; or (iii) who directly or indirectly own 10% or more in the same business entity as the vendor.

**16. Repayment:** Upon written request by DHHS, any overpayments, disallowed expenditures, excess payments or questioned costs will be immediately due and payable by the Grantee. In the alternative, DHHS may withhold any or all subsequent payments pursuant to this agreement until DHHS fully recoups these funds. In such cases, the Grantee shall not reduce the level of services required by this agreement.

**17. Budget Adjustments:** If this agreement is budget based, the budget attached to this agreement will be the basis for DHHS's payments to the Grantee. The Grantee shall not transfer budgeted funds from program costs to either administrative costs or capital expenditures without DHHS's prior written approval. The Grantee shall not transfer budgeted funds between administrative costs and capital expenditures without DHHS's prior written approval. The Grantee may transfer funds from administrative costs or capital expenditures to program costs without prior approval. The Grantee may transfer funds between subcategories within each major category without prior approval if there are no restrictions on expenditures within those subcategories.

**18. Excessive Expenditures:** If this agreement requires a budget, DHHS may question any amounts in excess of the total amount budgeted in either administrative costs or capital expenditures and may require the Grantee to refund the excesses to DHHS. Amounts in excess of the total amount budgeted in program costs will not normally result in questioned costs unless DHHS has placed restrictions on subcategories within this major category. If this

agreement restricts expenditures within defined subcategories, DHHS will consider any unapproved excesses to be a questioned cost.

- 19. Nonappropriation of Funds, Reduction of Funds, or Changes in Law:** Upon 30 days written notice delivered to the Grantee, DHHS may terminate this agreement in whole or in part, or proportionately reduce the services and the amounts due, if DHHS reasonably determines that: (i) a change in federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this agreement; or (ii) a change in appropriations, available funds, or budgets affects DHHS's ability to pay under this agreement. A change of available funds as used in this paragraph includes, but is not limited to, a change in federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this section, DHHS shall reimburse the Grantee for the services properly ordered until the effective date of said notice. DHHS will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
- 20. Cost Accounting System:** The Grantee shall maintain an accounting system that provides a general ledger and cost accounting records adequate to assure that costs incurred are reasonable, allowable, allocable to agreement objectives, and separate from costs associated with other business activities of the Grantee. The Grantee shall ensure that its accounting system meets required reporting requirements and timely development of cost data in the required form.
- 21. Insurance:** The Grantee shall maintain insurance sufficient to cover the types of hazards normally associated with the services the Grantee will be providing.
- 22. Suspension of Work:** DHHS shall give the Grantee written notice should DHHS suspend the Grantee's responsibilities under this agreement. The Grantee's responsibilities may be reinstated upon advance written notice from DHHS.
- 23. Indemnification:**
- 23.1.** If the Grantee is a governmental entity, the parties mutually agree that each party assumes liability for the negligent and wrongful acts committed by its own agents, officials, or employees, regardless of the source of funding for this agreement. Neither party waives any rights or defenses otherwise available under the Governmental Immunity Act.
  - 23.2.** If the Grantee is a non-governmental entity, the Grantee shall be fully liable for the actions of its agents, employees, officers, partners, and subcontractors. The Grantee shall fully indemnify, defend, and save harmless DHHS and the State from all claims, losses, suits, actions, damages, and costs of every name and description arising out of the Grantee's performance of this agreement caused by any intentional act or negligence of the Grantee, its agents, employees, officers, partners, or subcontractors, without limitation; provided, however, that the Grantee shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of DHHS. The Grantee is solely responsible for all payments owed to any subcontractor arising from the Grantee's performance under this agreement and will hold DHHS harmless from any such payments owed to the subcontractor. This provision survives the expiration or termination of this agreement.
  - 23.3.** The parties agree that if there are any limitations of the Grantee's liability, including a limitation of liability clause for anyone for whom the Grantee is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
- 24. Intellectual Property Indemnification:** The Grantee shall indemnify and hold DHHS and the State harmless from and against any and all damages, expenses (including reasonable legal fees), claims, judgments, liabilities, and costs in any action or claim brought against DHHS or the State for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of the Grantee's liability, such limitations of liability will not apply to this section.

- 25. No Subrogation or Contribution:** The Grantee has no right of subrogation or contribution from the State or DHHS for any judgment rendered against the Grantee.
- 26. Debarment:** DHHS may immediately terminate this agreement if DHHS determines that the Grantee has been debarred, suspended, or otherwise lawfully excluded from participating in any agreement issued by a governmental entity, including but not limited to, being determined ineligible as a subcontractor of any governmental entity. The Grantee certifies that it is not currently suspended, debarred, or otherwise prohibited to enter this agreement. The Grantee shall immediately notify DHHS if the Grantee becomes suspended, debarred, or otherwise ineligible for this or any other agreement issued by a governmental entity.
- 27. Termination and Default:**
- 27.1. Termination for Convenience.** DHHS may terminate this agreement without cause, upon 30 days written notice to the Grantee. If the Grantee terminates this agreement without cause, DHHS may treat the Grantee's action as a default under this agreement.
- 27.2. Termination for Cause.** Each party may terminate this agreement with cause. If the cause for termination is due to the default of a party, the non-defaulting party shall give written notice to the defaulting party of its intent to terminate. The defaulting party may cure the default within 10 days of the notice. If the default is not cured within the 10 days, the party giving notice may terminate this agreement 40 days from the date of the initial notice of default or at a later date. Time allowed for cure will not diminish or eliminate the Grantee's liability for damages.
- 27.3. Miscellaneous Grounds for Termination.** In addition to other grounds for termination, DHHS may immediately terminate this agreement if DHHS receives a notice of a lien against the Grantee's payments or if the Grantee becomes debarred, becomes insolvent, files for bankruptcy or reorganization proceedings, is subject to IRS withholding, sells 30% or more of the company's assets or corporate stock, or gives notice of its inability to perform its obligations under this agreement. The Grantee shall provide DHHS with proof of financial viability upon request.
- 27.4. Payment After Termination.** DHHS shall pay the Grantee for the services properly performed under this agreement up to the effective date of the notice of termination. The Grantee agrees that in the event of termination, the Grantee's sole remedy and monetary recovery from DHHS or the State is limited to full payment for all services properly performed as authorized under this agreement up to the date of termination, as well as any reasonable monies owed as a result of the Grantee having to terminate other contracts necessarily and appropriately entered into by the Grantee pursuant to this agreement.
- 27.5. Default.** Any of the following events will constitute cause for DHHS to declare the Grantee in default of this agreement: (i) the Grantee's non-performance of its contractual requirements and obligations under this agreement; or (ii) the Grantee's material breach of any term or condition of this agreement. If the Grantee defaults in any manner in the performance of any obligation under this agreement, or if audit exceptions are identified, DHHS may either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. Default and audit exceptions for which payment may be adjusted or withheld include disallowed expenditures of federal or State funds as a result of the Grantee's failure to comply with federal regulations or State rules. In addition, DHHS may withhold amounts due the Grantee under this agreement, any other current agreement between DHHS and the Grantee, or any future payments due the Grantee to recover the funds. DHHS shall notify the Grantee of DHHS's action in adjusting the amount of payment or withholding payment. This agreement is executory until such repayment is made.
- 28. Remedies:** In addition to terminating this agreement upon default or breach of the Grantee, DHHS may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) impose liquidated damages; (iii)

debar or suspend the Grantee from receiving future contracts from DHHS or the State; and (iv) demand a full refund of any payment DHHS has made to the Grantee for services that do not conform to this agreement.

**29. Reviews:** DHHS may perform plan checks or reviews and require changes when needed. Such reviews do not waive the requirement of the Grantee to meet all of the terms and conditions of this agreement.

**30. Performance Evaluation and Remediation:** DHHS may conduct a performance evaluation of the Grantee's services, including the Grantee's subcontractors. DHHS may make the results of any evaluation available to the Grantee. DHHS may make scheduled and unannounced visits. The Grantee shall allow DHHS monitors and auditors to have access to any records related to this agreement. The Grantee shall cooperate with all monitoring and audits. DHHS may require remediation. The Grantee shall comply with any remediation plan required by DHHS. The Grantee's failure to comply with a DHHS remediation plan will be deemed a material breach of this agreement.

**31. Public Information:** The Grantee agrees that this agreement, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State's Government Records Access and Management Act ("**GRAMA**"). DHHS and the State are not obligated to inform the Grantee of any GRAMA requests.

**32. Publicity:** The Grantee shall not advertise or publicize matters relating to this agreement, or publicly use DHHS's name, without the prior written approval of DHHS. The Grantee shall impose this restriction on its subawardees and subcontractors, and shall require subawardees and subcontractors to impose this restriction on each lower tier of subawardees and subcontractors.

**33. Information Ownership:** Except for confidential medical records held by direct care providers, DHHS shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this agreement. The Grantee shall not use or disclose, except in meeting its obligations under this contract, information gathered, reports developed, or conclusions reached in performance of this agreement without prior written consent from DHHS. DHHS will own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by the Grantee under this agreement. The Grantee shall not use confidential federal, state, or local government information without prior written consent from DHHS, and shall bind any subcontractor to the same requirement.

**34. Information Practices:** The Grantee shall establish, maintain, and practice information procedures and controls that comply with federal and State law including, as applicable, Utah Code Title 26B and the privacy and security standards promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") & the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"). DHHS may require the Grantee to enter into a business associate agreement if applicable. The Grantee shall receive or request from DHHS only information about an individual that is necessary to the Grantee's performance of its duties and functions. The Grantee shall use the information only for purposes of this agreement.

**35. Secure Protection and Handling of State Data:**

**35.1.** If the Grantee is given access to or stores State Data as part of this agreement, the protection of State Data must be an integral part of the business activities of the Grantee to ensure that there is no inappropriate or unauthorized use of State Data. The Grantee shall safeguard the confidentiality, integrity, and availability of the State Data. The Grantee agrees to not copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this agreement. The improper use or disclosure of confidential information is strictly prohibited.

**35.2.** Any and all transmission or exchange of State Data must take place via secure means. The Grantee shall create, store, and maintain any State Data on secure or encrypted computing devices or portable storage mediums. The Grantee agrees to protect and maintain the security of State Data with security measures including, but not limited to, maintaining secure environments that are patched and up to date with all

appropriate security updates, network firewall provisioning, and intrusion detection. The Grantee agrees that any computing device or portable medium that has access to DHHS's network or stores any non-public State Data is equipped with strong and secure password protection.

**35.3.** The Grantee shall: (i) limit disclosure of any State Data to Authorized Persons who have a need to know such information in connection with the current or contemplated business relationship between the parties to which this agreement relates, and only for that purpose; (ii) advise its Authorized Persons of the proprietary nature of the State Data and of the obligations set forth in this agreement and require Authorized Persons to keep the State Data confidential; (iii) keep all State Data strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (iv) not disclose any State Data received by it to any third parties, except as permitted by this agreement or otherwise agreed to in writing by DHHS.

**35.4.** The Grantee shall promptly notify DHHS of any misuse or misappropriation of State Data that comes to the Grantee's attention. The Grantee shall be responsible for any breach of this duty of confidentiality by any of its officers, agents, employees, subcontractors at any tier, and any of its respective representatives, including any required remedies or notifications under applicable law (Utah Code Ann. §§ 13- 44-101 through 301). This duty of confidentiality is ongoing and survives the term of this agreement. Notwithstanding the foregoing, if there is a discrepancy between a signed business associate agreement and this provision, the business associate agreement language will take precedence.

**36. Artificial Intelligence:** The Grantee shall not use State Data in any generative artificial intelligence ("GAI") queries, training, or program creation without prior written permission from DHHS. The Grantee attests that its GAI models use only properly licensed material. The Grantee shall fully indemnify and hold DHHS harmless from all claims, loss, or damages related to the Grantee's use of GAI. Should the Grantee learn that State Data has been used in GAI queries without DHHS permission, the Grantee shall immediately notify DHHS. The Grantee shall inform DHHS of any GAI in the Goods or Services being contracted for prior to providing those Goods or Services to DHHS. The Grantee shall include annotations sufficient to comply with DTS Policy 4000-0008 (Generative AI Policy) when utilizing GAI in the creation of Goods and Services with the potential to impact DHHS intellectual property rights.

**37. Ownership, Protection, and Return of Documents and Data upon Agreement Termination or Completion:** Except for records that must be retained for a longer period under section 40.2 and for confidential medical records held by direct care providers, all documents and data pertaining to work required by this agreement will be the property of DHHS, and must be returned to DHHS or disposed of within 30 days after termination or expiration of this agreement, regardless of the reason for agreement termination, and without restriction or limitation to future use. If such return or destruction is not feasible, the Grantee shall notify DHHS. The Grantee shall extend any protections, limitation, and restrictions of this agreement to any information retained after the termination of this agreement and shall limit further uses and disclosures to those purposes that make the return or destruction of the data infeasible. Any disposal of State Data must be disposed of in such a manner that it cannot be recovered or recreated. Notwithstanding the foregoing, if there is a discrepancy between a signed business associate agreement and this provision, the business associate agreement language will take precedence.

**38. Intellectual Property Ownership:** DHHS and the Grantee recognize that each has no right, title, or interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by the Grantee prior to the execution of this agreement, but specifically created or manufactured under this agreement, is considered work made for hire, and the Grantee shall transfer any ownership claim to DHHS.

**39. Standard of Care:** The services of the Grantee and its subcontractors must be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services, which similarities include the type, magnitude, and complexity of the services that are the subject of this agreement. The Grantee shall be liable to DHHS and the State for claims, liabilities, additional

burdens, penalties, damages, or third party claims, to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

**40. Record Keeping, Audits, and Inspections:**

- 40.1.** For financial reporting, the Grantee shall comply with the Uniform Guidance and Generally Accepted Accounting Principles (“GAAP”).
- 40.2.** The Grantee shall maintain or supervise the maintenance of all records necessary to properly account for the Grantee’s performance and the payments made by DHHS to the Grantee under this agreement. The Grantee shall maintain all supporting documents, financial and statistical records, and other records related to this agreement and the federal award for six years from the date of submission of the final expenditure report. DHHS shall have access to these records for as long as the records exist. This provision survives the expiration or termination of this agreement. The Grantee shall retain these records as required by GAAP, state law, or specific program requirements, whichever is longer. The Grantee shall allow, at no additional cost, the State, auditors, and DHHS staff, access to all such records.
- 40.3.** The Grantee shall retain all records which relate to disputes, litigation, audits, and claim settlements arising from agreement performance or cost or expense exceptions, until all disputes, litigation, audits, claims, or exceptions are resolved.
- 40.4.** The Grantee shall comply with federal and State regulations concerning cost principles, audit requirements, and agreement administration requirements, including, but not limited to, the Uniform Guidance. Unless specifically exempted in the scope of work, the Grantee shall comply with applicable federal cost principles and agreement administration requirements. Counties, cities, towns, and school districts are subject to the State Legal Compliance Audit Guide. The Grantee shall send copies of required reports to [dhhsfinancialreports@utah.gov](mailto:dhhsfinancialreports@utah.gov).

**41. Employment Practices:** The Grantee shall abide by the following employment laws, as applicable: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of Services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 C.F.R. § 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; (v) Utah Executive Order No. 2006-0012, dated December 13, 2006, which prohibits unlawful harassment in the workplace; (vi) Utah Code Ann. § 26B-7-503, Utah Indoor Clean Air Act which prohibits smoking in enclosed public places; (vii) Utah Executive Order No. 2006-0012 which prohibits all unlawful harassment in any workplace in which State employees and employees of public and higher education must conduct business; (viii) 41 CFR part 60, Equal Employment Opportunity, and the Executive Order 11246, as amended by Executive Order 11375, which implements those regulations; (ix) 45 C.F.R. part 83, which prohibits the extension of federal support to any entity that discriminates on the basis of sex in the admission of individuals to its health manpower and nurse training programs; and (x) 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5), Contract Work Hours and Safety Standards Act, for contracts that involve the employment of mechanics or laborers. The Grantee further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of the Grantee’s employees or Persons served.

**42. Background Screening Requirements:** The Grantee and any individuals associated with the Grantee shall comply with the background screening requirements in Utah Code §26B-2-120 and Utah Administrative Code R501-14.

**43. Provider Code of Conduct:** If the Grantee and any individuals associated with the Grantee will be working with DHHS clients, the Grantee shall follow and enforce the DHHS Provider Code of Conduct. Before allowing any employee or volunteer to work with clients, the Grantee shall: 1) provide a current copy of the DHHS Provider Code of Conduct to each employee or volunteer currently working for the Grantee and to new employees or

volunteers; and 2) retain in each employee's or volunteer's file a signed and dated statement in which that person certifies that he or she has read, understands, and will comply with the DHHS Provider Code of Conduct. Annually, the Grantee shall obtain the current DHHS Provider Code of Conduct poster and display the poster where its employees and volunteers can see it.

- 44. Waiver:** A waiver of any right, power, or privilege will not be construed as a waiver of any subsequent right, power, or privilege.
- 45. Legal Fees:** In the event of any judicial action to enforce rights under this agreement, the prevailing party will be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
- 46. Subawards, Subcontracts and Assignment:** The Grantee shall not assign, sell, transfer, subcontract, subaward, or sublet rights or delegate responsibilities under this agreement, in whole or part, without the prior written consent of DHHS. The Grantee retains ultimate responsibility for performance of all terms, conditions, and provisions of this agreement that are subcontracted or performed by a subcontractor. When subcontracting, the Grantee agrees to use written subcontracts that conform to federal and State laws. The Grantee shall request DHHS approval for any assignment at least 20 days prior to its effective date.
- 47. Force Majeure:** Neither party will be held responsible for delay or default caused by fire, riot, acts of God, or war which is beyond the party's reasonable control. DHHS may terminate this agreement after determining that the delay or default will likely prevent successful performance of this agreement.
- 48. Severability:** The invalidity or unenforceability of any provision, term, or condition of this agreement will not affect the validity or enforceability of any other provision, term, or condition of this agreement, which will remain in full force and effect.
- 49. Survival of Terms:** Termination or expiration of this agreement will not extinguish or prejudice DHHS's right to enforce this agreement with respect to any default or defect in the services that has not been cured.
- 50. Notice:** Notice must be in writing and sent to [dhhscontracts@utah.gov](mailto:dhhscontracts@utah.gov).
- 51. Order of Precedence:** The terms of this agreement will be reasonably interpreted and construed to avoid any conflict among the provisions. If there is any conflict between this agreement's terms, the order of precedence (listed in order of descending precedence) among the terms is: (1) Agreement Signature Page(s); (2) this Attachment A; (3) DHHS scope of work; (4) Any other attachments.
- 52. Time is of the Essence:** The Grantee shall complete services by any deadline stated in this agreement. For all services, time is of the essence. The Grantee shall be liable for all reasonable damages to DHHS and the State, and anyone for whom the State may be liable, as a result of the Grantee's failure to timely perform the services required under this agreement.
- 53. Dispute Resolution:** DHHS and the Grantee shall attempt to resolve agreement disputes through available administrative remedies prior to initiating any court action. Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. DHHS, after consultation with the Grantee, may appoint an expert or panel of experts to assist in the resolution of a dispute. If DHHS appoints such an expert or panel, DHHS and the Grantee agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
- 54. Prohibited Discriminatory Practices:** The Grantee shall not use grant funds for any prohibited discriminatory practice as defined by Utah Code 53B-1-118.
- 55. Entire Agreement:** This agreement constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revised: 1/15/2025)



## Attachment C: Utah Department of Health and Human Services Public Entity Non-Subrecipient Federal Grant Terms

### 1. Definitions:

**"Authorized Persons"** means the Grantee's employees, officers, partners, subcontractors, or other agents of the Grantee who need to access State Data to enable the Grantee to perform its responsibilities under this agreement.

**"Agreement Signature Page(s)"** means the DHHS cover page(s), including the page(s) signed by the parties.

**"DHHS"** means the Utah Department of Health and Human Services.

**"Local Money"** means money that is owned, held or administered by a political subdivision of the State that is derived from fee or tax revenues but does not include money received as payment for goods or services purchased or contributions or donations received by the political subdivision.

**"State"** means the state of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.

**"State Data"** means all confidential information, non-public data, personal data, and protected health information that is created or in any way originating with the State whether such data or output is stored on the State's hardware, the Grantee's hardware, or exists in any system owned, maintained or otherwise controlled by the State or by the Grantee. State Data includes any federal data that DHHS controls or maintains, that is protected under federal laws, statutes, and regulations. DHHS may identify, during and after this agreement, additional reasonable types of categories of information that must be kept confidential under federal and State laws.

**"State Money"** means money that is owned, held, or administered by a State agency and derived from State fee or tax revenues but does not include contributions or donations received by the State agency.

**"Uniform Guidance"** means Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for the specified federal awarding agency set forth in Title 2 of the Code of Federal Regulations.

2. **Governing Law and Venue:** This agreement is governed by the laws, rules, and regulations of Utah. Any action or proceeding arising from this agreement must be brought in a court of competent jurisdiction in the State. Venue is in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **Nonprofit Registration:** If the Grantee is a nonprofit corporation that receives an amount of money requiring an accounting report under the Utah Code, it shall register and maintain the nonprofit corporation's registration as a limited purpose entity in accordance with code requirements.
4. **Amendments:** Amendments to this agreement must be in writing and signed by the parties except for the following for which written notification from DHHS will constitute an amendment to the agreement without the Grantee's signature: 1) changes in the total agreement amount or rates; and 2) changes to financial reporting requirements.
5. **No Automatic Renewals:** This agreement will not automatically renew.
6. **Laws and Regulations:** The Grantee shall comply with all applicable federal, state, and local laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this agreement is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will take precedence over any conflict with this Attachment A.

7. **Conflict of Interest:** The Grantee represents that none of its officers or employees are officers or employees of DHHS or the State, unless written disclosure has been made to DHHS. The Grantee shall comply and cooperate in good faith with all conflict of interest and ethic laws.
8. **Independent Capacity:** The Grantee and any subcontractors, in the performance of this agreement, shall act in an independent capacity and not as officers, employees, or agents of DHHS.
9. **Reporting Receipt of Federal and State Funds.**
  - 9.1. If the Grantee is a nonprofit corporation and receives State Money, the Grantee shall disclose to DHHS, annually and in writing, whether it has received in the previous fiscal year or anticipates receiving any of the following amounts: (i) revenues or expenditures of State Money that is not payment for goods or services purchased from the Grantee, and Local Money in the amount of \$750,000 or more; (ii) revenues or expenditures of State Money that is not payment for goods or services purchased from the Grantee, and Local Money at least \$350,000 but less than \$750,000; or (iii) revenues or expenditures of State Money that is not payment for goods or services purchased from the Grantee, and Local Money of at least \$100,000 but less than \$350,000. This disclosure must be made when entering into this agreement and annually thereafter no later than six months after the end of the Grantee's fiscal year.
  - 9.2. The Grantee shall provide to DHHS a written description and itemized report at least annually detailing the expenditure of State Money, and the intended expenditure of any State Money that has not been spent. The Grantee shall provide to DHHS a final written itemized report when all the State Money is spent. DHHS may require the Grantee to return an amount of money that is equal to the State Money expended in violation of the terms of this section. Reports must be submitted no later than July 31<sup>st</sup> of each year and no later than 30 days after the expenditure of all State funds, whichever is earlier.
  - 9.3. The Grantee shall comply with all federal and State reporting requirements, including as applicable, but not limited to, 2 C.F.R. 200 and Utah Code sections 51-2a-201, 51-2a-201.5, and 63G-6b-201.
  - 9.4. Reports that are required to be sent to DHHS must be sent to [dhhsfinancialreports@utah.gov](mailto:dhhsfinancialreports@utah.gov).
10. **Timely Reporting:** The Grantee shall timely submit all reports and back-up data required by this agreement or requested by DHHS.
11. **Invoicing:** Unless otherwise stated in the scope of work, the Grantee shall submit invoices along with any supporting documentation within 20 days following the last day of the month in which the expenditures were incurred or the services provided. The Grantee shall list this agreement number on all invoices and correspondence relating to this agreement. The Grantee shall submit all final billings under this agreement within 14 days of expiration or termination of this agreement, regardless of the Grantee's billing period. Notwithstanding the foregoing, the Grantee shall submit all billings for services performed on or before June 30th of a given fiscal year no later than July 14th of the following fiscal year, regardless of Grantee's billing period or the expiration or termination date of this agreement. DHHS may reject any invoice or claim for payment or reimbursement if received by DHHS after the requirements stated in this agreement, but in no case will DHHS pay for items billed later than twelve months after the fiscal year ending June 30th that the Grantee's services were provided or expected under the agreement, or for agreements with Medicaid, later than Medicaid deadlines.
12. **Supporting Documentation:** The Grantee shall maintain documentation necessary to support the costs billed by the Grantee and shall submit the documentation with the billings, if requested. The Grantee shall store and file required documentation in a systematic and consistent manner.
13. **Questioned Costs:** DHHS may question any billing by the Grantee if the billing is not supported by proper documentation. The Grantee shall provide documentation as requested by DHHS.
14. **Payment:**
  - 14.1. Payment to the Grantee will be based on allowable costs incurred by the Grantee in providing services pursuant to this agreement. The Grantee shall maintain documented expenditures that comply with

federal cost principles and any attached budget. Expenditures must be reasonable and necessary to carry out agreement requirements. The Grantee shall be responsible for any expenditures DHHS finds to be improper or unallowable, including personal expenses, and shall repay these expenditures from funds other than those provided pursuant to this agreement or any other agreement between DHHS and the Grantee. The Grantee consents to a follow-up audit and clawback of any state grant funds if an audit shows that such grant funds were inappropriately used. This provision will survive the expiration or termination of this agreement.

**14.2.** DHHS shall make payments within 30 days after a correct invoice is received. All payments to the Grantee will be remitted by mail, electronic funds transfer, or the State's purchasing card. If payment has not been made after 60 days from the date a correct invoice is received by DHHS, then interest may be added by the Grantee as prescribed in the Utah Prompt Payment Act. The acceptance by the Grantee of final payment, without a written protest filed with DHHS within 10 business days of receipt of final payment, will release DHHS and the State from all claims and all liability to the Grantee. DHHS's payment for the services will not be deemed an acceptance of the services and is without prejudice to any and all claims that DHHS or the State may have against the Grantee. The Grantee shall not charge end users electronic payment fees of any kind.

**14.3.** If funding to DHHS is reduced due to an order by the legislature or the governor, or is required by State law, or if applicable federal funding is not provided to DHHS, DHHS shall reimburse the Grantee for services performed through the date of cancellation or reduction, and DHHS shall not be liable for any future commitments, penalties, or liquidated damages.

**14.4.** Upon 30 days written notice, the Grantee shall reimburse DHHS for funds DHHS is required to reimburse a third party funding source resulting from the actions of the Grantee or its subcontractors.

**15. Related Party Payments.** The Grantee shall not make payments to Related Parties in any category of expenditure (administrative costs, capital expenditures, or program costs) without the prior written consent of DHHS. Among other items, payments to Related Parties include: salaries, wages, compensation under employment or service agreements, or payments under purchase, lease, or rental agreements. Payments made by the Grantee to Related Parties without prior written consent may be disallowed and require repayment to DHHS. **"Related Parties"** means (a) any person related to the vendor's representative by blood or marriage including, but not limited to, father, mother, husband, wife, son, daughter, sister, brother, grandfather, grandmother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, uncle, aunt, nephew, niece, grandson, granddaughter, or first cousin; and (b) all business associates of the vendor: (i) who are partners, directors, or officers in the same business entity as the vendor; (ii) who have authority to make decisions or establish policies in the same business entity as the vendor; or (iii) who directly or indirectly own 10% or more in the same business entity as the vendor.

**16. Repayment:** Upon written request by DHHS, any overpayments, disallowed expenditures, excess payments or questioned costs will be immediately due and payable by the Grantee. In the alternative, DHHS may withhold any or all subsequent payments pursuant to this agreement until DHHS fully recoups these funds. In such cases, the Grantee shall not reduce the level of services required by this agreement.

**17. Budget Adjustments:** If this agreement is budget based, the budget attached to this agreement will be the basis for DHHS's payments to the Grantee. The Grantee shall not transfer budgeted funds from program costs to either administrative costs or capital expenditures without DHHS's prior written approval. The Grantee shall not transfer budgeted funds between administrative costs and capital expenditures without DHHS's prior written approval. The Grantee may transfer funds from administrative costs or capital expenditures to program costs without prior approval. The Grantee may transfer funds between subcategories within each major category without prior approval if there are no restrictions on expenditures within those subcategories.

**18. Excessive Expenditures:** If this agreement requires a budget, DHHS may question any amounts in excess of the total amount budgeted in either administrative costs or capital expenditures and may require the Grantee to refund the excesses to DHHS. Amounts in excess of the total amount budgeted in program costs will not normally

result in questioned costs unless DHHS has placed restrictions on subcategories within this major category. If this agreement restricts expenditures within defined subcategories, DHHS will consider any unapproved excesses to be a questioned cost.

- 19. Nonappropriation of Funds, Reduction of Funds, or Changes in Law:** Upon 30 days written notice delivered to the Grantee, DHHS may terminate this agreement in whole or in part, or proportionately reduce the services and the amounts due, if DHHS reasonably determines that: (i) a change in federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this agreement; or (ii) a change in appropriations, available funds, or budgets affects DHHS's ability to pay under this agreement. A change of available funds as used in this paragraph includes, but is not limited to, a change in federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this section, DHHS shall reimburse the Grantee for the services properly ordered until the effective date of said notice. DHHS will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
- 20. Cost Accounting System:** The Grantee shall maintain an accounting system that provides a general ledger and cost accounting records adequate to assure that costs incurred are reasonable, allowable, allocable to agreement objectives, and separate from costs associated with other business activities of the Grantee. The Grantee shall ensure that its accounting system meets required reporting requirements and timely development of cost data in the required form.
- 21. Suspension of Work:** DHHS shall give the Grantee written notice should DHHS suspend the Grantee's responsibilities under this agreement. The Grantee's responsibilities may be reinstated upon advance written notice from DHHS.
- 22. Indemnification:**
  - 22.1.** If the Grantee is a governmental entity, the parties agree that each party assumes liability for the negligent and wrongful acts committed by its own agents, officials, or employees, regardless of the source of funding for this agreement. Neither party waives any rights or defenses otherwise available under the Governmental Immunity Act.
  - 22.2.** The parties agree that if there are any limitations of the Grantee's liability, including a limitation of liability clause for anyone for whom the Grantee is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
- 23. Intellectual Property Indemnification:** The Grantee shall indemnify and hold DHHS and the State harmless from and against any and all damages, expenses (including reasonable legal fees), claims, judgments, liabilities, and costs in any action or claim brought against DHHS or the State for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of the Grantee's liability, such limitations of liability will not apply to this section.
- 24. Debarment:** DHHS may immediately terminate this agreement if DHHS determines that the Grantee has been debarred, suspended, or otherwise lawfully excluded from participating in any agreement issued by a governmental entity, including but not limited to, being determined ineligible as a subcontractor of any governmental entity. The Grantee certifies that it is not currently suspended, debarred, or otherwise prohibited to enter this agreement. The Grantee shall immediately notify DHHS if the Grantee becomes suspended, debarred, or otherwise ineligible for this or any other agreement issued by a governmental entity.
- 25. Termination and Default:**
  - 25.1. Termination for Convenience.** DHHS may terminate this agreement without cause, upon 30 days written notice to the Grantee. If the Grantee terminates this agreement without cause, DHHS may treat the Grantee's action as a default under this agreement.
  - 25.2. Termination for Cause.** Each party may terminate this agreement with cause. If the cause for termination is due to the default of a party, the non-defaulting party shall give written notice to the defaulting party of

its intent to terminate. The defaulting party may cure the default within 10 days of the notice. If the default is not cured within the 10 days, the party giving notice may terminate this agreement 40 days from the date of the initial notice of default or at a later date. Time allowed for cure will not diminish or eliminate the Grantee's liability for damages.

**25.3. Payment After Termination.** DHHS shall pay the Grantee for the services properly performed under this agreement up to the effective date of the notice of termination. The Grantee agrees that in the event of termination, the Grantee's sole remedy and monetary recovery from DHHS or the State is limited to full payment for all services properly performed as authorized under this agreement up to the date of termination, as well as any reasonable monies owed as a result of the Grantee having to terminate other contracts necessarily and appropriately entered into by the Grantee pursuant to this agreement.

**25.4. Default.** Any of the following events will constitute cause for DHHS to declare the Grantee in default of this agreement: (i) the Grantee's non-performance of its requirements and obligations under this agreement; or (ii) the Grantee's material breach of any term or condition of this agreement. If the Grantee defaults in any manner in the performance of any obligation under this agreement, or if audit exceptions are identified, DHHS may either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. Default and audit exceptions for which payment may be adjusted or withheld include disallowed expenditures of federal or State funds as a result of the Grantee's failure to comply with federal regulations or State rules. In addition, DHHS may withhold amounts due the Grantee under this agreement, any other current agreement between DHHS and the Grantee, or any future payments due the Grantee to recover the funds. DHHS shall notify the Grantee of DHHS's action in adjusting the amount of payment or withholding payment. This agreement is executory until such repayment is made.

**26. Remedies:** In addition to terminating this agreement upon default or breach of the Grantee, DHHS may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) impose liquidated damages; (iii) debar or suspend the Grantee from receiving future contracts from DHHS or the State; and (iv) demand a full refund of any payment DHHS has made to the Grantee for services that do not conform to this agreement.

**27. Reviews:** DHHS may perform plan checks or reviews and require changes when needed. Such reviews do not waive the requirement of the Grantee to meet all of the terms and conditions of this agreement.

**28. Performance Evaluation and Remediation:** DHHS may conduct a performance evaluation of the Grantee's services, including the Grantee's subcontractors. DHHS may make the results of any evaluation available to the Grantee. DHHS may make scheduled and unannounced visits. The Grantee shall allow DHHS monitors and auditors to have access to any records related to this agreement. The Grantee shall cooperate with all monitoring and audits. DHHS may require remediation. The Grantee shall comply with any remediation plan required by DHHS. The Grantee's failure to comply with a DHHS remediation plan will be deemed a material breach of this agreement.

**29. Public Information:** The Grantee agrees that this agreement, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State's Government Records Access and Management Act ("**GRAMA**"). DHHS and the State are not obligated to inform the Grantee of any GRAMA requests.

**30. Publicity:** The Grantee shall not advertise or publicize matters relating to this agreement, or publicly use DHHS's name, without the prior written approval of DHHS. The Grantee shall impose this restriction on its subawardees and subcontractors, and shall require subawardees and subcontractors to impose this restriction on each lower tier of subawardees and subcontractors.

**31. Information Ownership:** Except for confidential medical records held by direct care providers, DHHS shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this agreement. The Grantee shall not use or disclose, except in meeting its obligations under this contract,

information gathered, reports developed, or conclusions reached in performance of this agreement without prior written consent from DHHS. DHHS will own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by the Grantee under this agreement. The Grantee shall not use confidential federal, state, or local government information without prior written consent from DHHS, and shall bind any subcontractor to the same requirement.

**32. Information Practices:** The Grantee shall establish, maintain, and practice information procedures and controls that comply with federal and State law including, as applicable, Utah Code Title 26B and the privacy and security standards promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") & the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"). DHHS may require the Grantee to enter into a business associate agreement if applicable. The Grantee shall receive or request from DHHS only information about an individual that is necessary to the Grantee's performance of its duties and functions. The Grantee shall use the information only for purposes of this agreement.

**33. Secure Protection and Handling of State Data:**

**33.1.** If the Grantee is given access to or stores State Data as part of this agreement, the protection of State Data must be an integral part of the business activities of the Grantee to ensure that there is no inappropriate or unauthorized use of State Data. The Grantee shall safeguard the confidentiality, integrity, and availability of the State Data. The Grantee agrees to not copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this agreement. The improper use or disclosure of confidential information is strictly prohibited.

**33.2.** Any and all transmission or exchange of State Data must take place via secure means. The Grantee shall create, store, and maintain any State Data on secure or encrypted computing devices or portable storage mediums. The Grantee agrees to protect and maintain the security of State Data with security measures including, but not limited to, maintaining secure environments that are patched and up to date with all appropriate security updates, network firewall provisioning, and intrusion detection. The Grantee agrees that any computing device or portable medium that has access to DHHS's network or stores any non-public State Data is equipped with strong and secure password protection.

**33.3.** The Grantee shall: (i) limit disclosure of any State Data to Authorized Persons who have a need to know such information in connection with the current or contemplated business relationship between the parties to which this agreement relates, and only for that purpose; (ii) advise its Authorized Persons of the proprietary nature of the State Data and of the obligations set forth in this agreement and require Authorized Persons to keep the State Data confidential; (iii) keep all State Data strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (iv) not disclose any State Data received by it to any third parties, except as permitted by this agreement or otherwise agreed to in writing by DHHS.

**33.4.** The Grantee shall promptly notify DHHS of any misuse or misappropriation of State Data that comes to the Grantee's attention. The Grantee shall be responsible for any breach of this duty of confidentiality by any of its officers, agents, employees, subcontractors at any tier, and any of its respective representatives, including any required remedies or notifications under applicable law (Utah Code Ann. §§ 13- 44-101 through 301). This duty of confidentiality is ongoing and survives the term of this agreement. Notwithstanding the foregoing, if there is a discrepancy between a signed business associate agreement and this provision, the business associate agreement language will take precedence.

**34. Artificial Intelligence:** The Grantee shall not use State Data in any generative artificial intelligence ("GAI") queries, training, or program creation without prior written permission from DHHS. The Grantee attests that its GAI models use only properly licensed material. The Grantee shall fully indemnify and hold DHHS harmless from all claims, loss, or damages related to the Grantee's use of GAI. Should the Grantee learn that State Data has been used in GAI queries without DHHS permission, the Grantee shall immediately notify DHHS. The Grantee shall inform DHHS of any GAI in the Goods or Services being contracted for prior to providing those Goods or Services to DHHS.

The Grantee shall include annotations sufficient to comply with DTS Policy 4000-0008 (Generative AI Policy) when utilizing GAI in the creation of Goods and Services with the potential to impact DHHS intellectual property rights.

**35. Ownership, Protection, and Return of Documents and Data upon Agreement Termination or Completion:**

Except for records that must be retained for a longer period under section 37.2 and for confidential medical records held by direct care providers, all documents and data pertaining to work required by this agreement will be the property of DHHS, and must be returned to DHHS or disposed of within 30 days after termination or expiration of this agreement, regardless of the reason for agreement termination, and without restriction or limitation to future use. If such return or destruction is not feasible, the Grantee shall notify DHHS. The Grantee shall extend any protections, limitation, and restrictions of this agreement to any information retained after the termination of this agreement and shall limit further uses and disclosures to those purposes that make the return or destruction of the data infeasible. Any disposal of State Data must be disposed of in such a manner that it cannot be recovered or recreated. Notwithstanding the foregoing, if there is a discrepancy between a signed business associate agreement and this provision, the business associate agreement language will take precedence.

**36. Intellectual Property Ownership:** DHHS and the Grantee recognize that each has no right, title, or interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by the Grantee prior to the execution of this agreement, but specifically created or manufactured under this agreement, is considered work made for hire, and the Grantee shall transfer any ownership claim to DHHS.

**37. Record Keeping, Audits, and Inspections:**

**37.1.** For financial reporting, the Grantee shall comply with the Uniform Guidance and Generally Accepted Accounting Principles (“GAAP”).

**37.2.** The Grantee shall maintain or supervise the maintenance of all records necessary to properly account for the Grantee’s performance and the payments made by DHHS to the Grantee under this agreement. The Grantee shall maintain all supporting documents, financial and statistical records, and other records related to this agreement and the federal award for six years from the date of submission of the final expenditure report. DHHS shall have access to these records for as long as the records exist. This provision survives the expiration or termination of this agreement. The Grantee agrees to allow, at no additional cost, the State, auditors, and DHHS’s staff, access to all such records. The Grantee shall retain these records as required by GAAP, state law, or specific program requirements, whichever is longer. The Grantee shall allow, at no additional cost, the State, auditors, and DHHS staff, access to all such records.

**37.3.** The Grantee shall retain all records which relate to disputes, litigation, audits, and claim settlements arising from agreement performance or cost or expense exceptions, until all disputes, litigation, audits, claims, or exceptions are resolved.

**37.4.** The Grantee shall comply with federal and State regulations concerning cost principles, audit requirements, and agreement administration requirements, including, but not limited to, the Uniform Guidance. Unless specifically exempted in the scope of work, the Grantee shall comply with applicable federal cost principles and agreement administration requirements. Counties, cities, towns, and school districts are subject to the State Legal Compliance Audit Guide. The Grantee shall send copies of required reports to [dhhsfinancialreports@utah.gov](mailto:dhhsfinancialreports@utah.gov).

**38. Employment Practices:** The Grantee shall abide by the following employment laws, as applicable: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of Services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 C.F.R. § 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; (v) Utah Executive Order No. 2006-0012, dated December 13, 2006, which prohibits unlawful harassment in the workplace;

(vi) Utah Code Ann. § 26B-7-503, Utah Indoor Clean Air Act which prohibits smoking in enclosed public places; (vii) Utah Executive Order No. 2006-0012 which prohibits all unlawful harassment in any workplace in which State employees and employees of public and higher education must conduct business; (viii) 41 CFR part 60, Equal Employment Opportunity, and the Executive Order 11246, as amended by Executive Order 11375, which implements those regulations; (ix) 45 C.F.R. part 83, which prohibits the extension of federal support to any entity that discriminates on the basis of sex in the admission of individuals to its health manpower and nurse training programs; and (x) 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5), Contract Work Hours and Safety Standards Act, for contracts that involve the employment of mechanics or laborers. The Grantee further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of the Grantee's employees or Persons served.

- 39. Federal Requirements:** The Grantee shall abide by the following federal statutes, regulations, and requirements: 2 C.F.R. § 200.326, Agreement Provisions as applicable; 45 C.F.R. § 46, 42 U.S.C. § 2899, 21 C.F.R. 50, & 21 C.F.R. 56 Protection of Human Subject in research activities; 45 C.F.R. part 84, prohibits discrimination of drug or alcohol abusers or alcoholics who are suffering from mental conditions from admission or treatment by any private or public hospital or outpatient facility that receives support or benefit from a federally funded program; 42 C.F.R. parts 2 and 2a which implements the Public Health Service Act, sections 301(d) and 543, which requires certain medical records that relate to drug abuse prevention be kept confidential when the treatment or program is directly or indirectly assisted by the federal government; 42 U.S.C. §§ 7401-7971q., the Clean Air Act and 33 U.S.C. §§ 1251-1387, the Federal Water Pollution Control Act, and all applicable standards, orders or related regulations; 31 U.S.C. § 1352, Byrd Anti-Lobbying Amendment; 42 U.S.C. § 4331, the National Environmental Policy Act of 1969; 2 C.F.R. § 200.322, Procurement of recovered materials which outlines section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; 37 C.F.R. § 401, Rights to Inventions Made; 42 C.F.R. part 50, Subpart B, Sterilizations; 42 C.F.R. part 50, Subpart C, Abortions and Related Medical Services; 59 FR 46266, Recombinant DNA and Institutional Biosafety; 7 U.S.C. § 2131, Animal Welfare; 42 C.F.R. part 92, Misconduct in Science; 42 U.S.C. §§ 4728-4763, Merit System Standards for governmental entities only; 42 U.S.C. §§ 6101-6107 & 45 C.F.R. Part 91 Age Discrimination Act of 1975; 42 U.S.C. § 12101 et seq. & 28 C.F.R. Part 35, Part 39 Americans with Disabilities Act; 45 C.F.R. Part 80, 42 U.S.C. § 2000d et. seq. Civil Rights Act of 1964 as amended Title VI; 40 U.S.C. §§ 3701-3704 & 29 C.F.R. Part 5 Contract Work Hours and Safety Standards Act; 45 C.F.R. 2543.82, 18 U.S.C. § 874 & 29 C.F.R. Part 3 Copeland Anti-Kickback Act; 40 U.S.C. § 3142 & 29 C.F.R. Part 5 Davis-Bacon Act; 41 U.S.C. § 701 through 707, Drug Free Workplace Act of 1988; 20 U.S.C. § 1681 et. seq. & 45 C.F.R. Part 86, Education Amendments of 1972, Title IX; 8 U.S.C. § 1324a, Employment Eligibility Verification; 29 U.S.C. § 206(d) Equal Pay Act; 29 U.S.C. § 201 et seq. Fair Labor Standards Act; 8 U.S.C. § 1324 Immigration Control and Reform Act; 42 U.S.C. § 10801 et seq. Protection and Advocacy for Individuals with Mental Illness Act; 45 C.F.R. Part 84.53 Public Health Service Act, Section 522 and Section 526; 29 U.S.C. § 794 & 45 C.F.R. Part 84 Rehabilitation Act of 1973, as amended, Section 504; 42 U.S.C. § 6322 Energy Policy and Conservation Act; 42 U.S.C. § 4106 Flood Disaster Act of 1973 and other flood hazard provisions; 42 U.S.C. § 4321 et seq. & 40 C.F.R. Part 1500 et seq. National Environmental Policy Act of 1969; 42 U.S.C. §§ 7181-7184, Pro-Children Act of 2001; 31 U.S.C. § 3729-3733 and Chapter 38 Civil False Claims Act; Public L. 109-171 (2006) Deficit Reduction Act of 2005; P.L. 109-282, as amended by Section 6202 of P.L. 110-252 FFATA; 5 U.S.C. § 1501, et. seq. Hatch Act; 42 U.S.C. § 290dd-2; 42 C.F.R. § 2 and 2a Substance Abuse and Mental Health confidentiality; 45 C.F.R. Part 75 HHS Award requirements; and the Grantee shall include in any contracts termination clauses for cause and convenience, along with administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate.
- 40. Background Screening Requirements:** The Grantee and any individuals associated with the Grantee shall comply with the background screening requirements in Utah Code §26B-2-120 and Utah Administrative Code R501-14.
- 41. Provider Code of Conduct:** If the Grantee and any individuals associated with the Grantee will be working with DHHS clients, the Grantee shall follow and enforce the DHHS Provider Code of Conduct. Before allowing any employee or volunteer to work with clients, the Grantee shall: 1) provide a current copy of the DHHS Provider Code of Conduct to each employee or volunteer currently working for the Grantee and to new employees or



volunteers; and 2) retain in each employee's or volunteer's file a signed and dated statement in which that person certifies that he or she has read, understands, and will comply with the DHHS Provider Code of Conduct. Annually, the Grantee shall obtain the current DHHS Provider Code of Conduct poster and display the poster where its employees and volunteers can see it.

42. **Waiver:** A waiver of any right, power, or privilege will not be construed as a waiver of any subsequent right, power, or privilege.
43. **Subawards, Subcontracts and Assignment:** The Grantee shall not assign, sell, transfer, subcontract, subaward, or sublet rights or delegate responsibilities under this agreement, in whole or part, without the prior written consent of DHHS. The Grantee retains ultimate responsibility for performance of all terms, conditions, and provisions of this agreement that are subcontracted or performed by a subcontractor. When subcontracting, the Grantee agrees to use written subcontracts that conform to federal and State laws.
44. **Force Majeure:** Neither party will be held responsible for delay or default caused by fire, riot, acts of God, or war which is beyond the party's reasonable control. DHHS may terminate this agreement after determining that the delay or default will likely prevent successful performance of this agreement.
45. **Severability:** The invalidity or unenforceability of any provision, term, or condition of this agreement will not affect the validity or enforceability of any other provision, term, or condition of this agreement, which will remain in full force and effect.
46. **Survival of Terms:** Termination or expiration of this agreement will not extinguish or prejudice DHHS's right to enforce this agreement with respect to any default or defect in the services that has not been cured.
47. **Notice:** Notice must be in writing and sent to [dhhscontracts@utah.gov](mailto:dhhscontracts@utah.gov).
48. **Order of Precedence:** The terms of this agreement will be reasonably interpreted and construed to avoid any conflict among the provisions. If there is any conflict between this agreement's terms, the order of precedence (listed in order of descending precedence) among the terms is: (1) Agreement Signature Page(s); (2) this Attachment A; (3) DHHS scope of work; (4) Any other attachments.
49. **Time is of the Essence:** The Grantee shall complete services by any deadline stated in this agreement. For all services, time is of the essence. The Grantee shall be liable for all reasonable damages to DHHS and the State, and anyone for whom the State may be liable, as a result of the Grantee's failure to timely perform the services required under this agreement.
50. **Prohibited Discriminatory Practices:** The Grantee shall not use contract funds for any prohibited discriminatory practice as defined by Utah Code 53B-1-118.
51. **Entire Agreement:** This agreement constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revised: 12/10/2024)

## Attachment D: Utah Department of Health and Human Services Public Entity Terms

### 1. Definitions:

**"Authorized Persons"** means the Contractor's employees, officers, partners, Subcontractors, or other agents of the Contractor who need to access State Data to enable the Contractor to perform its responsibilities under this contract.

**"Contract Signature Page(s)"** means the DHHS cover page(s), including the page(s) signed by the parties.

**"DHHS"** means the Utah Department of Health and Human Services.

**"Goods"** means all types of tangible personal property (commodities), including but not limited to materials, supplies, Work Product, and equipment that Contractor is required to deliver to DHHS. To the extent this contract entails delivery or performance of services (including maintenance, installation, or product support) such services will be deemed "Goods" within the meaning of the Utah Uniform Commercial Code when reasonable to do so.

**"Person"** means any governmental entity, business, individual, union, committee, club, other organization, or group of individuals.

**"Services"** means the furnishing of labor, time, or effort by the Contractor pursuant to this contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.

**"State"** means the state of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.

**"State Data"** means all confidential information, non-public data, personal data, and protected health information that is created or in any way originating with the State whether such data or output is stored on the State's hardware, the Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State or by the Contractor. State Data includes any federal data that DHHS controls or maintains, that is protected under federal laws, statutes, and regulations. DHHS may identify, during and after this contract, additional reasonable types of categories of information that must be kept confidential under federal and State laws.

**"Subcontractor"** means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a Person or entity that is, or will be, providing or performing an essential aspect of this contract, including the Contractor's manufacturers, distributors, and suppliers.

**"Uniform Guidance"** means Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for the specified federal awarding agency set forth in Title 2 of the Code of Federal Regulations.

**"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, deliverable, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered, or reduced to practice by the Contractor or the Contractor's Subcontractors (either alone or with others) pursuant to this contract. Work Product will be considered a work made for hire under federal, State, and local laws; and all interest and title will be transferred to and owned by DHHS. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any DHHS intellectual property, the Contractor's intellectual property (that it owned or licensed prior to this contract) or third party intellectual property.

2. **Governing Law and Venue:** This contract is governed by the laws, rules, and regulations of Utah. Any action or proceeding arising from this contract must be brought in a court of competent jurisdiction in the State. Venue is in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **Amendments:** This contract may only be amended by mutual written agreement signed by both parties.
4. **No Automatic Renewals:** This contract will not automatically renew.
5. **Scope Changes:** Any changes to the scope of Goods or Services required under this contract must be executed by written amendment signed by the parties.
6. **Laws and Regulations:** The Contractor shall comply with all applicable federal, state, and local laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will take precedence over any conflict with this Attachment A.
7. **Independent Contractors:** The Contractor shall ensure that any Subcontractors act in an independent capacity and not as officers, employees, or agents of DHHS.
8. **Invoicing:** Unless otherwise stated in the scope of work, the Contractor shall submit invoices along with any supporting documentation within 20 days following the last day of the month in which the Services were provided or within 20 days of the delivery of the Goods to DHHS. The Contractor shall list this contract number on all invoices, freight tickets, and correspondence relating to this contract. The prices paid by DHHS will be those prices listed in this contract, unless the Contractor offers a prompt payment discount on its invoice. DHHS may adjust or return any invoice reflecting incorrect pricing. The Contractor shall submit all final billings under this contract within 14 days of expiration or termination of the contract, regardless of the Contractor's billing period. Notwithstanding the foregoing, the Contractor shall submit all billings for Services performed or Goods delivered on or before June 30th of a given fiscal year no later than July 14th of the following fiscal year, regardless of Contractor's billing period or the expiration or termination date of this contract. DHHS may reject any invoice or claim for payment or reimbursement if received by DHHS after the requirements stated in this contract, but in no case will DHHS pay for items billed later than twelve months after the fiscal year ending June 30th that the Contractor's services or goods were provided or expected under the contract, or for contracts with Medicaid, later than Medicaid deadlines.
9. **Payment:**
  - 9.1. DHHS shall pay the contracted amounts, less amounts collected by the Contractor from any other Person not a party to this contract legally liable for the payments for the Goods and Services.
  - 9.2. DHHS shall make payments within 30 days after a correct invoice is received.
  - 9.3. If funding to DHHS is reduced due to an order by the legislature or the governor, or is required by State law, or if applicable federal funding is not provided to DHHS, DHHS shall reimburse the Contractor for Goods delivered and Services performed through the date of cancellation or reduction, and DHHS will not be liable for any future commitments, penalties, or liquidated damages.
  - 9.4. Upon 30 days written notice, the Contractor shall reimburse DHHS for funds DHHS is required to reimburse a third party funding source resulting from the actions of the Contractor or its Subcontractors.
10. **Nonappropriation of Funds, Reduction of Funds, or Changes in Law:** Upon 30 days written notice delivered to the Contractor, DHHS may terminate this contract in whole or in part, or proportionately reduce the Goods and Services due and the amounts due, if DHHS reasonably determines that: (i) a change in federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this contract; or (ii) a change in appropriations, available funds, or budgets affects DHHS's ability to pay under this contract. A change of available funds as used in this paragraph includes, but is not limited to, a change in federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this section, DHHS shall pay the Contractor for the Goods and Services properly ordered

until the effective date of said notice. DHHS will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

**11. Suspension of Work:** DHHS shall give the Contractor written notice should DHHS suspend the Contractor's responsibilities under this contract. The Contractor's responsibilities may be reinstated upon advance written notice from DHHS.

**12. Indemnification:**

**12.1.** If the Contractor is a governmental entity, the parties agree that each party assumes liability for the negligent and wrongful acts committed by its own agents, officials, or employees, regardless of the source of funding for this contract. Neither party waives any rights or defenses otherwise available under the Governmental Immunity Act.

**12.2.** The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.

**13. Intellectual Property Indemnification:** The Contractor shall indemnify and hold DHHS harmless from and against any and all damages, expenses (including reasonable legal fees), claims, judgments, liabilities, and costs in any action or claim brought against DHHS for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of the Contractor's liability, such limitations of liability will not apply to this section.

**14. Debarment:** DHHS may immediately terminate this contract if DHHS determines that the Contractor has been debarred, suspended, or otherwise lawfully excluded from participating in any agreement issued by a governmental entity, including but not limited to, being determined ineligible as a subcontractor of any governmental entity. The Contractor certifies that it is not currently suspended, debarred, or otherwise prohibited to enter this contract. The Contractor shall immediately notify DHHS if the Contractor becomes suspended, debarred, or otherwise ineligible for this or any other agreement issued by a governmental entity.

**15. Termination and Default:**

**15.1. Termination for Convenience.** DHHS may terminate this contract without cause, upon 30 days written notice to the Contractor. If the Contractor terminates this contract without cause, DHHS may treat the Contractor's action as a default under this contract.

**15.2. Termination for Cause.** Each party may terminate this contract with cause. If the cause for termination is due to the default of a party, the non-defaulting party shall give written notice to the defaulting party of its intent to terminate. The defaulting party may cure the default within 10 days of the notice. If the default is not cured within the 10 days, the party giving notice may terminate this contract 40 days from the date of the initial notice of default or at a later date. Time allowed for cure will not diminish or eliminate the Contractor's liability for damages.

**15.3. Payment After Termination.** DHHS shall pay the Contractor for the Goods delivered and Services properly performed under this contract up to the effective date of the notice of termination. The Contractor agrees that in the event of termination, the Contractor's sole remedy and monetary recovery from DHHS or the State is limited to full payment for all Goods delivered and Services properly performed as authorized under this contract up to the date of termination, as well as any reasonable monies owed as a result of the Contractor having to terminate other contracts necessarily and appropriately entered into by the Contractor pursuant to this contract. In the event of such termination, the Contractor shall promptly deliver to the State all Work Product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, and any and all documents produced by the Contractor under this contract up to the date of termination.

**15.4. Cover.** If DHHS terminates this contract for cause, DHHS may procure replacement Goods or Services upon terms and conditions necessary to replace the Contractor's obligations. If the termination is due to the Contractor's failure to perform, and DHHS procures replacement Goods or Services, the Contractor agrees to pay any excess costs associated with obtaining the replacement Goods or Services.

**15.5. Default.** Any of the following events will constitute cause for DHHS to declare the Contractor in default of this contract: (i) the Contractor's non-performance of its requirements and obligations under this contract; or (ii) the Contractor's material breach of any term or condition of this contract. If the Contractor defaults in any manner in the performance of any obligation under this contract, or if audit exceptions are identified, DHHS may either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. Default and audit exceptions for which payment may be adjusted or withheld include disallowed expenditures of federal or State funds as a result of the Contractor's failure to comply with federal regulations or State rules. In addition, DHHS may withhold amounts due the Contractor under this contract, any other current contract between DHHS and the Contractor, or any future payments due the Contractor to recover the funds. DHHS shall notify the Contractor of DHHS's action in adjusting the amount of payment or withholding payment. This contract is executory until such repayment is made.

**16. Remedies:** In addition to terminating this contract upon default or breach of the Contractor, DHHS may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) impose liquidated damages; (iii) debar or suspend the Contractor from receiving future contracts from DHHS or the State; and (iv) demand a full refund of any payment DHHS has made to the Contractor for Goods or Services that do not conform to this contract.

**17. Reviews:** DHHS may perform plan checks or reviews and require changes when needed. Such reviews do not waive the requirement of the Contractor to meet all of the terms and conditions of this contract.

**18. Performance Evaluation:** DHHS may conduct a performance evaluation of the Contractor's Services, including the Contractor's Subcontractors. DHHS may make the results of any evaluation available to the Contractor.

**19. Public Information:** The Contractor agrees that this contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State's Government Records Access and Management Act ("GRAMA").

**20. Publicity:** The Contractor shall not advertise or publicize matters relating to this contract, or publicly use DHHS's name, without the prior written approval of DHHS. The Contractor shall impose this restriction on any subcontractors, and shall require subcontractors to impose this restriction on each lower tier of subcontractors.

**21. Information Ownership:** Except for confidential medical records held by direct care providers, if the Contractor uses any Subcontractors for activities arising out of this contract, the Contractor shall ensure it maintains exclusive ownership and title to all information gathered, reports developed, and conclusions reached in performance of this contract. The Contractor shall require any Subcontractors to obtain prior written consent from the Contractor prior to using or disclosing information gathered, reports developed, or conclusions reached in performance of activities arising out of this contract.

**22. Information Practices:** The Contractor shall establish, maintain, and practice information procedures and controls that comply with federal and state law including, as applicable, Utah Code Title 26B and the privacy and security standards promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") & the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"). DHHS may require the Contractor to enter into a business associate agreement if applicable. The Contractor shall receive or request from DHHS only information about an individual that is necessary to the Contractor's performance of its duties and functions. The Contractor shall use the information only for purposes of this contract.

**23. Secure Protection and Handling of State Data:**

- 23.1.** If the Contractor is given access to or stores State Data as part of this contract, the protection of State Data must be an integral part of the business activities of the Contractor to ensure that there is no inappropriate or unauthorized use of State Data. The Contractor shall safeguard the confidentiality, integrity, and availability of the State Data. The Contractor agrees to not copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this contract. The improper use or disclosure of confidential information is strictly prohibited.
- 23.2.** Any and all transmission or exchange of State Data must take place via secure means. The Contractor shall create, store, and maintain any State Data on secure or encrypted computing devices or portable storage mediums. The Contractor agrees to protect and maintain the security of State Data with security measures including, but not limited to, maintaining secure environments that are patched and up to date with all appropriate security updates, network firewall provisioning, and intrusion detection. The Contractor agrees that any computing device or portable medium that has access to DHHS's network or stores any non-public State Data is equipped with strong and secure password protection.
- 23.3.** The Contractor shall: (i) limit disclosure of any State Data to Authorized Persons who have a need to know such information in connection with the current or contemplated business relationship between the parties to which this contract relates, and only for that purpose; (ii) advise its Authorized Persons of the proprietary nature of the State Data and of the obligations set forth in this contract and require Authorized Persons to keep the State Data confidential; (iii) keep all State Data strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (iv) not disclose any State Data received by it to any third parties, except as permitted by this contract or otherwise agreed to in writing by DHHS.
- 23.4.** The Contractor shall promptly notify DHHS of any misuse or misappropriation of State Data that comes to the Contractor's attention. The Contractor shall be responsible for any breach of this duty of confidentiality by any of its officers, agents, Subcontractors at any tier, and any of its respective representatives, including any required remedies or notifications under applicable law (Utah Code Ann. §§ 13- 44-101 through 301). This duty of confidentiality is ongoing and survives the term of this contract. Notwithstanding the foregoing, if there is a discrepancy between a signed business associate agreement and this provision, the business associate agreement language will take precedence.
- 24. Artificial Intelligence:** The Contractor shall not use State Data in any generative artificial intelligence ("GAI") queries, training, or program creation without prior written permission from DHHS. The Contractor attests that its GAI models use only properly licensed material. The Contractor shall fully indemnify and hold DHHS harmless from all claims, loss, or damages related to the Contractor's use of GAI. Should the Contractor learn that State Data has been used in GAI queries without DHHS permission, the Contractor shall immediately notify DHHS. The Contractor shall inform DHHS of any GAI in the Goods or Services being contracted for prior to providing those Goods or Services to DHHS. The Contractor shall include annotations sufficient to comply with DTS Policy 4000-0008 (Generative AI Policy) when utilizing GAI in the creation of Goods and Services with the potential to impact DHHS intellectual property rights.
- 25. Intellectual Property Ownership:** DHHS and the Contractor recognize that each has no right, title, or interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by the Contractor prior to the execution of this contract, but specifically created or manufactured under this contract, is considered work made for hire, and the Contractor shall transfer any ownership claim to DHHS.
- 26. Work Product Ownership:** In the event that the Contractor provides Work Product to DHHS pursuant to this contract, the Contractor grants the ownership in Work Product, which has been developed and delivered by the Contractor exclusively for DHHS and is specifically within the framework of fulfilling the Contractor's obligations under this contract. Work Product will be deemed work made for hire, such that all intellectual property rights, title, and interest in the Work Product will pass to DHHS, to the extent that the Work Product is not recognized as

work made for hire, the Contractor hereby assigns to DHHS any and all copyrights in and to the Work Product, subject to the following:

- 26.1. The Contractor has received payment for the Work Product,
- 26.2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("**Intellectual Property Rights**") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the Services performed under this contract ("**Background IP**"), and
- 26.3. The Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the Services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "**Utilities**"), and (b) such ideas, concepts, know-how, processes, and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of the Contractor in the course of performing the Services or creating the Work Product, other than portions that specifically incorporate proprietary or confidential information or Work Product of DHHS (collectively, the "**Residual IP**"), even if embedded in the Work Product.
- 26.4. The Contractor shall not distribute or market Work Product, not including the Contractor's Intellectual Property Rights, Background IP, and Residual IP, without written approval by DHHS.
- 26.5. The Contractor agrees to grant to DHHS a perpetual, irrevocable, royalty-free license to use the Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for DHHS and the State to use the Work Product. DHHS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for DHHS's and the State's internal purposes, such Work Product. For the Goods or Services delivered that consist of the Contractor's scripts and code and are not considered Work Product, for any reason whatsoever, the Contractor grants DHHS a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for DHHS's and the State's internal business operation under this contract. DHHS and the State may not participate in the transfer or sale of, create derivative works from, or in any way exploit the Contractor's Intellectual Property Rights, in whole or in part.

**27. Software Ownership:** If the Contractor develops or pays to have developed computer software exclusively with funds or proceeds from this contract to perform its obligations under this contract, or to perform computerized tasks that it was not previously performing to meet its obligations under this contract, the computer software will be exclusively owned by or licensed to DHHS. If the Contractor develops or pays to have developed computer software which is an addition to existing software owned by or licensed exclusively with funds or proceeds from this contract, or to modify software to perform computerized tasks in a manner different than previously performed, to meet its obligations under this contract, the addition will be exclusively owned by or licensed to DHHS. In the case of software owned by DHHS, DHHS grants to the Contractor a nontransferable, nonexclusive license to use the software in the performance of this contract. In the case of software licensed to DHHS, DHHS grants to the Contractor permission to use the software in the performance of this contract. This license or permission, as the case may be, terminates when the Contractor has completed its work under this contract. If the Contractor uses computer software licensed to it which it does not modify or program to handle the specific tasks required by this contract, then to the extent allowed by the license agreement between the Contractor and the owner of the software, the Contractor grants to DHHS a continuing, nonexclusive license for either DHHS or a different contractor to use the software in order to perform work substantially identical to the work performed by the Contractor under this contract. If the Contractor cannot grant the license as required by this section, then the Contractor shall reveal the input screens, report formats, data structures, linkages, and relations used in

performing its obligations under this contract in such a manner to allow DHHS or another contractor to continue the work performed by the Contractor under this contract.

- 28. Updates and Upgrades:** The Contractor grants to DHHS a non-exclusive, non-transferable license to use upgrades and updates provided by the Contractor. Such upgrades and updates are subject to the terms of this contract. DHHS shall download, distribute, and install all updates as released by the Contractor. The Contractor shall use commercially reasonable efforts to provide DHHS with work-around solutions or patches to reported software problems that may affect DHHS's use of the software during the length of this contract.
- 29. Technical Support and Maintenance:** If technical support and maintenance is a part of the Goods or Services that the Contractor provides under this contract, the Contractor will use commercially reasonable efforts to respond to DHHS in a reasonable time when DHHS makes technical support or maintenance requests regarding the Goods or Services.
- 30. Equipment Purchase:** The Contractor shall obtain prior written DHHS approval before purchasing any equipment, as defined in the Uniform Guidance, with contract funds.
- 31. Acceptance and Rejection:** DHHS will have 30 days after the performance of the Services or delivery of the Goods to perform an inspection of the Goods or Services to determine whether the Goods and Services conform to the standards specified in this contract prior to acceptance of the Goods or Services by DHHS. If the Contractor delivers nonconforming Goods or Services, DHHS may, at its option and at the Contractor's expense: (i) return the Goods or Services for a full refund; (ii) require the Contractor to promptly correct or re-perform the nonconforming Goods or Services subject to the terms of this contract; or (iii) obtain replacement Goods or Services from another source, subject to the Contractor being responsible for any cover costs.
- 32. Record Keeping, Audits, and Inspections:**
- 32.1.** For financial reporting, the Contractor shall comply with the Uniform Guidance and Generally Accepted Accounting Principles ("GAAP").
  - 32.2.** The Contractor shall retain all records which relate to disputes, litigation, and claim settlements arising from contract performance or cost or expense exceptions, until all disputes, litigation, claims, or exceptions are resolved.
  - 32.3.** The Contractor shall comply with federal and state regulations concerning cost principles, audit requirements, and contract administration requirements, including, but not limited to, the Uniform Guidance. Unless specifically exempted in the scope of work, the Contractor shall comply with applicable federal cost principles and contract administration requirements if State funds are received. Counties, cities, towns, and school districts are subject to the State Legal Compliance Audit Guide. The Contractor shall send copies of required reports to [dhhsfinancialreports@utah.gov](mailto:dhhsfinancialreports@utah.gov).
  - 32.4.** If the Contractor enters into an agreement with a subrecipient, the Contractor shall report all Federal Funding Accountability and Transparency Act (FFATA) requirements to DHHS each time funding is awarded or amended.
- 33. Standard of Care:** The Services of the Contractor and its Subcontractors must be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar Services, which similarities include the type, magnitude, and complexity of the Services that are the subject of this contract. The Contractor shall be liable to DHHS and the State for claims, liabilities, additional burdens, penalties, damages, or third party claims, to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
- 34. Employment Practices:** The Contractor shall abide by the following employment laws, as applicable: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of Services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 C.F.R. § 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973 and the



Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; (v) Utah Executive Order No. 2006-0012, dated December 13, 2006, which prohibits unlawful harassment in the workplace; (vi) Utah Code Ann. § 26B-7-503, Utah Indoor Clean Air Act which prohibits smoking in enclosed public places; (vii) Utah Executive Order No. 2006-0012 which prohibits all unlawful harassment in any workplace in which State employees and employees of public and higher education must conduct business; (viii) 41 CFR part 60, Equal Employment Opportunity, and the Executive Order 11246, as amended by Executive Order 11375, which implements those regulations; (ix) 45 C.F.R. part 83, which prohibits the extension of federal support to any entity that discriminates on the basis of sex in the admission of individuals to its health manpower and nurse training programs; and (x) 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5), Contract Work Hours and Safety Standards Act, for contracts that involve the employment of mechanics or laborers. The Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of the Contractor's employees or Persons served.

**35. Federal Requirements:** The Contractor shall abide by the following federal statutes, regulations, and requirements: 2 C.F.R. § 200.326, Agreement Provisions as applicable; 45 C.F.R. § 46, 42 U.S.C. § 2899, 21 C.F.R. 50, & 21 C.F.R. 56 Protection of Human Subject in research activities; 45 C.F.R. part 84, prohibits discrimination of drug or alcohol abusers or alcoholics who are suffering from mental conditions from admission or treatment by any private or public hospital or outpatient facility that receives support or benefit from a federally funded program; 42 C.F.R. parts 2 and 2a which implements the Public Health Service Act, sections 301(d) and 543, which requires certain medical records that relate to drug abuse prevention be kept confidential when the treatment or program is directly or indirectly assisted by the federal government; 42 U.S.C. §§ 7401-7971q., the Clean Air Act and 33 U.S.C. §§ 1251-1387, the Federal Water Pollution Control Act, and all applicable standards, orders or related regulations; 31 U.S.C. § 1352, Byrd Anti-Lobbying Amendment; 42 U.S.C § 4331, the National Environmental Policy Act of 1969; 2 C.F.R. § 200.322, Procurement of recovered materials which outlines section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; 37 C.F.R. § 401, Rights to Inventions Made; 42 C.F.R. part 50, Subpart B, Sterilizations; 42 C.F.R. part 50, Subpart C, Abortions and Related Medical Services; 59 FR 46266, Recombinant DNA and Institutional Biosafety; 7 U.S.C. § 2131, Animal Welfare; 42 C.F.R. part 92, Misconduct in Science; 42 U.S.C. §§ 4728-4763, Merit System Standards for governmental entities only; 42 U.S.C. §§ 6101-6107 & 45 C.F.R. Part 91 Age Discrimination Act of 1975; 42 U.S.C. § 12101 et seq. & 28 C.F.R. Part 35, Part 39 Americans with Disabilities Act; 45 C.F.R. Part 80, 42 U.S.C. § 2000d et. seq. Civil Rights Act of 1964 as amended Title VI; 40 U.S.C. §§ 3701-3704 & 29 C.F.R. Part 5 Contract Work Hours and Safety Standards Act; 45C.F.R. 2543.82, 18 U.S.C. § 874 & 29 C.F.R. Part 3 Copeland Anti-Kickback Act; 40 U.S.C. § 3142 & 29 C.F.R. Part 5 Davis-Bacon Act; 41 U.S.C. § 701 through 707, Drug Free Workplace Act of 1988; 20 U.S.C. § 1681et. seq. & 45 C.F.R. Part 86, Education Amendments of 1972, Title IX; 8 U.S.C. § 1324a, Employment Eligibility Verification; 29 U.S.C. § 206(d) Equal Pay Act; 29 U.S.C. § 201 et seq. Fair Labor Standards Act; 8 U.S.C. § 1324 Immigration Control and Reform Act; 42 U.S.C. § 10801 et seq. Protection and Advocacy for Individuals with Mental Illness Act; 45 C.F.R. Part 84.53 Public Health Service Act, Section 522 and Section 526; 29 U.S.C. § 794 & 45 C.F.R. Part 84 Rehabilitation Act of 1973, as amended, Section 504; 42 U.S.C. § 6322 Energy Policy and Conservation Act; 42 U.S.C. § 4106 Flood Disaster Act of 1973 and other flood hazard provisions; 42 U.S.C. § 4321 et seq. & 40 C.F.R. Part 1500 et seq. National Environmental Policy Act of 1969; 42 U.S.C. §§ 7181-7184, Pro-Children Act of 2001; 31 U.S.C. § 3729-3733 and Chapter 38 Civil False Claims Act; Public L. 109-171 (2006) Deficit Reduction Act of 2005; P.L. 109-282, as amended by Section 6202 of P.L. 110-252 FFATA; 5 U.S.C. § 1501, et. seq. Hatch Act; 42. U.S.C. § 290dd-2; 42 C.F.R. § 2 and 2a Substance Abuse and Mental Health confidentiality; 45 C.F.R. Part 75 HHS Award requirements; and the Contractor shall include in any contracts termination clauses for cause and convenience, along with administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate.

**36. Waiver:** A waiver of any right, power, or privilege will not be construed as a waiver of any subsequent right, power, or privilege.

**37. Subcontracts:** The Contractor retains ultimate responsibility for performance of all terms, conditions, and provisions of this contract that are subcontracted or performed by a Subcontractor. When subcontracting, the Contractor agrees to use written subcontracts that conform to federal and State laws. If any Subcontractor is a subrecipient, the Contractor shall comply with all federal regulations governing subrecipients as set out in 2 CFR

Part 200. If the Contractor enters into an agreement with a subrecipient, the Contractor shall notify DHHS of its compliance with 2 CFR Part 200 in the manner required by DHHS.

- 38. Force Majeure:** Neither party will be held responsible for delay or default caused by fire, riot, acts of God, or war which is beyond the party's reasonable control. DHHS may terminate this contract after determining that the delay or default will likely prevent successful performance of this contract.
- 39. Severability:** The invalidity or unenforceability of any provision, term, or condition of this contract will not affect the validity or enforceability of any other provision, term, or condition of this contract, which will remain in full force and effect.
- 40. Survival of Terms:** Termination or expiration of this contract will not extinguish or prejudice DHHS's right to enforce this contract with respect to any default or defect in the Services that has not been cured.
- 41. Notice:** Notice must be in writing and sent to [dhhscontracts@utah.gov](mailto:dhhscontracts@utah.gov).
- 42. Order of Precedence:** The terms of this contract will be reasonably interpreted and construed to avoid any conflict among the provisions. If there is any conflict between this contract's terms, the order of precedence (listed in order of descending precedence) among the terms is: (1) Contract Signature Page(s); (2) this Attachment A; (3) DHHS scope of work; (4) Any other attachments.
- 43. Time is of the Essence:** The Contractor shall complete Services or deliver Goods by any deadline stated in this contract. For all Goods and Services, time is of the essence. The Contractor shall be liable for all reasonable damages to DHHS and the State, and anyone to whom the State may be liable, as a result of the Contractor's failure to timely perform the Services required under this contract.
- 44. Contractor Contact Information:** The Contractor shall ensure that DHHS has accurate contact information for the Contractor at all times throughout the duration of this contract and throughout the duration of the Contractor's record retention responsibilities. The Contractor shall immediately notify DHHS of any changes to contact information.
- 45. Prohibited Discriminatory Practices:** The Contractor shall not use contract funds for any prohibited discriminatory practice as defined by Utah Code 53B-1-118.
- 46. Remediation:** DHHS may monitor the Contractor's performance under this contract and require remediation. The Contractor shall comply with any remediation plan required by DHHS. The Contractor's failure to comply with a DHHS remediation plan will be deemed a material breach of this agreement.
- 47. Entire Agreement:** This contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revised: 12/10/2024)

## **Attachment E: Utah Department of Health and Human Services Business Associate Agreement**

This Business Associate Agreement ("Agreement") is entered into by and between the Utah Department of Health and Human Services (the "Department") and the other party named on the cover page ("Business Associate"). The Parties have entered into one or more underlying agreements (each and together, the "Service Agreement") pursuant to which Business Associate provides services to the Department that require the use and disclosure of PHI. This Agreement only applies when Business Associate is carrying out the covered functions described in the Service Agreement.

This Agreement sets forth the terms and conditions under which PHI that is created, received, maintained, or transmitted by Business Associate, for or on behalf of the Department, will be handled during the term of the Service Agreement and after its termination.

The Parties agree as follows:

### **1. Definitions:**

- A. The following terms used in this Agreement shall have the same meaning as those terms defined in the HIPAA Rules: Breach, Covered Functions, Data Aggregation, Designated Record Set, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, Workforce Member, and Use.
- B. **"HIPAA Rules"** means the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and its implementing regulations at 45 C.F.R. Parts 160 and 164, as amended by the Health Information Technology for Economic and Clinical Care Act (HITECH) enacted under Title XII of the American Recovery and Reinvestment Act of 2009, and its implementing regulations.

### **2. Permitted Uses and Disclosures of PHI by Business Associate:**

- A. Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Department as specified in the Service Agreement, so long as such use or disclosure would not violate HIPAA Rules if done by the Department.
- B. Business Associate may use or disclose PHI if necessary for its proper management and administration or to carry out its legal responsibilities, provided that: (i) the disclosures are permitted by law, or (ii) (1) Business Associate obtains reasonable assurances from the third party to whom PHI is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party; and (2) the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- C. If Business Associate provides data aggregation services for the Department under the Service Agreement, Business Associate may use and aggregate PHI only for purposes of providing the data aggregation services to the Department. Any use of PHI for other data aggregation or commercial purposes unrelated to the Service Agreement is prohibited. Business Associate may de-identify PHI in accordance with 45 C.F.R. § 164.514 for purposes required by the Service Agreement. All such uses and

disclosures of de-identified data shall be subject to the limits set forth in 45 C.F.R. § 164.514.

### **3. Obligations and Activities of Business Associate:**

- A. Limitations on Use.** Business Associate may use or disclose PHI solely (1) as necessary to perform its obligations under the Service Agreement, (2) as required by law, or (3) as permitted or required under this Agreement. Business Associate shall not use or disclose PHI for any other purpose or in any other manner.
- B. Minimum Necessary.** Business Associate shall request, use, and/or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use, or disclosure in accordance with the HIPAA Rules.
- C. Duty to Safeguard PHI.** Business Associate shall implement and maintain appropriate administrative, technical, and physical safeguards that comply with Subpart C of 45 C.F.R. 164 in order to secure electronic PHI, prevent the use or disclosure of PHI other than as provided for by this Agreement, and protect the integrity and availability of PHI.

As appropriate, information security safeguards include:

- (i) Limiting access to PHI to authorized workforce members and persons.
  - (ii) Securing its facilities, data centers, paper files, servers, back-up systems, and computing equipment with information storage capability.
  - (iii) Implementing network, device application, database, and platform security.
  - (iv) Securing information in transit and at rest.
  - (v) Implementing authentication and access controls within media, applications, operating systems, and equipment.
  - (vi) Encrypting PHI stored on any mobile media and computing devices that allow remote access.
  - (vii) Implementing appropriate personnel security and integrity procedures and practices; and
  - (viii) Providing appropriate privacy and information security training to its workforce members whose services may be used to satisfy Business Associate's obligations under this Agreement.
- D. Subcontractors.** In accordance with 45 C.F.R. §§ 164.502(e)(1)(i) and 164.308(b)(2), Business Associate shall require any subcontractors or agents that create, receive, maintain, or transmit PHI for or on behalf of the Business Associate, agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information. To the extent that subcontractors or agents create, receive, maintain, or transmit electronic PHI on behalf of Business Associate, it shall require its subcontractors or agents to comply with Subpart C of 45 C.F.R. 164.
- E. Access to PHI.** If the services performed under the Service Agreement require Business Associate to maintain a designated record set, within fifteen (15) days of receipt of the Department's request, Business Associate agrees to make available PHI to the Department or, as directed by the Department, to an individual in order to meet the requirements under 45 C.F.R. § 164.524, relating to an individual's right to inspect and obtain a copy of PHI relating to such individual. In the event an individual requests access to PHI directly from Business Associate or its Subcontractors, Business Associate shall forward the request to the Department within three (3) days of the request.

As a governmental entity, Business Associate understands it must comply with the Government Records and Management Act (GRAMA) in the retention and disclosure of records in its possession. Pursuant to U.C.A. § 63G-2-107, GRAMA does not apply to a record containing PHI as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is: (1) controlled or maintained by a governmental entity; and (2) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.

- F. Amendment to PHI. If the services performed under the Service Agreement require Business Associate to maintain a designated record set, within thirty (30) days of receipt of the Department's request, Business Associate agrees to make any amendments to PHI, if applicable, as the Department directs or agrees to pursuant to 45 C.F.R. § 164.526. In the event an individual requests an amendment to PHI directly from Business Associate or its Subcontractors, Business Associate shall forward the request to the Department within three (3) days of the request.
- G. Accounting of Disclosures of PHI. Business Associate shall, as applicable, maintain and make available the information required to provide an accounting of the disclosures as necessary to satisfy the Department's obligations under 45 C.F.R. § 164.528. In the event that an individual requests an accounting of disclosures to PHI directly from Business Associate or its Subcontractors, Business Associate shall forward the request to the Department within three (3) days of the request.
- H. Performance of Obligations. To the extent Business Associate is to carry out one or more of the Department's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Department in the performance of such obligations under this Agreement.
- I. Availability of Records for Review. Business Associate shall make its internal practices, books, and records available to the Secretary for purposes of determining the Department's compliance with the HIPAA Rules. Upon reasonable prior request of the Department, Business Associate agrees to allow the Department to perform a review of its facilities, systems, books, records, agreements, and policies and procedures relating to the use or disclosure of PHI in order to determine Business Associate's compliance with the terms of this Agreement.
- J. Prohibition of Offshoring. Business Associate shall not perform any work outside the territory of the U.S. that involves access to, use, or disclosure of PHI in any form via any medium. Nothing in this Agreement shall permit Business Associate to assign, delegate, or subcontract any of its rights or obligations under this Agreement to its subcontractors or agents residing beyond the boundaries and jurisdiction of the U.S. without express written consent of the Department.

#### **4. Incident and Breach Reporting and Mitigation:**

- A. Reporting Duties. Business Associate shall report to the Department any security incident or use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, within two (2) days of Business Associate's discovery of such incident. The report must include the following information, to the extent known:

- (1) Description of the incident;

- (2) Date of the incident and the date the incident was discovered;
- (3) Description of the type of PHI involved;
- (4) Identification of who received PHI;
- (5) Identification of the individuals whose PHI has been, or is reasonably believed to have been, accessed, acquired, used, or disclosed during the incident;
- (6) Steps Business Associate or its subcontractor or agents are taking to investigate the incident and prevent continuing or further incidents; and
- (7) Any other information requested by the Department.

Any of the above information which is not known within two (2) days must be reported to Department no later than thirty (30) days.

- B. **Breach Determination.** The Department will make the final determination of whether a breach of unsecured PHI has occurred and will notify Business Associate of the determination. If the Department determines a breach of unsecured PHI has occurred, Business Associate must take prompt corrective action to cure any such deficiencies and mitigate any significant harm that may have occurred to individuals whose information was disclosed inappropriately. The Department, in its sole discretion, will determine whether the Department or Business Associate is responsible for providing notifications to the individuals whose PHI has been disclosed, the Secretary, and/or the media.
- C. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effects resulting from a security incident or any use and or disclosure of PHI in violation of the requirements of this Agreement, the HIPAA Rules, or other applicable law.
- D. **Financial Obligations.** Notwithstanding any other provision in this Agreement, Business Associate shall be responsible for any and all costs and expenses arising from or related to a security incident or breach by Business Associate or its subcontractors and agents, including, but not limited to, any required notifications and credit monitoring services to affected individuals, notifications to the Secretary and the media, corrective action plans, and remedial and mitigation costs associated with the Department's and Business Associate's compliance with Subpart D of 45 C.F.R. 164.

## **5. Obligations of the Department:**

- A. **Notice of Privacy Practices.** The Department shall notify Business Associate of any limitation in the Department's Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520 to the extent such limitations affect the Business Associate's use or disclosure of PHI.
- B. **Revocation of Authorization of Individual.** The Department shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose PHI, if and to the extent that such changes affect Business Associate's use or disclosure of PHI.
- C. **Restrictions on Use and Disclosure.** The Department shall notify Business Associate of any restriction on the use or disclosure of PHI that the Department has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent such restriction may affect Business Associate's use or disclosure of PHI.
- D. **Requested Uses or Disclosures.** The Department shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by the

Department, except that Business Associate may use or disclose PHI for purposes set forth in Section 2(B).

**6. Term and Termination:**

- A. Term. This Agreement shall be effective as of the effective date of the Service Agreement and shall terminate upon termination or expiration of the Service Agreement or on the date the Department terminates this Agreement for cause as authorized in paragraph (B) of this Section, whichever is sooner.
- B. Termination. If the Department determines that Business Associate has violated a material term of this Agreement, the Department may: (1) provide Business Associate an opportunity to cure the breach within the timeframe specified in writing by the Department, or (2) immediately terminate this Agreement if a cure is not possible and termination is possible under state law. In the absence of a cure reasonably satisfactory to the Department, the Department may terminate this Agreement unless prohibited by state law.
- C. Effect of Termination. Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from the Department or created, maintained, or received by Business Associate on behalf of the Department that Business Associate still maintains in any form, unless the Business Associate is otherwise authorized by law to retain PHI for its official purposes. These termination provisions shall also apply to PHI in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI. Upon the Department's request, Business Associate shall certify to the Department that all PHI in its possession or control, and all PHI created, received or maintained by its subcontractors or agents, has been returned or destroyed. If return or destruction of PHI is not feasible, Business Associate will provide written notification of the conditions that make return or destruction infeasible. Upon a mutual agreement by the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make return or destruction infeasible, for so long as Business Associate maintains such PHI. This Section 6 shall survive termination of this Agreement for any reason.

**7. Indemnification:** Omitted for agreements between the Department and Local Health Departments.

**8. Miscellaneous:**

- A. Other Confidentiality Obligations. The parties acknowledge that this Agreement is intended to supplement any and all other confidentiality obligations that either party may have under other agreements or applicable federal and state laws.
- B. Independent Contractor Status. Business Associate is an independent contractor of the Department and shall not be considered an agent of the Department.
- C. Notice. Any notice or other communications required or permitted to be given under this Agreement shall be sent to:

If to the Department:

Natasha Naylor  
UDHHS Chief Privacy Officer 288 North 1460 West  
P.O. Box 14109  
Salt Lake City, Utah 84114 801-989-8684  
[nknaylor@utah.gov](mailto:nknaylor@utah.gov)

If to Business Associate:

The contact named on the cover page.

- D. Amendments. This Agreement may be amended or modified only in a writing, signed by the Parties. The Parties agree to take such action as is necessary to amend this Agreement from time to time for compliance with the requirements of the HIPAA Rules and any other applicable law.
- E. Waiver. Any failure of a party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights.
- F. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit the Department to comply with the HIPAA Rules. In the event the Service Agreement contains provisions relating to the use or disclosure of PHI that are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. Except as specified herein, all other terms of the Service Agreement will continue in full force and effect.
- G. Entire Agreement. This Agreement shall supersede any and all other earlier-dated Business Associate Agreements that may have been entered into by Business Associate executing this Agreement and the Department.
- H. Regulatory References. A reference in this Agreement to HIPAA Rules means the sections as in effect or as amended.

Rev. 08.14.2023