



## UTAH DEPARTMENT OF HEALTH MOA AMENDMENT

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

1615221  
Department Log Number

1. MOA NAME: The name of this MOA is FY2017-2021 General Provisions - San Juan County Amendment 1.
  2. MOA PARTIES: This MOA is between the Utah Department of Health (PRIMARY AGENCY) and San Juan County (PERFORMING AGENCY).
  3. PURPOSE OF AMENDMENT: is to update the General Provisions and Business Associate Agreement
  4. CHANGES TO MOA:
    1. Change end date of MOA to 06/30/2023
    2. General Provisions and Business Associate Agreement
- All other conditions and terms in the original MOA and previous amendments remain the same.
5. EFFECTIVE DATE OF AMENDMENT: This amendment is effective 03/18/2021
  6. DOCUMENTS INCORPORATED INTO THIS MOA BY REFERENCE BUT NOT ATTACHED:
    - A. All other governmental laws, regulations, or actions applicable to services provided herein.
    - B. All Assurances and all responses to bids as provided by the PERFORMING.
  7. This MOA, 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 MOA.

**MOA between Utah Department of Health, Executive Directors Office and San Juan County, Log # 1615221**

IN WITNESS WHEREOF, the parties enter into this agreement.

**PERFORMING AGENCY**

**PRIMARY AGENCY**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Kenneth Maryboy  
County Commission Chair

By: \_\_\_\_\_ Date \_\_\_\_\_  
Shari A. Watkins C.P.A.  
Director, Fiscal Operations

# Attachment A: UTAH DEPARTMENT OF HEALTH GENERAL PROVISIONS

## SUB-RECIPIENT

### 1. DEFINITIONS

- a. "Authorized Persons" means Subrecipient's employees, officers, partners, Subcontractors or other agents of Subrecipient who need to access State Data to enable Subrecipient to perform its responsibilities under Contract.
- b. "Contract" means this agreement between the Department and Subrecipient, including the Contract Signature Page(s) and all referenced attachments and documents incorporated by reference.
- c. "Contract Signature Page(s)" means the cover page(s) that the Department and Subrecipient sign.
- d. "Custom Deliverable" means the Work Product that Contractor is required to deliver to Department under this Contract.
- e. "Department" means the Utah Department of Health.
- f. "Director" means the Executive Director of the Department or authorized representative.
- g. "Federal pass through money" means federal money received by a nonprofit corporation through a subaward or contract but does not include federal money received by a nonprofit corporation as payment for goods or services purchased by the Department.
- h. "Goods" means any deliverable that is not defined as a Service that Subrecipient is required to deliver under the Contract.
- i. "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 by a nonprofit corporation as payment for goods or services purchased from the nonprofit corporation or contributions or donations received by the political subdivision.
- j. "Originating funding entity" means an individual or entity which provided to the Department any or all funds payable under this Contract.
- k. "Pass through funding" means money appropriated to a state agency which includes ongoing or one-time money and is designated as general funds, dedicated credits, or any combination of state funding sources, that is intended to be passed through the state agency to a local government entity, private organization, including not-for-profit organizations or persons in the form of a loan or grant.
- l. "Person" means any governmental entity, business, individual, union, committee, club, other organization, or group of individuals.
- m. "Recipient entity" means a local government entity or private entity, including a nonprofit entity, which receives money by way of pass through funding from the Department.
- n. "Services" means the furnishing of labor, time, or effort by Subrecipient pursuant to this Contract. Services include, but are not limited to, all of the deliverable(s) (including supplies, equipment, or commodities) that result from Subrecipient performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
- o. "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.
- p. "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 Department's hardware, Subrecipient's hardware, or exists in any system owned, maintained or otherwise controlled by the Department or by the Subrecipient. State Data includes any federal data that the Department controls or maintains, that is protected under federal laws, statutes, and regulations. The Department reserves the right to identify, during and after the Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
- q. "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.

- r. "Subcontract" means a written agreement between Subrecipient and another party to fulfill the requirements of the Contract.
  - s. "Subcontractor" means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Subrecipient, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Subrecipient 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 Subrecipient's manufacturers, distributors, and suppliers.
  - t. "Subrecipient" means the person who delivers the services or goods described in the Contract.
  - u. "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.
  - v. "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, 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 Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by Department. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Department intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **EFFECTIVE DATE:** Once signed by the Director and the State Division of Finance, when applicable, and the State Division of Purchasing, when applicable, this Contract becomes effective on the date specified in the Contract.
  3. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from the Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
  4. **AMENDMENTS:** The Contract may only be amended by mutual written agreement signed by both parties, which amendment will be attached to the Contract. Automatic renewals will not apply to the Contract, even if listed elsewhere in the Contract.
  5. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.
  6. **LAWS AND REGULATIONS:** At all times during the Contract, Subrecipient shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including licensure and certification requirements. If the Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding will supersede this Attachment A.
  7. **CONFLICT OF INTEREST:** Subrecipient represents that none of its officers or employees are officers or employees of the Department or the State of Utah, unless written disclosure has been made to the Department.
  8. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Subrecipient agrees to comply and cooperate in good faith with all conflict of interest and ethic laws, including but not limited to, Section 63G-6a-2404, Utah Procurement Code.
  9. **INDEPENDENT CONTRACTORS:** Subrecipient and Subcontractors, in the performance of the Contract, shall act in an independent capacity and not as officers or employees or agents of the Department or State.
  10. **PROCUREMENT ETHICS:** Subrecipient understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
  11. **REPORTING RECEIPT OF FEDERAL AND STATE FUNDS.**
    - 11.1. If Subrecipient is a nonprofit corporation and receives federal pass through money or state money, Subrecipient shall disclose to the Department, 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 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 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 Subrecipient, and local money of at least \$100,000 but less than \$350,000.

**11.2.** If Subrecipient is a recipient entity that, under the terms of the contract, is receiving pass through funding that was neither issued under a competitive award process, nor in accordance with a formula enacted in statute nor in accordance with a state program under parameters in statute or rule that guides the distribution of the pass through funding, Subrecipient shall provide to the Department a written description and itemized report at least annually detailing the expenditure of the state money, or the intended expenditure of any state money that has not been spent. Subrecipient shall provide to the Department a final written itemized report when all the state money is spent. The Department may require Subrecipient to return an amount of money that is equal to the state money expended in violation of the terms of the section.

**12. INVOICING:** Unless otherwise stated in the Special Provisions of the Contract, Subrecipient will submit invoices along with any supporting documentation within thirty (30) days following the last day of the month in which the expenditures were incurred or the services provided or within thirty (30) days of the delivery of the Good to the Department. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Department will be those prices listed in this Contract, unless Subrecipient offers a prompt payment discount on its invoice. The Department has the right to adjust or return any invoice reflecting incorrect pricing.

**13. PAYMENT:**

**13.1.** The Department shall reimburse total actual expenditures, less amounts collected by Subrecipient from any other person not a party to the Contract legally liable for the payments for the goods and services.

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

**13.3.** By signing the Contract, Subrecipient acknowledges that the Department cannot contract for the payment of funds not yet appropriated by the Utah State Legislature or received from federal sources. If funding to the Department 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 the Department, the Department shall reimburse Subrecipient for products delivered and services performed through the date of cancellation or reduction, and the Department shall not be liable for any future commitments, penalties, or liquidated damages.

**13.4.** Upon 30 days written notice, Subrecipient shall reimburse Department for funds the Department is required to reimburse the grantor or originating funding entity up to the amount repaid resulting from the actions of the Subrecipient or its Subcontractors.

**14. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Subrecipient, this Contract may be terminated in whole or in part at the sole discretion of the Department, if the Department 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) that a change in available funds affects the Department'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, the Department will reimburse Subrecipient for the Services properly ordered until the effective date of said notice. The Department will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

- 15. INSURANCE:** Subrecipient shall at all times during the term of the Contract, without interruption, carry and maintain commercial general liability insurance from an insurance company authorized to do business in the State of Utah. The limits of this insurance will be no less than one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) aggregate. Subrecipient also agrees to maintain any other insurance policies required in any applicable Solicitation. Subrecipient shall provide proof of the general liability insurance policy and other required insurance policies to the Department within thirty (30) days of contract award. Subrecipient must add the State of Utah as an additional insured with notice of cancellation. Failure to provide proof of insurance as required will be deemed a material breach of the Contract. Subrecipient's failure to maintain this insurance requirement for the term of the Contract will be grounds for immediate termination of the Contract.
- 16. WORKERS' COMPENSATION INSURANCE:** Subrecipient shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Subrecipient acknowledges that within thirty (30) days of contract award, Subrecipient must submit proof of certificate of insurance that meets the above requirements.
- 17. SALES TAX EXEMPTION:** The Services under the Contract will be paid for from the Department's funds and used in the exercise of the Department's essential functions as a State of Utah entity. Upon request, the Department will provide Subrecipient with its sales tax exemption number. It is Subrecipient's responsibility to request the Department's sales tax exemption number. It is Subrecipient's sole responsibility to ascertain whether any tax deductions or benefits apply to any aspect of the Contract.
- 18. SUSPENSION OF WORK:** Should circumstances arise which would cause the Department to suspend Subrecipient's responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Subrecipient's responsibilities may be reinstated upon advance formal written notice from the Department.
- 19. INDEMNIFICATION:**
- 19.1.** If 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 the Contract. Neither party waives any rights or defenses otherwise available under the Governmental Immunity Act.
- 19.2.** If Subrecipient is a non-governmental entity, Subrecipient shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors. Subrecipient shall fully indemnify, defend, and save harmless the Department and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Subrecipient's performance of the Contract caused by any intentional act or negligence of Subrecipient, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that Subrecipient shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the Department. Subrecipient is solely responsible for all payments owed to any Subcontractor arising from Subrecipient's performance under the contract and will hold the Department harmless from any such payments owed to the subcontractor.
- 19.3.** The parties agree that if there are any limitations of Subrecipient's liability, including a limitation of liability clause for anyone for whom Subrecipient is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
- 20. INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Subrecipient shall indemnify and hold the Department and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Department or the State of Utah 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 Subrecipient's liability, such limitations of liability will not apply to this section.
- 21. DEBARMENT:** Subrecipient certifies it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Contract, by any governmental department or agency, whether international, national, state, or local, and certifies it is in compliance with Utah Code Ann. § 63G-6a-904 *et seq.* and OMB guidelines at 2 C.F.R. § 180 which implement Executive Order Nos. 12549 and 12689. Subrecipient must notify Department within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during the Contract.
- 22. TERMINATION AND DEFAULT:**

- 22.1.** The Department may terminate the Contract without cause, upon thirty (30) days written notice to Subrecipient.
- 22.2.** The Department agrees to use its best efforts to obtain funding for multi-year contracts. If continued funding for the Contract is not appropriated or budgeted at any time throughout the multi-year contract period, the Department may terminate the contract upon thirty (30) days' notice to Subrecipient. If funding to the Department is reduced due to an order by the Legislature or the governor, or is required by federal or state law, the Department may terminate the Contract or proportionately reduce the services and goods due and the amount due from the Department upon thirty (30) days written notice to Subrecipient. If the specific funding source for the subject matter of the Contract is reduced, the Department may terminate the Contract or proportionately reduce the services and goods due and the amount due from the Department upon thirty (30) days written notice to Subrecipient.
- 22.3.** Each party may terminate the Contract with cause. If the cause for termination is due to the default of a party, the non-defaulting party shall send a notice, which meets the notice requirements of the Contract, citing the default and giving notice to the defaulting party of its intent to terminate. The defaulting party may cure the default within ten (10) days of the notice. If the default is not cured within the ten (10) days, the party giving notice may terminate the Contract forty (40) days from the date of the initial notice of default or at a later date specified in the notice.
- 22.4.** The Department may terminate the contract if Subrecipient becomes debarred, insolvent, files for bankruptcy or reorganization proceedings, sells 30% or more of the company's assets or corporate stock, or gives notice of its inability to perform its obligations under the Contract.
- 22.5.** Upon termination of the Contract, all accounts and payments for services rendered to the date of termination shall be processed according to the financial arrangements set forth herein for approved services rendered to date of termination. If the Department terminates the Contract, Subrecipient shall stop all work as specified in the notice of termination. The Department shall not be liable for work or services performed beyond the termination date as specified in the notice of termination.
- 22.6.** In the event of such termination, Subrecipient shall be compensated for services properly performed under the Contract up to the effective date of the notice of termination. Subrecipient agrees that in the event of such termination for cause or without cause, Subrecipient's sole remedy and monetary recovery from the State is limited to full payment for all work properly performed as authorized under the Contract up to the date of termination as well as any reasonable monies owed as a result of Subrecipient having to terminate contracts necessarily and appropriately entered into by Subrecipient pursuant to the Contract. Subrecipient further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, and any and all documents produced by Subrecipient under the Contract up to the date of termination are the property of the State and shall be promptly delivered to the State.
- 22.7.** If the Department terminates the Contract, the Department may procure replacement goods or services upon terms and conditions necessary to replace Subrecipient's obligations. If the termination is due to Subrecipient's failure to perform, and the Department procures replacement goods or services, Subrecipient agrees to pay the excess costs associated with obtaining the replacement goods or services.
- 22.8.** If Subrecipient terminates the Contract without cause, the Department may treat Subrecipient's action as a default under the Contract.
- 22.9.** If Subrecipient defaults in any manner in the performance of any obligation under the Contract, or if audit exceptions are identified, the Department may, at its option, 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 Subrecipient's failure to comply with federal regulations or state rules. In addition, the Department may withhold amounts due Subrecipient under the Contract, any other current contract between the Department and Subrecipient, or any future payments due Subrecipient to recover the funds. The Department shall notify Subrecipient of the Department's action in adjusting the amount of payment or withholding payment. The Contract is executory until such repayment is made.
- 22.10.** Any of the following events will constitute cause for the Department to declare Subrecipient in default of this Contract: (i) Subrecipient's non-performance of its contractual requirements and obligations under this

Contract; or (ii) Subrecipient's material breach of any term or condition of this Contract. The Department may issue a written notice of default providing a ten (10) day period in which Subrecipient will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Subrecipient's liability for damages. If the default remains after Subrecipient has been provided the opportunity to cure, the Department may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Subrecipient from receiving future contracts from the Department or the State of Utah; or (v) demand a full refund of any payment that the Department has made to Subrecipient under this Contract for Goods that do not conform to this Contract.

The rights and remedies of the Department enumerated in this article are in addition to any other rights or remedies provided in the Contract or available in law or equity.

- 23. REVIEWS:** The Department reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Goods and Services of Subrecipient. Such reviews do not waive the requirement of Subrecipient to meet all of the terms and conditions of the Contract.
- 24. PERFORMANCE EVALUATION:** The Department may conduct a performance evaluation of Subrecipient's Services, including Subrecipient's Subcontractors. Results of any evaluation may be made available to Subrecipient upon request.
- 25. PUBLIC INFORMATION:** Subrecipient agrees that the 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 of Utah's Government Records Access and Management Act (GRAMA). Subrecipient gives the Department and the State of Utah permission to make copies of the Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Subrecipient and expressly approved by the State of Utah Division of Purchasing and General Services, Subrecipient also agrees that Subrecipient's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The Department and the State of Utah are not obligated to inform Subrecipient of any GRAMA requests for disclosure of the Contract, related purchase orders, related pricing documents, or invoices.
- 26. PUBLICITY:** Subrecipient shall submit to the Department for written approval all advertising and publicity matters relating to this Contract. It is within the Department's sole discretion whether to provide approval, which must be done in writing.
- 27. INFORMATION OWNERSHIP:** Except for confidential medical records held by direct care providers, the Department shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of the Contract. Subrecipient shall not use or disclose, except in meeting its obligations under the Contract, information gathered, reports developed, or conclusions reached in performance of the Contract without prior written consent from the Department. The Department shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by Subrecipient under the Contract. Subrecipient, and any Subcontractors under its control, expressly agrees not to use confidential federal, state, or local government information without prior written consent from the Department.
- 28. INFORMATION PRACTICES:** Subrecipient shall establish, maintain, and practice information procedures and controls that comply with federal and state law including, as applicable, Utah Code § 26-1-1 *et seq* 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"). Subrecipient shall receive or request from the Department only information about an individual that is necessary to Subrecipient's performance of its duties and functions. Subrecipient shall use the information only for purposes of the Contract. The Department shall inform Subrecipient of any non-public designation of any information it provides to Subrecipient.
- 29. SECURE PROTECTION AND HANDLING OF STATE DATA:**
- 29.1.** If Subrecipient is given State Data as part of this Contract, the protection of State Data shall be an integral part of the business activities of Subrecipient to ensure that there is no inappropriate or unauthorized use of State Data. To the extent that Subrecipient is given State Data, Subrecipient shall safeguard the confidentiality, integrity, and availability of the State Data. Subrecipient agrees to not to 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 the Contract. The improper use or disclosure of confidential information is strictly prohibited.
- 29.2.** Any and all transmission or exchange of State Data shall take place via secure means. Subrecipient shall create, store, and maintain any State Data on secure or encrypted computing devices or any portable storage



mediums. Subrecipient agrees to protect and maintain the security of State Data with security measures including, but are not limited to, maintaining secure environments that are patched and up to date with all appropriate security updates as designated, network firewall provisioning, and intrusion detection. Subrecipient agrees that any computing device or portable medium that has access to the Department's network or stores any non-public State Data is equipped with strong and secure password protection.

**29.3.** Subrecipient shall: (a) limit disclosure of any State Data to Authorized Person who have a need to know such information in connection with the current or contemplated business relationship between the parties to which the Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the State Data and of the obligations set forth in the Contract and require such Authorized Persons to keep the State Data confidential; (c) 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 (d) not disclose any State Data received by it to any third parties, except as permitted by the Contract or otherwise agreed to in writing by the Department.

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

**30. OWNERSHIP, PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** All documents and data pertaining to work required by the Contract will be the property of the Department, and must be returned to the Department or disposed of within thirty (30) days after termination or expiration of the Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. If such return or destruction is not feasible, Subrecipient shall notify the Department. Subrecipient shall extend any protections, limitation, and restrictions of the Contract to any information retained after the termination of the 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 shall take precedence.

**31. OWNERSHIP IN INTELLECTUAL PROPERTY:** The Department and Subrecipient agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Subrecipient prior to the execution of this Contract, but specifically created or manufactured under this Contract shall be considered work made for hire, and Subrecipient shall transfer any ownership claim to the Department.

**32. OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Department pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for Department and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title, and interest in the Custom Deliverables shall pass to Department, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to Department any and all copyrights in and to the Custom Deliverables, subject to the following:

**32.1.** Contractor has received payment for the Custom Deliverables,

**32.2.** 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

**32.3.** 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 Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Department (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

**32.4.** Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by Department.

**32.5.** Contractor agrees to grant to Department a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for Department and the State of Utah to use the Custom Deliverables. Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for Department's and the State of Utah's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants Department a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for Department's and the State of Utah's internal business operation under this Contract. Department and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

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

**34. WARRANTY OF GOODS:**

**34.1.** Subrecipient warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Goods delivered to the Department under the Contract. If not more specifically set out in the contract, Subrecipient warrants for a period of one (1) year that: (i) the Goods perform according to all specific claims that Subrecipient has made; (ii) the Goods are suitable for the ordinary purposes for which such Goods are used; (iii) the Goods are suitable for any special purposes identified by the Department; (iv) the Goods are designed and manufactured in a commercially reasonable manner; (v) the Goods are manufactured and in all other respects create no harm to persons or property; and (vi) the Goods are free of defects or unusual problems about which the Department has not been warned. Unless otherwise specified, all Goods provided shall be new and unused of the latest model or design.

**34.2.** Notwithstanding the foregoing, any software portions of the Goods that Subrecipient licenses, contracts, or sells to the Department under the Contract, Subrecipient agrees that for a period of ninety (90) days from the date of the Department's acceptance that the warranties listed in 33.1 apply to the software portions.

**34.3.** Subrecipient warrants and represents that all services shall be performed in conformity with the requirements of the Contract by qualified personnel in accordance with generally recognized standards and conform to contract requirements.

**35. WARRANTY REMEDIES:** Subrecipient acknowledges that all warranties granted to the Department by the Uniform Commercial Code of the State of Utah apply to the Contract. Product liability disclaimers and/or warranty disclaimers

from Subrecipient are not applicable to the Contract. For any goods or service that the Department determines does not conform with this warranty, the Department may arrange to have the item repaired or replaced, or the service performed either by Subrecipient or by a third party at the Department's option, at Subrecipient's expense. If any item or services does not conform to this warranty, Subrecipient shall refund the full amount of any payments made. Nothing in this warranty will be construed to limit any rights or remedies the Department may otherwise have under the contract.

- 36. UPDATES AND UPGRADES:** Subrecipient grants to the Department a non-exclusive, non-transferable license to use upgrades and updates provided by Subrecipient during the term of the Contract. Such upgrades and updates are subject to the terms of the Contract. The Department shall download, distribute, and install all updates as released by Subrecipient during the length of the Contract, and Subrecipient strongly suggests that the Department also downloads, distributes, and installs all upgrades as released by Subrecipient during the length of the Contract. Subrecipient shall use commercially reasonable efforts to provide the Department with work-around solutions or patches to reported software problems that may affect the Department's use of the software during the length of the Contract.
- 37. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Goods that Subrecipient provides under the Contract, Subrecipient will use commercially reasonable efforts to respond to the Department in a reasonable time when the Department makes technical support or maintenance requests regarding the Goods.
- 38. EQUIPMENT PURCHASE:** Subrecipient shall obtain prior written Department approval before purchasing any equipment, as defined in the Uniform Guidance, with contract funds.
- 39. DELIVERY:** Unless otherwise specified in the Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Subrecipient. Responsibility and liability for loss or damage will remain with Subrecipient until final inspection and acceptance, when responsibility will pass to the Department, except as to latent defects, fraud and Subrecipient's warranty obligations. The parties shall ship all orders promptly in accordance with the delivery schedule. Subrecipient shall submit promptly invoices (within thirty (30) days of shipment or delivery of services) to the Department. The parties shall list the state contract number on all invoices, freight tickets, and correspondence related to the Contract. The prices paid by the Department shall be the prices listed in the Contract, unless Subrecipient offers a prompt payment discount within its proposal or on its invoice. The Department has the right to adjust or return any invoice reflecting incorrect pricing.
- 40. ACCEPTANCE AND REJECTION:** The Department shall have thirty (30) days after the performance of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the Department. If Subrecipient delivers nonconforming Services, the Department may, at its option and at Subrecipient's expense: (i) return the Services for a full refund; (ii) require Subrecipient to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Subrecipient being responsible for any cover costs.
- 41. STANDARD OF CARE:** The Services of Subrecipient and its Subcontractors shall 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. Subrecipient shall be liable to the Department and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Subrecipient's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
- 42. RECORD KEEPING, AUDITS, & INSPECTIONS:**
- 42.1.** For financial reporting, Subrecipient shall comply with the Uniform Guidance and Generally Accepted Accounting Principles (GAAP).
- 42.2.** Subrecipient shall maintain or supervise the maintenance of all records necessary to properly account for Subrecipient's performance and the payments made by the Department to Subrecipient under the Contract. These records shall be retained by Subrecipient for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Subrecipient agrees to allow, at no additional cost, the State of Utah, federal auditors, and the Department's staff, access to all such records. These records shall be retained by Subrecipient as required by GAAP, federal or state law, or specific program requirements, whichever is longer. Subrecipient agrees to allow, at no additional cost, the State of Utah, federal auditors, and Department staff, access to all such records.

- 42.3.** Subrecipient shall retain all records which relate to disputes, litigation, and claim settlements arising from Contract performance or cost or expense exceptions initiated by the Director, until all disputes, litigation, claims, or exceptions are resolved.
- 42.4.** Subrecipient 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 Contract's special provisions, Subrecipient must comply with applicable federal cost principles and Contract administration requirements if state funds are received. Counties, cities, towns, school districts are subject to the State of Utah Legal Compliance Audit Guide. Copies of required reports shall be sent to the Utah Department of Health, Office of Fiscal Operations P.O. Box 144002, Salt Lake City, Utah 84114-4002.
- 43. EMPLOYMENT PRACTICES:** 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, or 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. § 26-38-1 *et. seq.*, 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. Subrecipient further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Sub recipient's employees.
- 44. FEDERAL REQUIREMENTS:** Subrecipient shall abide by the following federal statutes, regulations and requirements, including, but not limited to (i) 2 C.F.R. § 200.326, Contract Provisions as applicable; (ii) 45 C.F.R. § 46, Protection of Human Subject in research activities; (iii) 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; (iv) 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; (v) 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; (vi) 31 U.S.C. § 1352, Byrd Anti-Lobbying Amendment; (vii) 42 U.S.C § 4331, the National Environmental Policy Act of 1969; (viii) 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; (ix) 37 C.F.R. § 401, Rights to Inventions Made; (x) 42 C.F.R. part 50, Subpart B, Sterilizations; (xi) 42 C.F.R. part 50, Subpart C, Abortions and Related Medical Services; (xii) 59 FR 46266, Recombinant DNA and Institutional Biosafety; (xiii) 7 U.S.C. § 2131, Animal Welfare; (xiv) 42 C.F.R. part 92, Misconduct in Science; (xv) 42 U.S.C. §§ 4728-4763, Merit System Standards for governmental entities only; and (xvi) 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 contract terms and provides for such sanctions and penalties as may be appropriate.
- 45. WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
- 46. ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
- 47. SUBCONTRACTS & ASSIGNMENT:** Subrecipient shall not assign, sell, transfer, subcontract, or sublet rights or delegate responsibilities under the Contract, in whole or part, without the prior written consent of the Department. Subrecipient retains ultimate responsibility for performance of all terms, conditions and provisions of the Contract that are subcontracted or performed by a Subcontractor. When subcontracting, Subrecipient agrees to use written subcontracts that conform to federal and state laws. Subrecipient shall request Department approval for any assignment at least twenty (20) days prior to its effective date.

- 48. FORCE MAJEURE:** Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, or war which is beyond the party's reasonable control. The Department may terminate the Contract after determining that the delay or default will likely prevent successful performance of the Contract.
- 49. SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of the Contract shall not affect the validity or enforceability of any other provision, term, or condition of the Contract, which shall remain in full force and effect.
- 50. SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the Department's right to enforce this Contract with respect to any default or defect in the Services that has not been cured.
- 51. NOTICE:** Notice shall be in writing and directed to the contact person listed on Contract Signature Page(s) of the Contract.
- 52. ORDER OF PRECEDENCE:** The terms of the Contract shall be reasonably interpreted and construed to avoid any conflict among the provisions. If there is any conflict between the Contract's terms, the order of precedence (listed in order of descending precedence) among the terms is: (1) Contract Signature Page(s); (2) Department General Provisions; (3) Department Special Provisions; (4) Any other attachments.
- 53. TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in the Contract. For all Services, time is of the essence. Subrecipient shall be liable for all reasonable damages to the Department, the State of Utah, and anyone for whom the State of Utah may be liable as a result of Subrecipient's failure to timely perform the Services required under the Contract.
- 54. DISPUTE RESOLUTION:** The Department and Subrecipient shall attempt to resolve contract 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. The Department, after consultation with the Subrecipient, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Department appoints such an expert or panel, Department and Subrecipient agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
- 55. 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.

(Revision date: Mar. 2018)

**UTAH DEPARTMENT OF HEALTH  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement") is entered into between the Utah Department of Health, Division of Medicaid Health and Financing (the "Department") and San Juan Health Department ("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 requires the use and disclosure of PHI.

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. Terms used in this Agreement shall have the same meaning as those terms defined in the HIPAA Rules.
- 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 access, acquire, create, receive, maintain, use, transmit, 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 required 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. 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 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, including, but not limited to, conducting background checks consistent with applicable law; 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 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.
- 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.
- 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.

- 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 inform the Department if it or its subcontractors or agents will 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.
- 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 to provide 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.** 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 affects 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 will become effective when all parties have signed it. This Agreement shall terminate upon the earlier of the termination or expiration of each individual Service Agreement or on the date the Department terminates this Agreement for cause as authorized in paragraph (B) of this Section.
- 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 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. 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 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. 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 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:

Chief Privacy and Security Officer  
288 North 1460 West  
Salt Lake City, Utah 84114  
801-538-6271  
flanier@utah.gov

If to Business Associate:

To the name identified on the Contract Signature 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 conflict or inconsistency between the terms of this Agreement and the Service Agreement shall be governed by the terms of this Agreement. Any ambiguity 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 Agreements, the provisions of the more restrictive documentation will control. 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.

