



County of San Bernardino

F A S

STANDARD CONTRACT

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New	Vendor Code		<b>SC</b>	Dept.	<b>A</b>	Contract Number	
<input type="checkbox"/> Change							
<input type="checkbox"/> Cancel							
County Department			Dept.	Orgn.	Contractor's License No.		
Arrowhead Regional Medical Center							
County Department Contract Representative			Telephone		Total Contract Amount		
William L. Gilbert, Director			580-6150				
Contract Type							
<input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:							
If not encumbered or revenue contract type, provide reason:							
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount	
Project Name			Estimated Payment Total by Fiscal Year				
Master District Agreement			FY	Amount	I/D	FY	Amount
Contract Type -							

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name Silver Valley Unified School District Hereinafter called District

Address P. O. Box 847

35320 Daggett-Yermo Rd. Yermo, CA. 92398

Telephone (760) 254-2916 Federal ID No. or Social Security No. \_\_\_\_\_

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

This agreement ("Agreement") is entered into by and among County of San Bernardino, hereinafter referred to as "County" on behalf of Arrowhead Regional Medical Center, hereinafter referred to as "Medical Center" and Silver Valley Unified School District, hereinafter referred to as "District".

WITNESSETH

WHEREAS, the County, through the Medical Center operates a school-based mobile asthma treatment program, hereinafter referred to as "Breathmobile Clinic";

WHEREAS, the District desires that Medical Center operate the Breathmobile Clinic on District property as set forth hereinbelow;

NOW, THEREFORE, the parties hereto enter into this Agreement as a full statement of their respective responsibilities during the term of this Agreement, and in consideration of the representations made above and the covenants and conditions set forth herein, the parties agree as follows:

I. General Information:

1. The delivery of services by the Medical Center will be on the premises of selected school sites, on days and at times as mutually agreed upon by both parties.

II. Obligations of the Medical Center:

1. Be solely responsible for staffing and providing services under this Agreement. Medical Center certifies that staff and/or trainees providing the services are adequately trained and prepared according to prevailing professional standards for providing such services.
2. Provide adequate supervision of the professional staff and/or trainees.
3. Certify that Medical Center staff will follow legal guidelines on reporting child abuse.
4. Certify that all personnel in contact with children shall provide evidence of freedom from tuberculosis upon request of the District and that personnel meet District criminal conviction standards.
5. Be responsible for the cost, care and maintenance of the Breathmobile Clinic.
6. Be responsible for the services described herein with parent/guardian written approval. Services shall include:
  - a. History and physical examination, including peak flow measurements
  - b. Limited skin testing
  - c. Exhaled Nitric Oxide testing
  - d. Spirometry
  - e. Pharmacologic therapy
  - f. Patient/parent education regarding environmental control measures, asthma management and treatment plans.
  - g. Referrals for additional care where indicated. If the services required cannot be performed at the designated location or by staff present, Medical Center will make its best efforts for referrals as may be appropriate to the patient's needs.
7. Should services by Medical Center include any form of medical services, including diagnostic services, treatment or counseling, Medical Center shall obtain written parent consent prior to providing service(s) to a minor.

III. Obligations of the District:(School site)

1. Provide the Breathmobile Clinic medical team with any necessary utilities, including phone lines, electrical hookups, and restroom facilities for staff as required for the Breathmobile Clinic.
2. District Nursing staff shall:
  - a. Identify students who are high risk asthma patients
  - b. Coordinate patients and parents for scheduled Breathmobile Clinic visits.
  - c. Monitor asthma status utilizing individual treatment plans

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d. Notify Breathmobile Clinic team regarding patient status as necessary.

IV. Billing:

1. Services will be provided at no cost to the District or to the students served. The Medical Center will bill Medi-Cal and other third-party payers for eligible services.

V. Insurance:

County and District are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement.

VI. Indemnification:

COUNTY agrees to indemnify and hold harmless the DISTRICT its officers, agents and volunteers from any and all claims, actions, losses, damages, and/or liability resulting from the COUNTY'S negligent acts or omissions which arise from the COUNTY'S performance of its obligations under this Agreement.

DISTRICT agrees to indemnify, defend (with counsel approved by COUNTY and hold harmless the COUNTY and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out if its obligations under this Agreement.

In the event the COUNTY and/or the DISTRICT is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the COUNTY and/or DISTRICT shall indemnify the other to the extent of its comparative fault.

VII. Status of Parties:

1. The parties hereby expressly understand and agree that this Agreement is not intended and shall not be construed to create a relationship of agent, servant, employee, partnership, joint venture, or association between District and County but is rather an Agreement by and between independent contractors.
2. The parties hereby expressly understand and agree that their employees, agents, and independent contractors are not the employees or agents of the other party for any purpose, including, but not limited to, compensation for services, employee welfare and pension benefits, other fringe benefits of employment, or workers' compensation insurance.

VIII. Assignment:

Neither party hereto shall assign its rights or obligations pursuant to this Agreement without the express written consent of the other party.

IX. Modification:

No modification, amendment, supplement to or waiver of any provision of this Agreement shall be binding upon the parties unless made in writing and duly signed by all parties.

X. Rules of Construction:

The language in all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either the County or the District. Section headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.

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All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identifications of the person or persons, firm or firms, corporation or corporations may require.

XI. Governing Law:

This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed by and under the laws of the State of California.

XII. Counterparts:

This Agreement may be executed in counterparts, and all such counterparts together shall constitute the entire Agreement of the parties hereto.

XIII. Severability:

The provisions of this Agreement are specifically made severable. If any clause, provision, right and/or remedy provided herein is unenforceable or inoperative, the remainder of this Agreement shall be enforced as if such clause, provision, right and/or remedy were not contained herein.

XIV. Alternative Dispute Resolution:

In the event the Medical Center determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

Notwithstanding the above, nothing herein shall preclude either party from pursuing its legal remedies at law in the event a mutually satisfactory solution is not reached.

XV. Term and Termination:

1. This agreement shall be effective for a five (5) year term, commencing on the execution of this agreement by both parties and terminating five years later. However, this agreement may be terminated, with or without cause, by either party after giving the other party sixty (60) days advance written notice of its intention to terminate. The Director of the Medical Center is authorized to initiate termination on behalf of the County.
2. Any written notice given under this Section XV shall be sent, postage prepaid, by certified mail, return receipt requested, to the following person(s), as the case may be:

**ARROWHEAD REGIONAL MEDICAL CENTER**  
400 North Pepper Avenue  
Colton, CA 92324  
Attention: Director, Medical Center

**SILVER VALLEY UNIFIED SCHOOL DISTRICT**  
P. O. Box 847  
Yermo, CA. 92398  
Attention: Superintendent

XVI. Health Insurance Portability and Accountability Act (HIPAA)

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Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), regulations have been promulgated governing the privacy and security of individually identifiable health information (IIHI) otherwise defined as Protected Health Information (PHI) or electronic Protected Health Information (ePHI). The HIPAA Privacy and Security Regulations specify requirements with respect to contracts between an entity covered under the HIPAA Privacy and Security Regulations and its Business Associates. A Business Associate is defined as a party that performs certain services on behalf of, or provides certain services for, a Covered Entity and, in conjunction therewith, gains access to IIHI, or PHI or ePHI. Therefore, in accordance with the HIPAA Privacy and Security Regulations, District shall comply with the terms and conditions as set forth in the attached Business Associate Agreement, hereby incorporated by this reference as Appendix I.

**XVII. Entire Agreement:**

This Agreement contains the final, complete and exclusive Agreement between the parties hereto. Any prior Agreement promises, negotiations or representations relating to the subject matter of this Agreement not expressly set forth herein are of no force or effect. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Agreement and signs the same of its own free will.

**XVIII. Authorization:**

The undersigned individuals represent that they are fully authorized to execute this Agreement on behalf of the named parties.

IN WITNESS whereof, this Agreement has been executed by the parties hereto as of the day and year first written above.

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/  
/  
/  
/

COUNTY OF SAN BERNARDINO

\_\_\_\_\_  
(Print or type name of corporation, company, contractor, etc.)

Director and/or Designee, Arrowhead Regional Medical Center  
William L. Gilbert

By: \_\_\_\_\_  
(Authorized signature - sign in blue ink)

Dated: \_\_\_\_\_

Name: \_\_\_\_\_  
(Print or type name of person signing contract)

Title: \_\_\_\_\_  
(Print or Type)

Dated: \_\_\_\_\_

Address: P. O. Box 847  
Yermo, CA. 92398

Approved as to Legal Form

Reviewed by Contract Compliance

Presented to BOS for Signature

County Counsel

\_\_\_\_\_

Department Head

Date \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

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## BUSINESS ASSOCIATE AGREEMENT

Except as otherwise provided in this Agreement, District, hereinafter referred to as "Business Associate", may use, access, maintain or disclose Protected Health Information to perform functions, activities or services for or on behalf of Arrowhead Regional Medical Center, hereinafter referred to as the "Covered Entity", as specified in this Agreement, provided such use, access, maintenance or disclosure does not violate the Health Insurance Portability and Accountability Act, 42 USC 1320d et seq., and its implementing regulations, including but not limited to, 45 CFR Parts 160, 162, and 164, (hereinafter referred to as the "Privacy and Security Rules") and patient confidentiality regulations, including but not limited to, Title 42 of the Code of Federal Regulations Part 2 and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (the "HITECH Act") and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of business associates. Business Associate recognizes and agrees it is obligated by law to meet the applicable provisions of the HITECH Act.

### I. Definitions

A. "Breach" means the acquisition, access, use or disclosure of PHI in a manner not permitted under HIPAA (45 CFR Part 164, Subpart E), which compromises the security or privacy of the PHI. An impermissible use or disclosure of PHI is presumed to be a breach unless the Covered Entity or Business Associate demonstrates that there is a low probability the PHI has been compromised. A breach shall not include:

1. Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of Covered Entity or the Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Rule; or
2. Any inadvertent disclosure by a person who is authorized to access PHI at Covered Entity or Business Associate to another person authorized to access Protected Health Information at Covered Entity or Business Associate, respectively, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule; or
3. A disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

B. "Business Associate" means with respect to a Covered Entity, a person who:

1. On behalf of such Covered Entity, but other than in the capacity of a member of the workforce of such Covered Entity creates, receives, maintains or transmits PHI for a function or activity involving the use or disclosure of Personally Identifiable Health Information, including claims processing or administration, data analysis, data storage, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or
2. Provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services to or for Covered Entity where the provision of the service involves the disclosure of PHI from such Covered Entity to the person.

A HIPAA Covered Entity may be the Business Associate of another Covered Entity.

- C. "Covered Entity" means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA Privacy and Security Regulations.
- D. "Data Aggregation" means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.
- E. "Discovered" means a breach shall be treated as discovered by Covered Entity or Business Associate as of the first day on which such breach is known to such Covered Entity or Business Associate, respectively, (including any person, other than the individual committing the breach, that is an employee, officer or other agent of such entity or associate, respectively) or should reasonably have been known to such Covered Entity or Business Associate (or person) to have occurred.
- F. "Electronic Protected Health Information" or "Electronic PHI" means PHI that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.
- G. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- H. "HIPAA Privacy Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart E.
- I. "HIPAA Security Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of Electronic Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart C.
- J. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.
- K. "Individual" means the person who is the subject of PHI, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g)
- L. "Individually Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, and:
1. is created or received by a health care provider, health plan, employer or health care clearinghouse; and
  2. relates to the past, present or future physical or mental health condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
    - (a) that identifies the individual; or
    - (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- M. "Protected Health Information" or "PHI" means Individually Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity, (ii) Business Associate creates for its own purposes from Individually Identifiable Health Information that Business Associate received from Covered Entity, or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered

Entity. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. Section 1232(g), records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.

- N. "Unsecured PHI" means PHI that is not secured through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.
- O. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the HIPAA Privacy Rule, the HIPAA Security Rule and the HITECH Act.

## II. Obligations and Activities of Business Associate

### A. Prohibited Uses and Disclosures

Business Associate shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached **CONTRACT** or as required by law. Further, Business Associate shall not use PHI in any manner that would constitute a violation of the Privacy Rule or Subtitle D of the HITECH Act. Business Associate shall disclose to its employees, subcontractors, agents, or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

Business Associate shall not use or disclose PHI for fundraising or marketing purposes. Business Associate shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; 42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(i)(A). Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); and 45 C.F.R. Section 164.508 however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to this Agreement.

### B. Permitted Uses and Disclosures

If Business Associate discloses PHI to a third party, including any agent or subcontractor, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any breach of PHI, to the extent it has obtained knowledge of such breach in accordance with provision II.C.4. [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)].

1. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
2. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation service to Covered Entity as permitted by 45 CFR Section 164.504(e)(2)(i)(B).
3. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR Section 164.502(j)(1).

### C. Appropriate Safeguards



Business Associate shall implement the following administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity; and to ensure that any agent or subcontractor to whom Business Associate provides such information agrees to implement reasonable and appropriate safeguards to protect PHI in accordance with the HIPAA Security Rule under 45 C.F.R., Sections 164.308, 164.310, 164.312, 164.314 and 164.316:

1. Implement policies and procedures to prevent, detect, contain and correct security violations; identify the security official who is responsible for the development and implementation of the policies and procedures required by this subpart for the Business Associate; implement a security awareness and training program for all members of its workforce; implement policies and procedures to prevent those workforce members who should not have access from obtaining access to Covered Entity's Electronic PHI; implement policy and procedures to address security incidents; establish policies and procedures for responding to an emergency or other occurrence that damages systems that contain Electronic PHI; and perform a periodic technical and nontechnical evaluation in response to environmental or operational changes affecting the security of Electronic PHI, including conducting accurate and thorough assessments of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Electronic PHI, that establishes the extent to which an entity's security policies and procedures meet the requirements of this subpart.
2. Implement policies and procedures to limit physical access to Business Associate's Electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed; implement policies and procedures that specify the proper functions to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstations that can access Electronic PHI; implement physical safeguards for all workstations that access Electronic PHI; restrict access to authorized users; implement policies and procedures that govern the receipt and removal of hardware and electronic media that contain Electronic PHI into and out of a facility and the movement of these items within the facility.
3. Implement technical policies and procedures for electronic information systems that maintain Electronic PHI to allow access only to those persons or software programs that have been granted access rights as specified in 45 C.F.R., Section 164.208 implement hardware; software and/or procedural mechanisms that record and examine activity in information systems that contain or use Electronic PHI; implement policies and procedures to protect Electronic PHI from improper alteration, destruction, unauthorized access or loss of integrity or availability; including but not limited to, encryption of all workstations, laptops and flash drives that store PHI.
4. Enter into written agreements with agents and subcontractors to whom Business Associate provides Covered Entity's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to Business Associate with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

D. Mitigation

Business Associate shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, access or disclosure of PHI by Business Associate, its agents or subcontractors in violation of the requirements of this Agreement.

**E. Reporting of Improper Access, Use or Disclosure or Breach**

Business Associate shall report to Covered Entity's Office of Compliance any unauthorized use, access or disclosure of Unsecured PHI or any other security incident with respect to PHI no later than one (1) business day upon the discovery of a breach or suspected breach consistent with the regulations promulgated under the HITECH Act, 45 CFR Part 164, Subpart D by the United States Department of Health and Human Services. Upon discovery of a breach or suspected breach, the Business Associate shall complete the following actions:

1. Provide Covered Entity's Office of Compliance with the following information to include but not limited to:
  - (a) Date the breach or suspected breach occurred;
  - (b) Date the breach or suspected breach was discovered;
  - (c) Number of staff, employees, subcontractors, agents or other third parties and the titles of each person allegedly involved;
  - (d) Number of potentially affected patients/clients; and
  - (e) Description of how the breach or suspected breach allegedly occurred.
2. Conduct and document a risk assessment by investigating without reasonable delay and in no case later than five (5) calendar days of discovery of the breach or suspected breach to determine the following:
  - (a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
  - (b) The unauthorized person who used PHI or to whom it was made;
  - (c) Whether the PHI was actually acquired or viewed; and
  - (d) The extent to which the risk to PHI has been mitigated.
3. Provide a completed risk assessment and investigation documentation to Covered Entity's Office of Compliance within ten (10) calendar days of discovery of the breach or suspected breach with decision whether a breach has occurred.
  - (a) If a breach has not occurred, notification to Individual(s) is not required.
  - (b) If a breach has occurred, notification to the Individual(s) is required and Business Associate must provide Covered Entity with affected Individual(s) name and contact information so that Covered Entity can provide notification.
4. Make available to Covered Entity and governing State and Federal agencies in a time and manner designated by Covered Entity or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a breach or suspected breach for the purposes of audit or should the Covered Entity reserve the right to conduct its own investigation and analysis.

**F. Access to Protected Health Information**

Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or to an Individual, at the request or direction of Covered Entity and in the time and manner designated by the Covered Entity. If Business Associate maintains PHI in an electronic format, and an individual requests a copy of such information in electronic form, Business Associate shall provide such information in electronic form as required by of 45 CFR Section 164.524.

**G. Amendment of Protected Health Information**

If Business Associate maintains a Designated Record Set on behalf of the Covered Entity, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to, pursuant to 45 CFR Section 164.526, in the time and manner designated by the Covered Entity.

## H. Access to Records

Business Associate shall make internal practices, books, and records, including policies and procedures and PHI, relating to the use, access and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the U.S. Department of Health and Human Services, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules and patient confidentiality regulations. Anything provided to the Secretary shall also be provided to the Covered Entity upon Covered Entity's request.

## I. Accounting for Disclosures

Business Associate, its agents and subcontractors shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI. Further, Business Associate shall provide to Covered Entity or an Individual, in the time and manner designated by the Covered Entity, information collected in accordance with provision (I.), above, to permit Covered Entity to respond to a request by the Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528.

## J. Destruction of Protected Health Information

Upon termination of this Agreement, Business Associate shall return all PHI required to be retained and return or destroy, with certification of destruction by an officer of Business Associate, all other PHI received from the Covered Entity, or created or received by the Business Associate or its subcontractors, employees or agents on behalf of the Covered Entity. In the event the Business Associate determines that returning the PHI is not feasible, the Business Associate shall provide the Covered Entity with written notification of the conditions that make return not feasible. Business Associate further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by Business Associate or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures to the purposes that make the return or destruction of the PHI infeasible.

## K. Breach Pattern or Practice by Covered Entity

Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under this Agreement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS.

## L. Costs Associated to Breach

Business Associate shall be responsible for reasonable costs associated with a breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the Covered Entity and shall not be reimbursable under the Agreement at any time. Covered Entity shall determine the method to invoice the Business Associate for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

1. Postage;
2. Alternative means of notice;
3. Media notification; and
4. Credit monitoring services.

## M. Direct Liability

Business Associate may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to Covered Entity; failure to provide access to a copy of Electronic PHI to covered entity or individual; failure to disclose PHI to the Secretary of the U.S. Department of Health and Human Services when investigating Business Associate's compliance with the HIPAA; failure to provide an accounting of disclosures and failure to enter into a business associate agreement with subcontractors.

#### N. Termination for Cause

Covered Entity may, upon written notice to Business Associate, immediately terminate this agreement, and any related agreements, if Covered Entity determines that Business Associate has breached a material term of this agreement. Covered Entity may, upon written notice to Business Associate, allow Business Associate five (5) business days to cure such breach.

### III. Obligations of Covered Entity

- A. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect Business Associate's use, access or disclosure of PHI.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use, access or disclose PHI, to the extent that such changes may affect Business Associate's use, access, maintenance or disclosure of PHI.
- C. Covered Entity shall notify Business Associate of any restriction to the use, access or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Business Associate's use, access, maintenance or disclosure of PHI.

### IV. General Provisions

#### a. Remedies

Business Associate agrees that Covered Entity shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which Covered Entity may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by Business Associate or any agent or subcontractor of Business Associate that received PHI from Business Associate.

#### b. Ownership

The PHI shall be and remain the property of the Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI.

#### c. Regulatory References

A reference in this Agreement to a section in the Privacy and Security Rules and patient confidentiality regulations means the section as in effect or as amended.

#### d. Amendment

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and HIPAA, the HITECH Act and patient confidentiality regulations.

#### e. Interpretation

Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules and patient confidentiality regulations.

#### f. Indemnification

Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of Business Associate, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of Covered Entity's PHI, including without limitation, any breach of PHI or any expenses incurred by Covered Entity in providing required breach notifications.

