

## HIPAA BUSINESS ASSOCIATE AGREEMENT

### CITY OF AUSTIN PURCHASING OFFICE REQUEST FOR QUALIFICATION STATEMENTS NO. RFQS 5800 BYS4008 BIOMETRIC SCREENING SERVICES

The City of Austin ("City") and \_\_\_\_\_ ("Contractor") hereby agree that the following terms and conditions are made a part of the Agreement, to go into effect upon contract execution (such contract and this Exhibit are collectively referred to herein as "Contract"), for all purposes. The parties acknowledge that this is required by the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

The parties acknowledge and agree that Contractor, in performing its duties under the Contract, will receive individually identifiable protected health information as defined in Section 14 below (referred to as "Protected Health Information" or "PHI"), from City and from City's contractors or enrollees, and will create, receive or use PHI on the City's behalf. Contractor agrees to maintain the privacy and security of such PHI as required by all applicable laws and regulations, including but not limited to HIPAA and the privacy and security regulations adopted under HIPAA. Without limiting the foregoing, Contractor agrees to the following:

1. **Use of PHI:** Contractor shall not and shall ensure that its directors, officers, employees, contractors, and agents (referred to collectively as "Contractor's Agents") do not use PHI other than as expressly permitted by the Contract, or as required by law. Specifically, Contractor shall use PHI only for the following purposes: receive and process claims for payment for all eligible Plan participants; maintain claims history and patient profiles; maintain current eligibility data on all Plan participants; and for the proper management and administration of its internal business processes that relate to its responsibilities under the Contract, and to fulfill its legal responsibilities. In addition, Contractor agrees that it will not sell PHI, including patient or enrollee lists, nor use any PHI to engage in "marketing," as such term is defined in Section 164.501 of Title 45, U.S. Code of Federal Regulations. The term "marketing" includes, but is not limited to, the distribution of or mailing by Contractor or its affiliates of correspondence to City enrollees or their beneficiaries.
2. **Disclosure of PHI:**
  - a. *Disclosure to Third Parties.* Contractor shall not and shall ensure that Contractor's Agents do not disclose PHI to any other person or entity (other than members of Contractor's workforce as specified in subSection b. of this Section), unless disclosure is required by law, and as approved by City in writing. Any such disclosure shall be made only upon the written agreement of the subcontractor to be bound by the provisions of the Contract, for the express benefit of Contractor and City.

To the extent that Contractor discloses PHI to a third party, Contractor must obtain, prior to making any disclosure:

    1. reasonable assurances from such third party that PHI will be held confidential as provided in the Contract, and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and
    2. an agreement from such third party to immediately notify Contractor of any breaches of the confidentiality of PHI, to the extent it has obtained knowledge of such breach.
  - b. *Disclosure to Workforce.* Contractor shall not disclose PHI to any member of its workforce unless Contractor has advised such person of Contractor's obligations under the Contract, and of the consequences for such person and for Contractor of

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violating them. Contractor shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in contravention of this Contract.

3. **Safeguards:** Contractor shall implement all appropriate safeguards to prevent use or disclosure of PHI other than as permitted by the Contract. Contractor shall provide City with such information concerning the safeguards as City may from time to time request and shall, upon reasonable request, give City access for inspection and copying to Contractor's facilities used for the maintenance and processing of PHI, and to its books, records, practices, policies, and procedures concerning the use and disclosure of PHI. In addition, Contractor and Contractor's Agents shall comply with the minimum necessary requirements set forth in the HIPAA privacy regulations when using or disclosing PHI. Contractor also agrees to mitigate, to the extent possible, any harmful effects of an improper use or disclosure of PHI by Contractor in violation of the requirements of the Contract.
4. **Accounting of Disclosures:**
  - (a) Contractor shall maintain a record of all PHI disclosures made other than for the permitted purposes of the Contract, including the date of disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purposes of the disclosures.
  - (b) Within ten (10) calendar days of notice by City to Contractor that City has received a request for an accounting of disclosures of PHI regarding an individual, Contractor shall make available to City such information as is in Contractor's possession and is required for City to make the accounting.
5. **Reporting of Disclosures of Protected Health Information:** Contractor shall, within five (5) business days (Monday - Friday) of becoming aware of a use or disclosure of PHI in violation of this Contract by Contractor or Contractor Agents, report such disclosure or use in writing to Chris Echols in the Employee Benefits Division of the City's Human Resources Department and describe remedial action taken or proposed to be taken with respect to such use or disclosure.
6. **Contracts by Third Parties:** Contractor shall enter into an agreement with any agent or subcontractor that will have access to PHI that is received from, or created or received by Contractor on behalf of City, in which such agent or subcontractor agrees to be bound by the same restrictions, terms, and conditions that apply to Contractor under this Contract.
7. **Disclosure to U.S. Department of Health and Human Services:** Contractor shall make its internal practices, books and records, including policies and procedures, relating to the use and disclosures of PHI available to the Secretary of the United States Department of Health and Human Services, for purposes of determining compliance with HIPAA.
8. **Access by Individuals:** Within ten (10) calendar days of receipt of a request by City, Contractor shall permit any individual whose PHI is maintained by Contractor to have access to and to copy his or her PHI, in the format requested, unless it is not readily producible in such format, in which case it shall be produced in hard copy format. In the event any individual requests access to PHI held by Contractor directly from Contractor, Contractor shall, within two (2) days forward such request to City. Any denial of access

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to the PHI requested shall be the responsibility of City.

9. **Correction of PHI:** Contractor agrees to make any amendments to PHI that the City directs or agrees to under HIPAA. City shall provide Contractor with written instructions regarding any such amendment.
10. **Amendment:** Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or Texas relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, City may, by written notice to Contractor, amend this Contract in such manner as City determines necessary to comply with such law or regulation. If Contractor disagrees with any such amendment, it shall so notify City in writing within thirty (30) days of the date of the notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, either of them may terminate the Contract upon written notice to the other.
11. **Breach:** Without limiting the rights of the parties under Section 2 this Agreement, should Contractor breach any of its obligations under this Amendment, City may, at its option:
  - a. Exercise any of its rights of access and inspection under Section 2 of this Agreement;
  - b. Provide Contractor with notice of the breach and an opportunity to cure such breach within thirty (30) calendar days of the notice of breach. If Contractor fails to cure the breach to City's satisfaction within such cure period, City may terminate the Contract by providing written notice to Contractor. If Contractor cures the breach within the cure period, City may require Contractor to submit to a plan of monitoring and reporting of uses and disclosures of PHI, as City may determine necessary to maintain compliance with this Amendment. Any such monitoring plan shall be made a part of the Contract;
  - c. Immediately terminate the Contract, with or without an opportunity to cure the breach; or
  - d. If termination is not feasible, report the breach to the Secretary of the United States Department of Health and Human Services.

City's remedies under this Agreement shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

12. **Procedure Upon Termination.**
  - (1) Except as provided in paragraph (2) below, upon termination of the Contract, for any reason, Contractor shall return or destroy all PHI received from City, or created or received by Contractor on behalf of City. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the PHI.
  - (2) In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to City written notification of the conditions that make return or destruction infeasible. Upon agreement by City that return or destruction of PHI is not feasible, Contractor shall extend the protections of this Contract to such PHI and limit further uses and disclosures of such PHI to those

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purposes that make the return or destruction infeasible, for so long as Contractor maintains the PHI.

13. **Indemnification.** Contractor shall indemnify and hold harmless City from and against any and all costs, liabilities, losses, damages and expenses (including, but not limited to, reasonable attorneys' fees) resulting from any claim, lawsuit or proceeding brought by a third party against City and arising from or related to a breach or alleged breach by Contractor or Contractor's Agents of the obligations referenced herein. Contractor's obligation to indemnify shall survive the expiration or termination of the Contract.
14. **Definitions for Use in this Addendum:**
- (a) *HIPAA Rules and/or HIPAA* shall mean the Privacy, Security, Breach Notification, and Enforcement Rules implementing HIPAA and set out at 45 CFR Part 160 and Part 164.
  - (b) *Individually Identifiable Health Information* shall mean information that is a subset of health information, including demographic information collected from an individual, that:
    - (i) is created or received by a health care provider, health plan, employer, or healthcare clearinghouse; and
    - (ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and (a) 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.
  - (b) *Protected Health Information* shall mean Individually Identifiable Health Information that is (i) transmitted by electronic media; (ii) maintained in any medium constituting electronic media; or (iii) transmitted or maintained in any other form or medium.
  - (c) *Agent and Subcontractor* shall mean a third party who is not an employee in the workforce of the Business Associate and who receives Protected Health Information from the Business Associate for purposes of carrying out any part of the Business Associate's responsibilities under its services agreement with the City.
  - (d) *Business Associate* shall have the meaning as the term "business associate" set out at 45 CFR Part 160.103, and in reference to the party of this agreement, shall be the party designated as a Business Associate.

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**“CITY”**

**CITY OF AUSTIN, A Home Rule Municipality**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“CONTRACTOR”**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_