

**MEMORANDUM OF UNDERSTANDING BETWEEN  
WYOMING DEPARTMENT OF HEALTH, PUBLIC HEALTH DIVISION  
AND  
CONVERSE COUNTY**

1. **Parties.** The parties to this Memorandum of Understanding (Agreement) are Wyoming Department of Health, Public Health Division (Agency), whose address is: 122 West 25<sup>th</sup> Street, 3<sup>rd</sup> Floor West, Cheyenne, Wyoming 82002, and Converse County (County), whose address is: 107 North 5th Street, Suite 114, Douglas, Wyoming 82633. This Agreement concerns the Public Health Division.
2. **Purpose of Agreement.** The purpose of this Agreement is to set forth the terms and conditions by which the County shall utilize grant funds for COVID-19 disease surveillance and testing activities.
3. **Term of Agreement.** This Agreement is effective when all parties have executed it (Effective Date). The performance period of the Agreement is from December 31, 2020 through June 30, 2021. All services shall be completed during this term.

This Agreement may be extended twice by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of extension and any extension will be determined at the discretion of the Agency.

4. **Payment.**

- A. The Agency agrees to pay the County for the services described in Section 5, below, and in Attachment A, Statement of Work, which is attached to and incorporated into this Agreement by this reference. Total payment under this Agreement shall not exceed one hundred sixty-seven thousand, nine hundred sixty-four dollars (\$167,964.00). Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. County shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Agreement. Total federal funds provided under Catalog of Federal Domestic Assistance (CFDA) Number 93.323 shall not exceed one hundred sixty-seven thousand, nine hundred sixty-four dollars (\$167,964.00).
- B. No payment shall be made for work performed prior to December 31, 2020. Should the County fail to perform in a manner consistent with the terms and conditions set forth in this Agreement, payment under this Agreement may be withheld until such time as the County performs its duties and responsibilities to the satisfaction of Agency.
- C. When the County is working at a location requiring an overnight stay, the County shall be reimbursed at the rates set out in Wyo. Stats. §§ 9-3-102 and 9-3-103.

5. **Responsibilities of County.** The County agrees to:
- A. Provide the services and comply with the duties described in Attachment A.
  - B. Abide by Attachment B, Business Associate Agreement, which is attached to and incorporated into this Agreement by this reference.
6. **Responsibilities of Agency.** The Agency agrees to:
- A. Pay County in accordance with Section 4 above.
  - B. Provide support as described in Attachments A.
  - C. Monitor and evaluate the County's compliance with the conditions set forth in this Agreement.
7. **Special Provisions.**
- A. **Assumption of Risk.** The County shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the County's failure to comply with state or federal requirements. The Agency shall notify the County of any state or federal determination of noncompliance.
  - B. **Environmental Policy Acts.** County agrees all activities under this Agreement will comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.
  - C. **Human Trafficking.** As required by 22 U.S.C. § 7104(g) and 2 CFR Part 175, this Agreement may be terminated without penalty if a private entity that receives funds under this Agreement:
    - (i) Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
    - (ii) Procures a commercial sex act during the period of time that the award is in effect; or
    - (iii) Uses forced labor in the performance of the award or subawards under the award.
  - D. **Kickbacks.** County certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If County breaches or violates this warranty, Agency may, at its discretion, terminate this Agreement without liability to Agency, or deduct from



the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

- E. **Limitations on Lobbying Activities.** By signing this Agreement, County certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by County or its subrecipients in connection with lobbying member(s) of Congress, or any federal agency in connection with the award of a federal grant, MOU, cooperative agreement, or loan.
- F. **Monitoring Activities.** Agency shall have the right to monitor all activities related to this Agreement that are performed by County or its subrecipients. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Agreement; and to observe personnel in every phase of performance of Agreement related work.
- G. **Nondiscrimination.** The County shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Agreement.
- H. **No Finder's Fees:** No finder's fee, employment agency fee, or other such fee related to the procurement of this Agreement, shall be paid by either party.
- I. **Publicity.** Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the County and related to the services and work to be performed under this Agreement, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval of Agency.
- J. **Suspension and Debarment.** By signing this Agreement, County certifies that neither it nor its principals/agents are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction or from receiving federal financial or nonfinancial assistance, nor are any of the participants involved in the execution of this Agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension), 44 CFR Part 17, or 2 CFR Part 180, or are on the debarred, or otherwise ineligible, vendors lists maintained by the federal government. Further, County agrees to notify Agency by certified mail should it or any of its principals/agents become ineligible for

payment, debarred, suspended, or voluntarily excluded from receiving federal funds during the term of this Contract.

- K. Administration of Federal Funds.** County agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 C.F.R. Part 200, *et seq.*; any additional requirements set forth by the federal funding agency; all applicable regulations published in the Code of Federal Regulations; and other program guidance as provided to it by Agency.
- L. Copyright License and Patent Rights.** County acknowledges that federal grantor, the State of Wyoming, and Agency reserve a royalty-free, nonexclusive, unlimited, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal and state government purposes: (1) the copyright in any work developed under this Agreement; and (2) any rights of copyright to which County purchases ownership using funds awarded under this Agreement. County must consult with Agency regarding any patent rights that arise from, or are purchased with, funds awarded under this Agreement.
- M. Federal Audit Requirements.** County agrees that if it expends an aggregate amount of seven hundred fifty thousand dollars (\$750,000.00) or more in federal funds during its fiscal year, it must undergo an organization-wide financial and compliance single audit. County agrees to comply with the audit requirements of the U.S. General Accounting Office Government Auditing Standards and Audit Requirements of 2 C.F.R. Part 200, Subpart F. If findings are made which cover any part of this Agreement, County shall provide one (1) copy of the audit report to Agency and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to Agency's records.
- N. Non-Supplanting Certification.** County hereby affirms that federal grant funds shall be used to supplement existing funds, and shall not replace (supplant) funds that have been appropriated for the same purpose. County should be able to document that any reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds under this Agreement.
- O. Program Income.** County shall not deposit grant funds in an interest bearing account without prior approval of Agency. Any income attributable to the grant funds distributed under this Agreement must be used to increase the scope of the program or returned to Agency.
- P. Health Equity.** The County shall ensure that services are equitable to under-resourced, socially disadvantaged, and ethnically diverse groups; provide services that are culturally and linguistically appropriate; collect demographic information, to the extent practicable; and engage in partnerships with other public or private providers to eliminate health disparities and improve the health of all people.



8. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed by all parties to this Agreement.
- B. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Assignment Prohibited and Agreement Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The County shall not use this Agreement, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Agency.
- D. **Audit and Access to Records.** The Agency and its representatives shall have access to any books, documents, papers, electronic data, and records of the County which are pertinent to this Agreement. The County shall immediately, upon receiving written instruction from the Agency, provide to any independent auditor or accountant all books, documents, papers, electronic data, and records of the County which are pertinent to this Agreement. The County shall cooperate fully with any such independent auditor or accountant during the entire course of any audit authorized by the Agency.
- E. **Availability of Funds.** Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Agreement, the Agreement may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the County at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. **Award of Related Agreements.** The Agency may award supplemental or successor agreements for work related to this Agreement or may award agreements to other subrecipients for work related to this Agreement. The County shall cooperate fully with other subrecipients and the Agency in all such cases.

- G. Compliance with Laws.** The County shall keep informed of and comply with all applicable federal, state, and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Agreement.
- H. Confidentiality of Information.** Except when disclosure is required by the Wyoming Public Records Act or court order, all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the County in the performance of this Agreement shall be kept confidential by the County unless written permission is granted by the Agency for its release. If and when County receives a request for information subject to this Agreement, County shall notify Agency within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Agency.
- I. Entirety of Agreement.** This Agreement, consisting of ten (10) pages; Attachment A, Statement of Work, consisting of one (1) page; and Attachment B, Business Associate Agreement, consisting of six (6) pages, represent the entire and integrated Agreement between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Agreement and the language of any attachment or document incorporated by reference, the language of this Agreement shall control, with the exception of that contained in Attachment B, Business Associate Agreement.
- J. Ethics.** County shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing County's profession.
- K. Extensions.** Nothing in this Agreement shall be interpreted or deemed to create an expectation that this Agreement will be extended beyond the term described herein. Any extension of this Agreement shall be initiated by the Agency and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Agreement or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Agreement.
- L. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.



- M. Indemnification.** Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
- N. Independent Contractor.** The Parties agree that, only for purposes of the Health Insurance Portability and Accountability Act (HIPAA), the County's Public Health Nursing employees shall be considered part of the Wyoming Department of Health's workforce, as defined at 45 CFR § 160.103. For all other purposes, the County shall function as an independent contractor. Consistent with the express terms of this Agreement, the County shall be free from control or direction over the details of the performance of services under this Agreement. The County shall assume sole responsibility for any debts or liabilities that may be incurred by the County in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the County or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency or to incur any obligation of any kind on behalf of the State of Wyoming or the Agency except as authorized by this Agreement. The County agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the County or the County's agents or employees as a result of this Agreement. Nothing in this Agreement shall be deemed to change, modify, or increase such benefits to either party or its employees.
- O. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing either by regular mail or delivery in person at the addresses provided under this Agreement.
- P. Ownership and Return of Documents and Information.** Agency is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the County in the performance of this Agreement. County is the official custodian and owns all data produced in the performance of any work outside the scope of this Agreement. Agency is not responsible for maintaining the privacy or security of County data produced and maintained in the performance of any work outside the scope of this Agreement. Upon termination of services, for any reason, County agrees to return all original and derivative information and documents owned by the Agency to the Agency in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers.
- Q. Prior Approval.** This Agreement shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Agreement has been fully executed, approved as to

form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).

- R. **Insurance Requirements.** County is protected by the Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, *et seq.*, and certifies that it is a member of the Wyoming Association of Risk Management (WARM) pool or the Local Government Liability Pool (LGLP), Wyo. Stat. § 1-42-201, *et seq.*, and shall provide a letter verifying its participation in the WARM or LGLP to the Agency.
- S. **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- T. **Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Agency expressly reserve sovereign immunity by entering into this Agreement and the County expressly reserves governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereign or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the County, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Agreement, or in any attachments or documents incorporated by reference, will not be binding on the State of Wyoming. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to immunity shall be construed in favor of immunity.
- U. **Taxes.** The County shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- V. **Termination of Agreement.** This Agreement may be terminated, without cause, by the Agency upon thirty (30) days written notice. This Agreement may be terminated by the Agency immediately for cause if the County fails to perform in accordance with the terms of this Agreement.
- W. **Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall



not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

- X. **Time is of the Essence.** Time is of the essence in all provisions of this Agreement.
- Y. **Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.
- Z. **Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- AA. **Counterparts.** This Agreement may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Agreement. Delivery by the County of an originally signed counterpart of this Agreement by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Agency. The County's failure to deliver, either personally or via US Mail, postage prepaid, the originally signed counterpart to the Agency within five (5) business days shall be considered a material breach and may result in immediate termination of this Agreement by the Agency.

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9. **Signatures.** The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The Effective Date of this Agreement is the date of the signature last affixed to this page.

**AGENCY: WYOMING DEPARTMENT OF HEALTH, PUBLIC HEALTH DIVISION**

\_\_\_\_\_  
Michael A. Ceballos, Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Stephanie Pyle, MBA  
Senior Administrator, Public Health Division

\_\_\_\_\_  
Date

**COUNTY: CONVERSE COUNTY**

\_\_\_\_\_  
Chairman, Converse County Board of Commissioners



24-Dec-2020  
\_\_\_\_\_  
Date

**COUNTY ATTORNEY: APPROVAL AS TO FORM**

\_\_\_\_\_  
Converse County Attorney

12-23-20  
\_\_\_\_\_  
Date

**COUNTY CLERK'S ATTESTATION**

\_\_\_\_\_  
Converse County Clerk

12/24/2020  
\_\_\_\_\_  
Date

**ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM**

for: \_\_\_\_\_ #208932  
Tyler M. Renner, Senior Assistant Attorney General

12/14/2020  
\_\_\_\_\_  
Date



**ATTACHMENT A  
STATEMENT OF WORK  
COVID Disease Surveillance**

**General Description**

This document is a Statement of Work (SOW) to define the use of funding from the Wyoming Department of Health, Public Health Division (Agency) for Converse County's (County) COVID disease surveillance and testing activities.

**Responsibilities of the County**

The County agrees to:

- A. Utilize funding to pay COVID-related public health personnel expenses from December 31, 2020 through June 30, 2021. Personnel expenses must be related to contact tracing, disease surveillance, isolation and quarantine, and sample collection or laboratory testing.
  - 1. Public health personnel costs could include, but are not limited to: staff overtime, personnel costs for temporary staff (can include benefits if included by county protocol), and personnel costs for staff that are redirected from their normal duties.
  - 2. Other costs related to additional personnel. Can include, but is not limited to, cell phones and computers.
- B. COVID surveillance and laboratory testing:
  - 1. Costs can include: pay for personnel to implement and conduct expanded testing events, advertising costs for testing events, contact tracing, isolation and quarantine, administration costs for sample collection and handling, supply costs, and other approved expenses. Funding shall only be used for molecular or antigen tests for the detection of SARS-CoV-2; this funding is not approved for serologic testing. This funding is available through June 30, 2021.

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**ATTACHMENT B  
BUSINESS ASSOCIATE AGREEMENT BETWEEN  
THE WYOMING DEPARTMENT OF HEALTH, PUBLIC HEALTH DIVISION AND  
CONVERSE COUNTY**

1. **Purpose.** The Parties to this Contract agree that Contractor, Converse County, is a Business Associate of the Wyoming Department of Health, Public Health Division (Agency), as defined by 45 CFR § 160.103; therefore, this attachment is mandatory for purposes of this Contract. This attachment seeks to satisfy the requirements for the privacy and security and transmission of protected health information found in 45 CFR Parts 160, 162, and 164 as well as applicable Wyoming state law. Applicable Wyoming state law may include, but is not limited to, Wyo. Stat. Ann. §§ 9-2-125 et seq. and applicable rules and regulations. These statutes, rules, and regulations are collectively referred to as the "Privacy and Security Rules."
2. **Definitions.** The Parties agree that the definitions in 45 CFR Parts 160, 162, and 164 shall apply to the terms used in this attachment. For the purpose of this attachment, Contractor shall be known as the "Business Associate."
3. **Responsibilities of Business Associate Pursuant to this Attachment.** Except as otherwise permitted or required by this attachment, the Business Associate may only create, receive, maintain, or transmit protected health information received from or on behalf of the Agency as necessary to coordinate or conduct human SARS-CoV-2 testing and outbreak activities (including but not limited to contract tracing) as set forth in the Contract, as required by law, or to carry out the proper management and administration or legal responsibilities of the Business Associate. Further, the Business Associate agrees:
  - A. To not create, receive, maintain, or transmit protected health information in a manner that would violate any provision of the Privacy and Security Rules, or other applicable federal, state, or local law.
  - B. To establish, use, and maintain administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of all protected health information that the Business Associate creates, receives, maintains, or transmits on behalf of the Agency and to prevent any use or disclosure of protected health information as provided by this attachment.
  - C. To comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information. The Business Associate shall provide notice of its designated security officer to the Agency within thirty (30) days following execution of this attachment.

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BUSINESS ASSOCIATE AGREEMENT BETWEEN  
THE WYOMING DEPARTMENT OF HEALTH, PUBLIC HEALTH DIVISION (AGENCY)  
AND CONVERSE COUNTY (BUSINESS ASSOCIATE)**



- D. To limit its use, disclosure, or requests for protected health information to the extent practicable to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request.
- E. To secure all protected health information in its possession in accordance with the most current standards established by the Secretary of Health and Human Services under 13402(h)(2) of Public Law 111-5 on the Health and Human Services website.
- F. To notify the Agency of any use or disclosure of protected health information not provided for by this attachment, any security incident, or any breach of unsecured protected health information of which the Business Associate becomes aware.
  - i. Such notice shall include the identification of each individual whose protected health information has been, or is reasonably believed to have been subject to such use, disclosure, incident, or breach, a statement indicating whether the protected health information was secured or unsecured, and a description of any security measures used.
  - ii. A disclosure, incident, or breach shall be treated as discovered by the Business Associate as of the first day on which such breach is known to the Business Associate, or, by exercising reasonable diligence, would have been known to the Business Associate. The Business Associate shall be deemed to have knowledge of a disclosure, incident, or breach if the same is known, or, by exercising reasonable diligence, would have been known to any person (other than the person committing the disclosure, incident, or breach) who is an employee, officer, or other agent (determined in accordance with the federal common law of agency) of the Business Associate.
  - iii. All reports of breach involving unsecured protected health information by the Business Associate shall also include the most current contact information available for each individual whose protected health information has been, or is reasonably believed to have been accessed, acquired, or disclosed, and any other information required by 45 CFR § 164.404 for the notification of individuals.
- G. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), to ensure that any subcontractor that the Business Associate uses to create, receive, maintain, or transmit protected health information on its behalf agrees to the same restrictions,

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AND CONVERSE COUNTY (BUSINESS ASSOCIATE)

conditions, and requirements that apply to the Business Associate under the terms of this attachment.

- H. To conduct electronic transactions covered by 45 CFR Part 162 as a standard transaction as required by 45 CFR Part 162, and ensure that any agents, including subcontractors, also process electronic transactions as required therein.
- I. To make all protected health information received from the Agency or otherwise created, maintained, or transmitted on behalf of the Agency available to the Agency as necessary for the Agency to comply with an individual's request for access to protected health information under 45 CFR § 164.524, a public records request under Wyo. Stat. Ann. §§ 16-4-201 through 16-4-205, or any other request that may be required by law. If the Business Associate receives such request for protected health information directly, it shall notify the Agency within three (3) business days following its receipt of such request. Thereafter, the Parties agree to meet to promptly discuss and jointly resolve the request for protected health information. The Parties' failure to reach an agreement regarding any such request prior to the timeframes specified in 45 CFR § 164.524 and Wyo. Stat. Ann. §§ 16-4-201 through 16-4-205 shall be cause to terminate this Contract and all other contracts between the Parties.
- J. To make any amendments to protected health information in a designated record set held by the Business Associate or by any subcontractor or agent pursuant to 45 CFR § 164.526. Should the Business Associate receive such request directly, it shall notify the Agency prior to providing any response to the person requesting amendment. Thereafter, the Parties agree to meet to promptly discuss and jointly resolve the request for amendment to the protected health information. The Parties' failure to reach an agreement regarding any amendment prior to the timeframes specified in 45 CFR § 164.526 shall be cause to terminate this Contract and all other contracts between the Parties.
- K. To make internal practices, books and records relating to the use and disclosure of protected health information received from or created or received by the Business Associate on behalf of the Agency available to the Agency or to the Secretary of Health and Human Services for purposes of determining the Agency's or Business Associate's compliance with the Privacy and Security Rules. The Business Associate shall notify the Agency if it provides such information to the Secretary.
- L. To document such disclosures of protected health information and information related to such disclosures as would be required for the Agency to respond to a request by an individual for an accounting of disclosures under 45 CFR § 164.528.

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AND CONVERSE COUNTY (BUSINESS ASSOCIATE)



The Business Associate shall comply with the Agency's request for such information within seven (7) business days following the Agency's request. Should the Business Associate receive such request directly, it will notify the Agency. Thereafter, the Parties agree to meet to promptly discuss and jointly resolve the request for an accounting of disclosures. The Parties' failure to reach an agreement regarding any accounting of disclosures prior to the timeframes specified in 45 CFR § 164.528 shall be cause to terminate this Contract and all other contracts between the Parties.

- M. Unless otherwise provided, to provide notice within seven (7) business days of any event that triggers the Business Associate's obligation to notify the Agency.
  - N. That Business Associate may be subject to civil and criminal penalties enumerated at sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320-6) with respect to violations of this attachment or the Privacy and Security Rules.
  - O. To assume sole responsibility for its own compliance and the compliance of its workforce with the provisions of this section.
4. **Responsibilities of Agency Pursuant to this Attachment.** The Agency shall inform the Business Associate of the Agency's notice of privacy practices and restrictions on protected health information. The first such notice and restrictions shall be given to the Business Associate no later than the date of the last signature to the Contract. In addition, the Agency agrees to the following:
- A. To provide the Business Associate with the notice of privacy practices the Agency produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
  - B. To provide the Business Associate with any changes in, or revocation of, permission by an individual to use or disclose protected health information, if such changes affect the Business Associate's permitted or required uses and disclosures.
  - C. To notify the Business Associate of any restriction to the use or disclosure of protected health information to which the Agency has agreed and which are applicable to the Business Associate, in accordance with 45 CFR § 164.522 and section 13405(a) of Public Law 111-5.
  - D. To not request that the Business Associate use or disclose protected health information in any manner that would not be permissible under the Privacy and Security Rules if done by the Agency.

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AND CONVERSE COUNTY (BUSINESS ASSOCIATE)

- E. To timely notify the Business Associate of any material violation of this attachment or material Privacy or Security violation by the Business Associate of which the Agency becomes aware. The Agency shall specify a time for the Business Associate, within which the Business Associate must cure the violation, if cure is possible, or within which the Business Associate must end the violation.

**5. Special Business Associate Provisions**

- A. **Amendments.** If the Contract must be amended to ensure compliance with the Privacy and Security Rules, the Parties shall meet in good faith to agree upon such amendments. If the Parties cannot agree upon such amendments, then either party may terminate the Contract upon thirty (30) days' prior written notice to the other party.
- B. **Interpretation.** Any ambiguity in this attachment shall be resolved in favor of a meaning that permits the Parties to comply with the Privacy and Security Rules. Nothing in the Contract shall be construed to allow or require either Party to violate such rules.
- C. **Notices.** In addition to the notice provisions set forth in the Contract, notices arising out of or from the provisions of this attachment shall be in writing and shall be deemed provided to each respective party if by personal delivery or by, at least, first class United States mail, postage prepaid. Written notices to the Agency shall be provided to the attention of the Agency's designated representative for this Contract and, by separate mailing, to the WDH Compliance Office, 401 Hathaway Building, Cheyenne, Wyoming 82002.
- D. **Termination.** In addition to the termination provisions in the General Provisions section of this Contract, the Contract may be terminated for cause if the Business Associate materially violates the terms of this attachment.
  - i. **Material Violation of Attachment.** Any violation by the Business Associate of any provision of this attachment or any other contract with the Agency which involves the use or disclosure of protected health information, as determined by the Agency, shall constitute a material violation and shall entitle the Agency to terminate this Contract immediately, seek related remedies, and to terminate all other contracts which involve the Business Associate in the use or disclosure of protected health information, by notifying the Business Associate of such termination.
  - ii. **Cure.** If the Agency receives evidence of a material violation of the obligations set forth herein, or of the Business Associate's primary contracts



with the Agency, and the Agency does not terminate this Contract pursuant to subsection "i" above, then the Agency may provide an opportunity to cure or end such violation, as applicable, within a reasonable timeframe specified by the Agency. If the Business Associate's efforts to cure or end such violation are unsuccessful within the time specified, the Agency may terminate this Contract, where feasible, or if termination is not feasible, may report the Business Associate's violation to the Secretary of Health and Human Services or his designee.

- iii. Effect of Termination. Upon termination of this Contract for any reason, the Business Associate shall return or destroy all protected health information, regardless of form so that the Business Associate retains no copies of protected health information received or created on behalf of the Agency. If return or destruction of all protected health information is not feasible, the Business Associate shall notify the Agency of the conditions that make return or destruction infeasible. Upon agreement between the parties that the return or destruction of the protected health information is infeasible, the Business Associate shall extend the protections of this attachment to such information, and further limit the use and disclosure of such information only to those purposes that make its return or destruction infeasible, for so long as the Business Associate maintains the information.
- iv. This provision applies equally to the Business Associate and any of its agents or subcontractors in possession or control of protected health information subject to this attachment.

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