

MEMORANDUM OF UNDERSTANDING #201-162-P-N2011  
Lake Tahoe Community College District – Public Health Preparedness Activities

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THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as COUNTY) and Lake Tahoe Community College District whose principal place of business is One College Drive, South Lake Tahoe, CA 96150 (hereinafter referred to as LTCC);

R E C I T A L S

WHEREAS, COUNTY on behalf of the Health Services Department (HSD) Public Health Division, has determined that it is necessary to obtain a location(s) to provide Public Health inoculation clinics on public school grounds as part of the County of El Dorado Emergency Operations Plan (PLAN); and

WHEREAS, part of this PLAN requires that COUNTY assume responsibility for locating, setting up, and operating Public Health inoculation clinics (FLU CLINIC) for LTCC staff and the general public in times of a Public Health emergency; and

WHEREAS, LTCC has represented to COUNTY that it has suitable locations for FLU CLINIC at one or more of its public school sites, and a sufficient number of personnel to maintain the infrastructure supporting those sites, for the purpose of FLU CLINIC activities for the general public; and

WHEREAS, this PLAN will provide benefits to the health and well-being of people in the County of El Dorado by providing medication and protection from public health threats and/or epidemics; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State and local laws; and

WHEREAS, COUNTY has determined that the provision of these services by LTCC is in the public's best interest, and that these services are more economically and feasibly performed by outside independent entity as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, COUNTY and LTCC mutually agree as follows:

## SCOPE OF SERVICES

### Section 1.01 LTCC agrees to:

- (a) Provide site information and emergency point of contact information to ensure the timely flow of information and notification between HSD and LTCC in the event of a public health emergency.
- (b) Provide a suitable location at one or more of its public school sites during times of public health emergency for the provision of FLU CLINIC activities for the general public by the Health Services Department Public Health staff.
- (c) Permit, to the extent of LTCC's ability, upon request by HSD the use of physical facilities within three (3) months of said request, including but not limited to:
  - (i) School buildings; and
  - (ii) Parking areas.
- (d) Permit the use of equipment during the time period requested by HSD for FLU CLINIC activities, disease prevention and control activities, including but not limited to:
  - (i) Space (i.e., agreed upon rooms); and
  - (ii) Tables, chairs, desks, etc.
- (e) Designate the following two points of contact to facilitate FLU CLINIC activities:
  - (i) An **Administrative** point of contact, who will serve as the primary contact, and who should have authority to open any LTCC facility or building; and
  - (ii) A **Facilities** point of contact, who will work with HSD personnel to move tables, chairs, etc.
- (f) Allow potential FLU CLINIC sites to be visited by HSD staff for the development and maintenance of a FLU CLINIC dispensing plan.
- (g) Provide the necessary number of school personnel (as requested by HSD) to prepare the FLU CLINIC site infrastructure.
- (h) Encourage LTCC personnel to participate in FLU CLINIC volunteer training.

### Section 1.02 COUNTY agrees to:

- (a) Submit a request for use of Facilities at least three (3) months prior to the requested date of the FLU CLINIC event.
- (b) Abide by the Lake Tahoe Community College District Rules Governing the Use of District Facilities, attached hereto as Exhibit A, and incorporated by reference herein.
- (c) Provide emergency point of contact information to ensure the timely flow of information and notification between HSD and LTCC in the preparation for implementation of, and follow up for, FLU CLINIC activities.
- (d) Provide a point of contact to answer questions that LTCC personnel may have about the arrangements contained within this MOU.
- (e) Assume responsibility of FLU CLINIC activities by trained COUNTY personnel.
- (f) Perform any post-event cleanup that may be required using HSD staff.
- (g) Use COUNTY supplies, pharmaceuticals and materials to provide FLU CLINIC activities.
- (h) Provide storage for, organize, and maintain all materials to be used at the FLU CLINIC.
- (i) Provide training for all LTCC staff that will participate in FLU CLINIC activities.

**Article II. TERM**

This Agreement shall become effective upon final execution by both parties hereto and shall cover the term upon signature through December 31, 2013 unless earlier terminated pursuant to the provisions under Article VI herein.

**Article III. HIPAA Compliance:**

By signing this Agreement, CONTRACTOR agrees to comply with Exhibit B - Business Associate Agreement, attached hereto and incorporated by reference herein.

**Article IV. GENERAL PROVISIONS**

Section 4.01 There shall be no remuneration associated with this Memorandum of Understanding.

Section 4.02 This MOU is not in effect or enforceable until signed by authorized representatives of both parties.

**Article V. CHANGES TO AGREEMENT**

This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

**Article VI. DEFAULT, TERMINATION, AND CANCELLATION**

Section 6.01 Either party hereto may terminate this MOU upon ninety (90) days written notice to the other.

**Article VII. NOTICE TO PARTIES**

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to COUNTY shall be addressed as follows:

COUNTY OF EL DORADO  
HEALTH SERVICES DEPARTMENT  
931 SPRING STREET  
PLACERVILLE, CA 95667  
ATTN: NEDA WEST, DIRECTOR

or to such other location as the COUNTY directs.

Notices to LTCC shall be addressed as follows:

LAKE TAHOE COMMUNITY COLLEGE DISTRICT  
ONE COLLEGE DRIVE  
SOUTH LAKE TAHOE, CA 96150  
ATTN: THOMAS GREENE, VICE PRESIDENT, ACADEMIC AFFAIRS AND STUDENT SERVICES

or to such other location as the LTCC directs.

**Article VIII. INDEMNITY / INSURANCE**

Section 8.01 LTCC, by agreeing to designate its public school sites as potential FLU CLINIC dispensing sites without any compensation for its use, is designated as a volunteer of the County of El Dorado. All liability coverage of County of El Dorado facilities under COUNTY's self-insurance program, including but not limited to professional liability, tort liability, and premises liability, are applicable to LTCC during the use of any of its facilities as a FLU CLINIC site.

Section 8.02 In the event that an incident is not covered under Section 8.01, then:

- (a) COUNTY shall be liable for any and all claims, demands, expenses, liabilities, and losses (including reasonable attorney's fees) as a result of incidents or damages to the facility which may arise out of any acts on the part of COUNTY, its employees, agents, or contractors, in connection with the performances of dispensing services provided by HSD. While acting as a FLU CLINIC site under the terms of this MOU, property damage to any LTCC facility shall be identified and reported to the appropriate COUNTY official(s) within thirty (30) days of the dispensing site closing; and
- (b) LTCC shall be liable for any and all claims, demands, expenses, liabilities, and losses (including reasonable attorney's fees) as a result of incidents or damages to its schools and/or facilities, which may arise out of any acts or failures to act of LTCC, its employees, agents or contractors, in connection with the performance of the services provided by LTCC pursuant to this MOU.

**Article IX. ADMINISTRATOR**

The County Officer or employee with responsibility for administering this Agreement is Chris Weston, Public Health Preparedness Manager, or successor.

**Article X. AUTHORIZED SIGNATURES**

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind said parties to the obligations set forth herein.

**Article XI. PARTIAL INVALIDITY**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**Article XII. VENUE**

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

**Article XIII. ENTIRE AGREEMENT**

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**REQUESTING DEPARTMENT HEAD CONCURRENCE:**

By:  Dated: 5-23-11  
Neda West, Director  
Health Services Department

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO--

By: \_\_\_\_\_  
Raymond J. Nutting, Chair  
Board of Supervisors  
COUNTY

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

*Attest: Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors*

\_\_\_\_\_  
Deputy

\_\_\_\_\_  
Date

--LAKE TAHOE COMMUNITY COLLEGE DISTRICT--

By:  \_\_\_\_\_

Dated: 6-9-11

THOMAS GREENE, VICE PRESIDENT  
ACADEMIC AFFAIRS AND STUDENT SERVICES  
LTCC

EXHIBIT A  
AGREEMENT #201-162-P-N2011

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LAKE TAHOE COMMUNITY COLLEGE DISTRICT  
Rules Governing the Use of District Facilities

1. REQUESTS FOR USE OF FACILITIES:
  - a. SCHEDULED EVENTS: Reservations for scheduled use of the facilities shall be submitted to LTCC no less than three (3) months prior to the requested date of use. Should the facilities be needed by LTCC, as determined by the Vice President of Business Services, LTCC reserves the right to notify COUNTY not less than two (2) months in advance of a need to either reassign space or cancel the reservation.
  - b. EMERGENCY EVENTS: In the event of a Public Health emergency, LTCC shall permit to the extent of LTCC's ability, the use of physical facilities within forty-eight (48) hours of said request, including but not limited to:
    1. School buildings; and
    2. Parking areas.
2. COUNTY shall be bound by the rules, regulations and policies of the Lake Tahoe Community College governing the use of LTCC facilities as noted in Section 7.27 of the Board Policy Manual (copy available upon request). Among other requirements, this policy provides that no public use of District facilities interfere with any instructional or instructional-related activities.
3. A LTCC employee shall be on duty and be fully in charge of the facility being used.
4. Possession and/or consumption of alcoholic beverages, dangerous or controlled substances on campus is prohibited. Violation of this rule will result in loss of privilege to use LTCC facilities.
5. Smoking is prohibited inside all college buildings and within fifty (50) feet of all college buildings. Smoking is allowed in the designated smoking shelter.
6. Groups or organizations using LTCC facilities shall conform to all applicable city and COUNTY ordinances and all fire regulations. Educational classes must be approved by the Vice President, Academic Affairs and Student Services.
7. Groups with minors in attendance shall provide their own chaperone/supervision. The amount of supervision may be determined by LTCC.
8. LTCC may require, as a condition for confirmation of an application, that the applicant furnish at his/her own expense, security officers in a number mutually agreed to by both parties hereto.
9. Groups or organizations using LTCC facilities shall be responsible for the normal clean-up

of facilities including removal of special decorations or materials and for returning the furniture and equipment to their original set up.

10. Fees to be charged, if any, will be due and payable upon receipt of an invoice from the Business Office. Checks should be made payable to Lake Tahoe Community College District.
11. LTCC may require COUNTY to provide proof of liability insurance prior to use of the facilities.



## **Exhibit B to Agreement 201-162-P-N2011 HIPAA Business Associate Agreement**

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This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

### **RECITALS**

**WHEREAS**, County and Contractor (hereinafter referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to County, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

**WHEREAS**, the County and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

**WHEREAS**, County is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

**WHEREAS**, BA, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

**WHEREAS**, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

**WHEREAS**, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

**WHEREAS**, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. **Definitions.** Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.

2. Scope of Use and Disclosure by BA of County Disclosed PHI

- A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
  - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
  - (3) disclose PHI as necessary for BA's operations only if:
    - (a) prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
      - (i) to hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
      - (ii) the third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
  - (4) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
  - (5) not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
  - (6) de-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.

3. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:
  - A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308,164.310,164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
  - B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
  - C. Report to County in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.
  - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA 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. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:
  - A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).

- B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
- C. To assist the County in meeting its disclosure accounting under HIPAA:
  - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
  - (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
- D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary") , BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of County.

- A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.

- D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. **Term.** This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. **Termination for Cause.** Upon the County's knowledge of a material breach by the BA, the County shall either:
  - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
  - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.
- C. **Effect of Termination.**
  - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
  - (2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and . BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.
- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.