

AN ORDINANCE

2011-12-01-0988

**AUTHORIZING AN AGREEMENT WITH THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER, D/B/A HEARTLAND NATIONAL TB CENTER (HEARTLAND) TO PROVIDE MEDICAL AND TECHNICAL TUBERCULOSIS CONSULTATION SERVICES TO THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT (METRO HEALTH) AND AUTHORIZING METRO HEALTH TO PARTICIPATE WITH HEARTLAND IN A FELLOWSHIP PROGRAM FOR A PERIOD BEGINNING OCTOBER 1, 2011 THROUGH DECEMBER 31, 2012, WITH THE OPTION TO RENEW FOR TWO YEARS.**

\* \* \* \* \*

**WHEREAS**, the San Antonio Metropolitan Health District's (Metro Health) TB Prevention and Control Program provides services for residents of Bexar County which include TB diagnosis and treatment, case management, contact investigation and community intervention in order to reduce infection rates and control the spread of the disease; and

**WHEREAS**, Metro Health requires medical and technical consultation services to help with patient examinations and review patient treatment and case management efforts; and

**WHEREAS**, through this agreement, Dr. Barbara J. Seaworth, Medical Director at the University of Texas Health Science Center at Tyler, d/b/a Heartland National TB Center (Heartland) or another physician expert at Heartland, will provide patient physical examinations and consultative services on an as needed basis; and

**WHEREAS**, in addition, Metro Health's TB Prevention and Control Program will allow physicians and nurses enrolled in fellowships provided by Heartland to observe the care provided at the clinic as part of their medical training; and

**WHEREAS**, the number of medical professionals to participate in this program shall be based on need and will be mutually determined by Metro Health and Heartland; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee or the Director of the San Antonio Metropolitan Health District (Metro Health) or his designee is authorized to execute an agreement with The University of Texas Health Science Center at Tyler, d/b/a Heartland National TB Center (Heartland) to provide medical and technical tuberculosis consultation services to Metro Health and authorizing Metro Health to participate with Heartland in a fellowship program for a period beginning October 1, 2011 through December 31, 2012, with the option to renew for two years. A copy of the agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 1st day of December, 2011.



M A Y O R  
Julián Castro

**ATTEST:**



\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
for Michael Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 16

<b>Name:</b>	4, 5, 6, 7, 10, 12A, 12B, 12C, 12D, 13, 14, 16, 18, 19, 20, 21						
<b>Date:</b>	12/01/2011						
<b>Time:</b>	09:44:35 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing an agreement with The University of Texas Health Science Center at Tyler, d/b/a Heartland National TB Center (Heartland) to provide medical and technical tuberculosis consultation services to the San Antonio Metropolitan Health District (Metro Health) and authorizing Metro Health to participate with Heartland in a fellowship program for a period beginning October 1, 2011 through December 31, 2012, with the option to renew for two years. [ Sharon De La Garza , Assistant City Manager; Dr. Thomas L. Schlenker, Director of Public Health]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

MEMORANDUM OF AGREEMENT  
BETWEEN

THE CITY OF SAN ANTONIO ON BEHALF OF THE SAN ANTONIO METROPOLITAN  
HEALTH DISTRICT AND THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT  
TYLER D/B/A HEARTLAND NATIONAL TB CENTER

This Memorandum of Agreement is entered into by and between the City of San Antonio (hereinafter referred to as "City") a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (hereinafter referred to as "SAMHD"), and the University of Texas Health Science Center at Tyler d/b/a Heartland National TB Center (hereinafter referred to as "Center").

WHEREAS, the City's Tuberculosis (TB) Prevention and Control Program (hereinafter referred to as the "Program") within the SAMHD provides examination, diagnosis and treatment for individuals suspected or confirmed with active tuberculosis disease; and

WHEREAS, the Program also provides screening and preventive medicine for those with a known exposure to TB or those from high risk populations; and

WHEREAS, additional services offered include case management, contact investigation and community intervention with prevention measures in order to reduce the rates and control the spread of TB disease; and

WHEREAS, the Center is one of four regional training and medical consultation Centers in the United States funded by the Centers for Disease Control and Prevention's Division of TB Elimination; and

WHEREAS, the Center provides medical and technical consultation related to various aspects of TB control; and

WHEREAS, the Center also provides for on-site educational experiences for physicians and other medical professionals enrolled in the Center's fellowships for which such learning experiences can be obtained through the SAMHD within the City; and

WHEREAS, this Memorandum of Agreement defines the terms between the City and the Center for the provision of medical consultation services by the Center and meeting the educational objectives of the Center's fellowship program which will contribute to the educational preparation of future public health specialists; and

**NOW THEREFORE** this Memorandum of Agreement delineates the Parties' responsibilities in meeting the anticipated needs of the Center and the City's TB Prevention and Control Program.

**Term:** The term of this Memorandum of Agreement ("Agreement") shall begin on October 1, 2011 and terminate on December 31, 2012 unless sooner terminated as hereinafter provided. The Parties hereby agree that, notwithstanding any other language to the contrary, either Party may terminate this Agreement with or without cause with sixty (60) days written notice to the other Party. The Parties may renew the Agreement for up to two years thereafter, in writing, executed by the City acting by and through the Director of the San Antonio Metropolitan Health District, and by the Center through its designated agent. If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

### **Center's Responsibilities:**

1. The Center agrees to offer professional consultation services to be provided by Dr. Barbara J. Seaworth or other designated TB Expert Consultant employed by the Center. The Center shall offer consultative support on an as needed basis to the SAMHD TB Program related to TB cases, to include review of adverse events and contact investigations. The Center shall offer reviews of adverse events of clients under medical treatment, case-management or contact investigation by personnel in the Program. In accordance with SAMHD Quality Management policies related to adverse events, the Center shall offer to review charts and medical regimens. The Center's reviewing consultant shall collaborate with a medical physician from the SAMHD to consult on findings, conclusions and recommendations on adverse events.
2. The Center agrees to provide clinical services through the services of Dr. Seaworth or other designated Center physician and Center nursing staff employed by the Center. Designated Center physician shall provide a minimum of one four hour shift per week dependent upon Center requirements and duties. Center shall provide City a tentative schedule of available dates. The Center and the City will collaborate to plan a clinic schedule one month prior to clinic. The Center shall provide notice to the City as soon as possible in the event that the Center needs to change the City clinic schedule. The Center shall provide direct patient care which may include examining patients and providing treatment recommendations at the City Chest Clinic at 814 McCullough.
3. The Center shall comply with standard practices of confidentiality of patient information as required by the SAMHD and mandated by The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws. Center will enter into a Business Associate Agreement with the City that is attached hereto as Attachment I and incorporated herein as a part of this Agreement for all purposes.
4. The Center shall perform duties and services under this Agreement in accordance with all relevant local, state, and federal laws and shall comply with standards, guidelines, and policies of the City and the SAMHD.
5. All Center staff performing services under this Agreement shall have undergone a criminal background check, the results of which upon request shall be available to the City prior to the Center staff performing any services under this Agreement, subject to any confidentiality requirements of the Center. If a criminal background check is not available for Center staff, the City will arrange for this to be done at no cost to the Center.
6. The Center shall provide to City satisfactory evidence that each staff is free from contagious disease and does not otherwise present a health hazard to the SAMHD TB Prevention and Control Program clinic patients, employees, volunteers or guests prior to his or her participation under this Agreement. Such evidence shall include, without limitation, the results of recent tuberculin skin test. The Center shall also be responsible for arranging for participating staff's medical care and/or treatment, if necessary, to include transportation in case of illness or injury while performing services under this Agreement. In no event shall the City be responsible for the Center staff's medical care or treatment.
7. The Center agrees that any persons, wherever located, while engaged in the performance of any activities agreed to by the Center for the City under this Agreement shall be considered employees of the Center only, and not of the City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Center.
8. The Center will provide evidence that Center personnel providing services to the City have such licenses, permits or certificates as may be required by law.

9. City policies regarding authorization for access to confidential information and review of medical records will be followed by the Center. Center assumes full responsibility for any breach of confidence by its staff or its participating medical professionals with regard to activities under this Agreement.

10. Subject to any confidentiality requirements of the Center, prior to Program participation and upon request by the City, the Center shall provide City access to documentation of Center's compliance with requirements set forth in this Agreement to include, but not limited to, TB Skin Testing, and Confidentiality of Information, criminal back ground check, and required insurance coverages. The Center shall furnish City with documentation acceptable to City evidencing the required insurance coverage prior to participating in any activities under this Agreement. A written notice of cancellation, non-renewal or any material changes in such coverage will be given to City at least ten (10) days in advance of any such action.

11. Center shall not use any City data or information collected, obtained or observed during the term of this Agreement for publication, or reviews or presentations unless approval is obtained in writing from the City.

12. The Center warrants and ensures that all Center staff providing services and medical professionals participating in fellowships at the SAMHD TB Prevention and Control Program have complied with the requirements set forth in this Agreement prior to providing services.

**City Responsibilities:**

1. City will provide for an on-site educational experience for medical professionals, including physicians and nurses enrolled in fellowships provided by the Center which can be obtained through the SAMHD. It is to the benefit of Center participants accepted into fellowships to obtain a part of their experience with the City. Center fellow(s) will meet the educational objectives of the Program by obtaining instruction through observation in the City Chest Clinic. The Center is not required to provide a specified number of medical professionals to the Program, and City is not required to accept into the Program any specified number of medical professionals. The number of medical professionals to participate in this Program shall be demonstrated by need and shall be mutually determined by City and Center.
2. SAMHD will provide ongoing communication with the Center regarding any changes, difficulties or problems that may arise related to the Center staff and their performance while on assignment at the SAMHD TB Program.
3. Upon request by the Center, subject to City staff availability, the City may assist with local TB health education presentations in the community.

**Confidentiality:** The Center acknowledges that in connection with the services to be performed under this Agreement by the Center, the Center and its employees may be acquiring and making use of certain confidential information of the City and the SAMHD which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists/health information, and other materials or records of a proprietary nature ("Confidential Information"). Therefore, in order to protect the Confidential Information, the Center and its employees shall not after the date hereof use the Confidential Information except in connection with the performance of services pursuant to this Agreement, or divulge the Confidential Information to any third party, unless the City consents in writing to such use or divulgence or disclosure is required by law. In the event the Center receives a request or demand for the disclosure of Confidential Information, the Center shall promptly provide written notice to the City of such request or demand, including a copy of any written element of such request or demand.

The Center agrees to adequately instruct its employees, physicians and all personnel that may

provide services pursuant to this Agreement regarding the confidentiality and privacy of patients and patients' medical records. All such instructions shall be in accordance with the formal policies and rules of the parties and with all federal and state laws and regulations regarding patient and medical record confidentiality. The Center assumes full responsibility for any breach of confidence by its employees or its staff with regard to the provision of services under this Agreement.

**Compensation:** No fees or expenses shall be exchanged between the City and the Center for the activities set out under this Agreement. The City will not be charged for any services performed by the Center in connection with the activities covered by this Agreement or have any obligation to pay the salaries or expenses of any Center personnel.

**Insurance:** Center and the City each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

**Indemnification:** Center and the City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

**Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; or (c) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below:

<b>City:</b>	<b>Center:</b>
City of San Antonio	University of Texas Health Science at Tyler
San Antonio Metropolitan Health District	d/b/a Heartland National TB Center
Attn: Director	Attn: Director
332 W. Commerce, Suite 307	220 W. Cypress
San Antonio, TX 78205	San Antonio, TX 78212

**Independent Contractor:** The Center is an independent contractor, and neither the Center nor any of its agents, representatives, staff or employees shall be considered agents, representatives, or employees of the City. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relations between the parties hereto. The Center shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes or benefits. City shall not provide the Center staff any salaries, insurance or other benefits.

**Amendments:** Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and the Center.

**Licenses/Certifications:** The Center warrants and certifies that the Center and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

**Compliance:** The Center shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

**Assignment:** This Agreement is not assignable by either party without the prior written consent of the other party. Any assignment without such written consent shall be void.

**Captions:** The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

**Texas Law to Apply/Venue:** This Agreement shall be construed under and in accordance with the laws of the United States and the State of Texas.

**Legal Construction:** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**Entire Agreement:** The final and entire Memorandum of Agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

By signing below, the representatives agree they are duly authorized by their respective agencies to enter into this Agreement.

WITNESS OF WHICH, this Agreement has been executed effective the 1<sup>st</sup> day of October, 2011.

City of San Antonio

University of Texas Health Science Center at  
Tyler d/b/a Heartland National Tuberculosis  
Center

\_\_\_\_\_  
Thomas L. Schlenker M.D., M.P.H.  
Director

  
\_\_\_\_\_  
David Coultas, M.D.  
Vice President for Clinical and  
Academic Affairs and Physician in  
Chief

San Antonio Metropolitan Health District

11 / 9 / 11  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Bernard  
City Attorney

## Attachment I - Business Associate Agreement

This Business Associate Agreement (“Agreement”) dated October 1, 2011 (the “Effective Date”), is entered into by and between the City of San Antonio (“Health Care Provider”) and the University of Texas Health Science Center at Tyler d/b/a Heartland National TB Center (“Business Associate”).

**WHEREAS**, Health Care Provider is receiving and Business Associate is providing services (“Business Arrangement”) that may require Business Associate to access health information that is protected by state and/or federal law;

**WHEREAS**, Business Associate and Health Care Provider desire that Business Associate obtain access to such information in accordance with the terms specified herein;

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. **Definitions.** Unless otherwise specified in this Business Associate Agreement, all capitalized terms not otherwise defined shall have the meanings established for purposes of Title 45, Parts 160 and 164, of the United States Code of Federal Regulations, as amended from time to time. For purposes of clarification, the following terms shall have the definitions as set forth herein below:

"Privacy Standards" shall mean the Standards for Privacy of Individually Identifiable Health Information as codified in 45 CFR Parts 160 and 164.

"Security Standards" shall mean the Security Standards for the Protection of Electronic Protected Health Information as codified in 45 CFR Parts 160 and 164.

"Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental 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 (ii) that identifies the individual, or with respect to which there is reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term in the Privacy Standards and in the Security Standards.

2. **Business Associate Obligations.** Business Associate may receive from Health Care Provider health information that is protected under applicable state and/or federal law, including without limitation, Protected Health Information. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards or the Security Standards if the PHI were used or disclosed by Health Care Provider in the same manner. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement.

3. **Use of PHI.** Business Associate may use PHI only (i) for the purpose of performing services for Health Care Provider as such services are defined in Business Arrangement, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Health Care Provider shall retain all rights in the PHI not granted herein.

4. **Disclosure of PHI.** Business Associate may disclose PHI as necessary to perform its obligations under the Business Arrangement and as permitted by law, provided that Business Associate shall in such

case: (a) obtain reasonable assurances from any person to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the person or entity; (b) agree to promptly notify Health Care Provider of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards or the Security Standards; and (c) obtain reasonable assurances that all disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed. In addition, Business Associate may disclose PHI as required by law. If Business Associate discloses PHI received from Health Care Provider, or created or received by Business Associate on behalf of Health Care Provider, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Health Care Provider any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within five (5) days of the Business Associate becoming aware of such use or disclosure. Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Health Care Provider in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI in violation of this Agreement.

5. **Individual Rights.** If Business Associate maintains a Designated Record Set on behalf of Health Care Provider, Business Associate shall (a) permit an individual to inspect or copy PHI contained in that set about the individual under conditions and limitations required under 45 CFR § 164.524, as it may be amended from time to time, and (b) amend PHI maintained by Business Associate as requested by Health Care Provider. Business Associate shall respond to any request from Health Care Provider for access by an individual within five (5) days of such request and shall make any amendment requested by Health Care Provider within ten (10) days of such request. The information shall be provided in the form or format requested, if it is readily producible in such form or format, or in summary, if the individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying PHI may be charged. Business Associate shall accommodate an individual's right to have access to PHI about the individual in a Designated Record Set in accordance with the Privacy Standards set forth at 45 CFR § 164.526, as it may be amended from time to time, unless the regulation provides for a denial or an exception expressly applies. Health Care Provider shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Health Care Provider within five (5) days of receipt of any request for access or amendment by an individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set.

6. **Accounting of Disclosures.** Business Associate shall make available to Health Care Provider in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 CFR § 164.528, as it may be amended from time to time, incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the Privacy Standards. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of Health Care Provider's request. Such accounting must be provided without cost to the individual or to Health Care Provider if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Health Care Provider and the Health Care Provider informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting shall be provided as long as Business Associate maintains PHI.

7. **Withdrawal of Consent or Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific consent or authorization for the use of his or her PHI, and (i) the individual revokes such consent or authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid,

Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.

8. **Reporting of Disclosures of Protected Health Information in violation of HIPAA.** Business Associate shall, within five (5) days of becoming aware of a disclosure of PHI or EPHI in violation of this Agreement by Business Associate, (its officers, directors, employees, contractors, or agents,) or by a third party to which Business Associate disclosed PHI, report such disclosure in writing to the Covered Entity and the remedial action taken or proposed to be taken with respect to such use or disclosure. Business Associate shall take all commercially reasonable action to mitigate any harm caused by inappropriate disclosure.

9. **Reporting Breaches of Protected Health Information in violation of HITECH.**

9.1 Business Associate shall secure PHI (including data in motion, data at rest, data in use and data disposed), created by Business Associate, or accessed, maintained, retained, modified, recorded, stored, destroyed, or otherwise held, used, or disclosed by Business Associate, on behalf of Covered Entity, by encrypting such ePHI in accordance with the Department of Health and Human Services Guidance at <http://www.hhs.gov/ocr/privacy> ("HHS Guidance") and the National Institute of Standards and Technologies ("NIST") at <http://www.csrc.nist.gov/> to render such information unusable, unreadable, or indecipherable to unauthorized individuals. Business Associate understands and agrees that ePHI is encrypted as specified in the HIPAA Security Rule by the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key and such confidential process or key that might enable decryption has not been breached. To avoid a breach of the confidential process or key, these decryption tools shall be stored by Business Associate on a device or at a location separate from the data that are used to encrypt or decrypt.

9.2 In the event that Business Associate uses a method other than encryption or an encryption algorithm that is not specified in the Guidance or NIST Standards and Technologies to secure the ePHI as referenced above, such ePHI shall be considered to be "unsecured" in accordance with HITECH.

9.3 Under HITECH, a breach occurs when there is an unauthorized acquisition, access, use or disclosure of unsecured PHI, including ePHI, which compromises the security or privacy of the PHI/ePHI. A breach compromises the security or privacy of PHI/ePHI if it poses a significant risk of financial, reputational, or other harm to the individual whose PHI/ePHI was compromised.

9.4 Business Associate agrees to:

- (1) implement a system to detect breaches of PHI/ePHI within Business Associate's business;
- (2) maintain written documentation with respect to all suspected and confirmed breaches for six (6) years;
- (3) provide access to such documentation to Covered Entity upon request; and to submit documentation on breaches to HHS as required by HITECH on an annual basis;
- (4) develop breach notification policies and procedures;
- (5) train workforce members on, and have sanctions for failure to comply with, these policies and procedures;

- (6) allow workforce members to file complaints regarding these policies and procedures or a failure to comply with them, and refrain from intimidating or retaliatory acts towards its workforce members;

9.5 In the event that there is a breach of unsecured PHI/ePHI, Business Associate agrees to:

- (1) notify Covered Entity within five (5) business days that a breach is known to Business Associate;
- (2) provide Covered Entity, to the extent possible, with the identity of each individual whose unsecured PHI/ePHI has been, or is reasonably believed to have been, breached;
- (3) cooperate in conducting a risk assessment, as instructed by, and under the direction of, Covered Entity, to determine whether the privacy or security of individuals' PHI/ePHI was compromised as a result of the breach,
- (4) mitigate any harm to individuals whose PHI/ePHI has been breached;

9.6 Business Associate shall comply with the HIPAA obligations of Section 8 above related to unauthorized use and disclosures of PHI.

9.7 Business Associate shall destroy all paper, film, or other hard copy media by shredding or destruction, and destroy electronic media by clearing, purging or destruction consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization, such that the PHI cannot be retrieved.

10. **Records and Audit.** Business Associate shall make available to Health Care Provider and to the United States Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Health Care Provider for the purpose of determining Health Care Provider's compliance with the Privacy Standards and the Security Standards or any other health oversight agency, in a timely a manner designated by Health Care Provider or the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Health Care Provider immediately upon receipt by Business Associate of any and all requests served upon Business Associate for information or documents by or on behalf of any and all government authorities.

11. **Notice of Privacy Practices.** Health Care Provider shall provide to Business Associate its Notice of Privacy Practices ("Notice") when adopted and any amendments thereafter. Business Associate agrees that it will abide by the limitations of any Notice published by Health Care Provider of which it has knowledge. An amended Notice shall not affect permitted uses and disclosures on which Business Associate has relied prior to the receipt of such Notice.

12. **Confidentiality.** Business Associate shall take any steps required to (i) protect PHI from unauthorized uses or disclosures and (ii) maintain the confidentiality and integrity of PHI. Prior to any permitted disclosure of PHI, Business Associate shall require the person or entity to which it intends to disclose PHI to assume all of the same duties with respect to PHI that Business Associate has under this Agreement.

13. **Security.** Business Associate will: implement administrative, physical, and technical safeguards that reasonably and appropriate protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Health Care

Provider; ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect the information; and report any security incidents to the Health Care Provider, in accordance with the Security Standards.

14. **Term and Termination.**

14.1 This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 12, provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

14.2 Health Care Provider shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.

14.3 Health Care Provider, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate hereunder if any of the following events shall have occurred and be continuing:

- (a) Business Associate shall fail to observe or perform any material covenant or agreement contained in this Agreement for ten (10) days after written notice thereof has been given to Business Associate by Health Care Provider; or
- (b) A violation by Business Associate of any provision of the Privacy Standards, Security Standards, or other applicable federal or state privacy law.

14.4 Upon the termination of the Business Arrangement, either party may terminate this Agreement by providing written notice to the other party.

14.5 Upon termination of this Agreement for any reason, Business Associate agrees either to return to Health Care Provider or to destroy all PHI received from Health Care Provider or otherwise through the performance of services for Health Care Provider, that is in the possession or control of Business Associate or its agents. In the case of information for which it is not feasible to "return or destroy," Business Associate shall continue to comply with the covenants in this Agreement with respect to such PHI and shall comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment. Termination of this Agreement shall be cause for Health Care Provider to terminate the Business Arrangement.

15. **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; or (c) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below:

<b>Health Care Provider:</b>	<b>Business Associate</b>
City of San Antonio	University of Texas Health Science Center Heartland National Tuberculosis
San Antonio Metropolitan Health District	Center
Attn: Director	Attn: Director
332 W. Commerce, Suite 307	220 W. Cypress
San Antonio, TX 78205	San Antonio, TX 78212


16. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

15. **Assignment.** Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party.

16. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Health Care Provider relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangement or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangement comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

17. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought.

19. **Indemnification.** Business Associate and the City acknowledge they are political subdivisions of the State of Texas and are subject to and comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 et. seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Health Care Provider:  
CITY OF SAN ANTONIO  
San Antonio Metropolitan Health District

\_\_\_\_\_  
Thomas L. Schlenker, M.D., M.P.H.  
Director of Health

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
City Attorney

Business Associate:  
University of Texas Health Science  
Center at Tyler d/b/a Heartland National  
Tuberculosis Center



\_\_\_\_\_  
David Coultas, M.D.  
Vice President for Clinical and Academic Affairs and  
Physician in Chief

\_\_\_\_\_  
Date

11/9/11