

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: February 15, 2022
PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Angela Mora, Public Health Director, (915) 212-6564
Claudia A. Garcia, Interim Director of Purchasing & Strategic Sourcing, (915) 212-1218

DISTRICT(S) AFFECTED: ALL

STRATEGIC GOAL: No. 8 – Nurture and Promote a Healthy, Sustainable Community

SUBGOAL: 8.1 - Deliver prevention, intervention and mobilization services to promote a healthy, productive and safe community.

SUBJECT:

The award of solicitation 2021-0885R Electronic Medical Records (EMR) System to CureMD.com, Inc., for a three (3) year initial term estimated amount of \$150,958.00. The award also includes a two (2) year option for an estimated amount of \$84,984.00. The total value of the contract is, including the initial term plus the option for a total of five (5) years, for an estimated amount of \$235,942.00. This contract will provide an EMR system from which care coordination efforts can be maximized, sustainability efforts can be accomplished, and quality improvement efforts can be driven for the care of City of El Paso residents.

BACKGROUND / DISCUSSION:

The selection of CureMD, Inc., will allow the Department of Public Health to continue providing services to all residents. This EMR system built includes electronic medical record, third party billing, clinical application and laboratory modules.

SELECTION SUMMARY:

Solicitation was advertised on April 27, 2021 and May 4, 2021. The solicitation was posted on City website on April 27, 2021. The email (Purmail) notification was sent out on April 29, 2021. There was a total of fifty-four (54) viewers online; eight (8) proposals were received; none being local.

CONTRACT VARIANCE:

The difference in cost, based on the comparison from previous contract is as follows: A decrease of \$181,421.60, which represents a 79.36% decrease for the same services.

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Amount: \$150,958.00
Funding Source: General Funds and Public Health Grants
Accounts: 341-522020-1000-41170
341-522020-2140-41262-G412245

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Public Health
SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

*******REQUIRED AUTHORIZATION*******

DEPARTMENT HEAD:

Angela Mora

Angela Mora, Public Health Director

**COUNCIL PROJECT FORM
(RFP)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **CONSENT AGENDA** for the Council Meeting of **February 15, 2022**.

STRATEGIC GOAL 8 – Nurture and Promote a Healthy, Sustainable Community

The linkage to the Strategic Plan is subsection 8.1 Deliver prevention, intervention and mobilization services to promote a healthy, productive and safe community.

Award Summary:

The award of solicitation 2021-0885R Electronic Medical Records (EMR) System to CureMD.com, Inc., for a three (3) year initial term estimated amount of \$150,958.00. The award also includes a two (2) year option for an estimated amount of \$84,984.00. The total value of the contract is, including the initial term plus the option for a total of five (5) years, for an estimated amount of \$235,942.00. This contract will provide an EMR system from which care coordination efforts can be maximized, sustainability efforts can be accomplished, and quality improvement efforts can be driven for the care of City of El Paso residents.

Contract Variance:

The difference in cost, based on the comparison from previous contract is as follows: A decrease of \$181,421.60, which represents a 79.36% decrease for the same services.

Department:	Public Health
Award to:	CureMD.com, Inc. New York, NY
Item(s):	All
Initial Term:	Three (3) years
Option to Extend:	Two (2) years
Annual Estimated Amount:	\$ 65,974.00 Year 1 \$ 42,492.00 Years 2 - 5
Initial Term Estimated Amount:	\$150,958.00 (3 years)
Option to Extend Amount:	\$ 84,984.00 (2 years)
Total Estimated Award:	\$235,942.00 (5 years)
Funding Source:	General Funds and Public Health Grants
Accounts:	341-522020-1000-41170 341-522020-2140-41262-G412245
District(s):	All

This is a Request for Proposals (RFP), requirements contract.

The Purchasing & Strategic Sourcing and Public Health Departments recommend award as indicated to CureMD.com, Inc., the highest ranked proposer based on evaluation factors established for this procurement. In accordance with this award the City Manager or designee is authorized to exercise future options if needed.

Additionally, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.

CITY OF EL PASO RFP SCORESHEET

PROJECT: 2021-0885R Electronic Health Records (EMR) System

Evaluation of Submittal

		CureMD.com, Inc	Patagonia Health Inc.	Medicalistics, LLC	Custom Data Processing, Inc.	Netsmart Technologies, Inc.	OCHIN, Inc.	EHR Evolution, Inc.	Aithent, Inc.
	<small>MAX POINTS</small>								
Factor A - Offeror's Fee Proposal									
	30	\$ 234,442.00	\$ 477,140.82	\$ 547,771.18	\$ 396,585.00	\$ 767,432.30	\$ 3,015,234.00	\$ 973,356.00	\$ 2,975,480.00
		30.00	14.74	12.84	17.73	9.16	2.33	7.23	2.36
Factor B - Response and Presentation									
	25	21.75	20.25	14.25	16.75	17.50	15.00	16.25	17.00
Factor C - Technical Demonstration									
	20	19.00	15.50	15.00	10.25	11.00	14.25	12.00	9.50
Factor D – Experience with projects similar in scope and size									
	15	16.00	13.00	11.50	12.00	10.75	9.75	13.00	11.50
Factor E - Response of References									
	10	6.67	3.33	10.00	8.00	6.00	10.00	0.00	2.67
TOTAL SCORE	100	93.42	66.82	63.59	64.73	54.41	51.33	48.48	43.03
Rank		1	2	3	4	5	6	7	8



**CITY OF EL PASO
REQUEST FOR PROPOSALS TABULATION FORM**



Bid Opening Date: June 9, 2021

Solicitation #: 2021-0885R

Project Name: Electronic Medical Records (EMR) System

Department: Public Health

BIDDER'S NAME:	LOCATION:	AMENDMENT(S) ACKNOWLEDGED:
Aithent, Inc.	New York, NY	No
CureMD.com, Inc	New York, NY	No
Custom Data Processing, Inc.	Romeoville, IL	No
EHR Evolution, Inc.	Clifton, VA	Yes
Medicalistics, LLC	Dallas, TX	No
Netsmart Technologies, Inc.	Overland Park, KS	Yes
OCHIN, Inc.	Portland, OR	Yes
Patagonia Health Inc.	Cary, NC	Yes
RFPs SOLICITED: 10 LOCAL RFPs SOLICITED: 0 RFPs RECEIVED: 8 LOCAL RFPs RECEIVED: 0 NO BIDS: 0		

NOTE: The information contained in this RFP tabulation is for information only and does not constitute actual award/execution of contract.

Approved: /s/

Date: 6/16/2021

BIDDERS LIST – 2021-0885R Electronic Medical Records (EMR) System

**ECLINICALWORKS
2 TECHNOLOGY DR
WESTBOROUGH, MA 01581**

**NEXTGEN
18111 VON KARMAN AVE.
SUITE 800, IRVINE, CA 92612**

**CERNER
2800 ROCKCREEK PARKWAY, NORTH
KANSAS CITY, MISSOURI 64117**

**EPIC
1979 MILKY WAY
VERONA, WI 53593**

**ATHENA
311 ARSENAL
ST. WATERTOWN, MA 02472**

**IMAGETREND
20855 KENSINGTON BLVD.
LAKEVILLE, MN 550445**

**EMEDICAL
2150 LAKE IDA RD, SUITE 6
DELRAY BEACH, FL 33445**

**CHART LOGIC
1220 E 7800 S, FLOOR 3
SANDY, UT 84094**

**24 OUR CARE
1602 SOUTH MAIN ST., 2ND FLOOR
TULSA, OK 74419**

**KAREO
3353 MICHELSON SUITE 400
IRVINE CA 92612**

STATE OF TEXAS)
)
COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into on _____, 2022 by and between the CITY OF EL PASO, TEXAS (“CITY”), as the Covered Entity, and CureMD.com, Inc. (“BUSINESS ASSOCIATE”) by and through their duly authorized officials, in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information (“PHI”) and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as “HIPAA”). Covered Entity and Business Associate may be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, CITY has engaged BUSINESS ASSOCIATE to perform services through Contract No. 2021-0885R (“Services Agreement”);

WHEREAS, CITY possesses individually identifiable health information that is defined in and protected under HIPAA, and is permitted to use or disclose such information only in accordance with HIPAA;

WHEREAS, BUSINESS ASSOCIATE may receive such information from CITY, or create and receive such information on behalf of CITY, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, CITY wishes to ensure that BUSINESS ASSOCIATE will appropriately safeguard individually identifiable health information;

NOW THEREFORE, CITY and BUSINESS ASSOCIATE agree as follows:

A. HIPAA Terms

1. **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear, or as provided in (1)(h) to this Section.
 - a. **Agreement** shall refer to this document.
 - b. **Business Associate** means CureMD.com, Inc.
 - c. **HHS Privacy Regulations** shall mean the Code of Federal Regulations (“C.F.R.”) at Title 45, Sections 160 and 164, in effect, or as amended.
 - d. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term “individual” is defined in 45 C.F.R. 164.501.
 - e. **Information** shall mean any “health information” provided and/or made available by the CITY to BUSINESS ASSOCIATE, and has the same meaning as the term “health information” as defined by 45 C.F.R. 160.102.
 - f. **Parties** shall mean the CITY and BUSINESS ASSOCIATE.
 - g. **Secretary** shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.

- h. **Catch-all definition:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and 164, in effect, or as amended: breach, data aggregation, designated record set, disclosure, health care operations, protected health information, required by law, subcontractor, and use.
- i. **Limits on Use and Disclosure Established by Terms of Agreement.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the CITY for any other purpose other than as expressly permitted or required by this Agreement (ref. 45 C.F.R. 164.504(e)(2)(i).)
- j. **Stated Purposes for which BUSINESS ASSOCIATE May Use or Disclose Information.** The Parties hereby agree that BUSINESS ASSOCIATE shall be permitted to use and/or disclose Information provided or made available from CITY for the following stated purposes:

To perform functions, activities, or services for or on behalf of, Covered Entity as specified in the Services Agreement for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the CITY (ref. 45 C.F.R. 164.504(e)(2)(i); 65 Fed. Reg. 82505.), provided that such use or disclosure would not violate HIPAA, HIPAA Regulations or the HITECH Act as of its effective date if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity

- 2. **Use of Information for Management, Administrative and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 45 C.F.R. 164.504(e)(4)(i)(A-B)).
- 3. **Disclosure of Information for Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from CITY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:
 - a. The disclosure is required by law; or
 - b. The BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the BUSINESS ASSOCIATE of any instance of which it is aware in which the confidentiality of the information has been breached. (ref. 45 C.F.R. 164.504(e)(4)(ii)).
- 4. **Data Aggregation Services.** BUSINESS ASSOCIATE is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of CITY. (ref. 45 C.F.R. 164.504(e)(2)(i)(B)).
- 5. **Business Associate Obligations:**
 - a. **Limits on Use and Further Disclosure Established by Agreement and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the CITY shall not be further used or disclosed other than as permitted or required by the Agreement or as required by federal law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
 - b. **Appropriate Safeguards.** BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(B)).

- c. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to CITY within two (2) days of discovery any use or disclosure of Information not provided for or allowed by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(C)).
- d. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that any time Information is provided or made available to any subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).
 - (i) **45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2).** In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BUSINESS ASSOCIATE agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of BUSINESS ASSOCIATE agree in writing to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such Information.
- e. **Right of Access to Information.** BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements of Section 181.102 of the Texas Health and Safety Code, requiring that not later than the 15th business day after the date of the receipt of a written request from a person for the person's electronic health record, BUSINESS ASSOCIATE shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form, and with any further requirements of 45 C.F.R. 164.524. (ref. 45 C.F.R. 164.504(e)(2)(ii)(E)).
- f. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the CITY, amend or correct protected health information (PHI) in its possession or under its control.
- g. **Amendment and Incorporation of Amendments.** BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to Information in accordance with 45 C.F.R. 164.504(e)(2)(ii)(F)).
- h. **Provide Accounting.** BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528. (ref. 45 C.F.R. 164.504(e)(2)(ii)(G)).
- i. **Access to Books and Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the CITY, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(ii)(H)).
- j. **Return or Destruction of Information.** At the termination of this Agreement, BUSINESS ASSOCIATE hereby agrees to adhere to Section B.3. of this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(I)).
- k. **Mitigation Procedures.** BUSINESS ASSOCIATE agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Agreement or the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(f)).
- l. **Sanction Procedures.** BUSINESS ASSOCIATE agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement of the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(e)(1)).
- m. **Subpart E of 45 C.F.R. Part 164.** To the extent BUSINESS ASSOCIATE is to carry out one or more of

CITY'S obligations under Subpart E of 45 C.F.R. Part 164, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to CITY in the performance of such obligation(s).

- n. **Prohibition against the Sale of Protected Health Information.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.153, and any amendments of that section.
 - o. **Notice and Authorization Required for Electronic Disclosure of PHI.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.154, and any amendments of that section, regarding the requirement of providing notice to an Individual for whom the BUSINESS ASSOCIATE creates or receives protected health information if the Individual's PHI is subject to electronic disclosure.
 - p. **State Law on Medical Records Privacy.** The BUSINESS ASSOCIATE shall abide by the requirements set forth in Texas Health and Safety Code Section 181.001 et. seq., and any amendments of that chapter.
6. **Obligations of Covered Entity.**
- a. **Notice of Privacy Practices:** CITY agrees to provide individuals with notice of its privacy practices and obtain acknowledgment of receipt thereof in compliance with 45 C.F.R. § 164.520. In addition, upon request CITY shall promptly provide Business Associate with a copy of its privacy practices in accordance with 45 C.F.R. § 164.520, as well as any modifications thereto.
 - b. **Changes In or Revocation of Permission by Individuals:** CITY shall promptly notify Business Associate, in writing, of any changes in, or revocation of, an individual's permission to use or disclose PHI, if such changes or revocation affects Business Associate's permitted or required uses and disclosures.
 - c. **CITY's Agreements to Restrict Use or Disclosure:** In the event CITY agrees to restrict the use and/or disclosure of PHI in accordance with 45 C.F.R. § 164.522, it shall promptly notify Business Associate, in writing, of the nature and extent of said restriction. The CITY shall not agree to restrictions on the use or disclosure of PHI that might adversely affect the Business Associate, its ability to perform under the Services Agreement or increase the costs of such performance. The CITY shall notify the Business Associate of any such restrictions that the CITY may have entered into prior to the execution of this Agreement. If any such restrictions exist prior to the execution of the Agreement, the Business Associate shall recover costs that are associated with such restrictions.
 - d. **Permissible Requests by CITY:** CITY shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under HIPAA or other applicable law or regulation governing the privacy of PHI.
 - e. **Consents and Authorizations:** CITY represents and warrants that any and all consents, authorizations, or other permissions required by HIPAA or other applicable law (including state law) necessary to allow Business Associate to perform the administrative functions, services, or activities on behalf of CITY consistent with this Agreement have been properly secured.
7. **Property Rights.** The Information shall be and remain the property of the CITY. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified Information, as a result of this Agreement.
8. **Modifications.** The CITY and BUSINESS ASSOCIATE agree to modify this Business Associate Agreement, in order to comply with Administrative Simplification requirements of HIPAA, as set forth in Title 45, Parts 160 and 164, (Subparts A and E the "Privacy Rule" and Subparts A and C the "Security Rule") of the Code of Federal Regulations.

9. **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, this Business Associate Agreement shall automatically amend such that the obligations imposed on BUSINESS ASSOCIATE as a Business Associate remain in compliance with such regulations.

B. Term and Termination

1. **Term.** The Term of this Agreement shall be effective as of the date of Contract No. 2021-1225R, and shall terminate on the same date Contract No.2021-1225R or on the date covered entity terminates for cause as authorized in paragraph (B.2.) of this Section, whichever is sooner.
2. **Termination for Cause.** Upon the CITY's knowledge of a material breach by BUSINESS ASSOCIATE, the CITY shall:
 - a. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by the CITY.
 - b. Immediately terminate the Business Associate Agreement if BUSINESS ASSOCIATE has breached a material term of this Business Associate Agreement and cure is not possible.
 - c. Notify the Secretary of HHS if termination is not possible.
3. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, BUSINESS ASSOCIATE, with respect to protected health information received from CITY, or created, maintained, or received by BUSINESS ASSOCIATE on behalf of CITY, shall:
 - a. Retain only that protected health information which is necessary for BUSINESS ASSOCIATE to continue its proper management and administration or to carry out its legal responsibilities;
 - b. Return to CITY, or, if agreed to by CITY, destroy, the remaining protected health information that the BUSINESS ASSOCIATE still maintains in any form and BUSINESS ASSOCIATE shall certify to the CITY that the Information has been destroyed;
 - c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as BUSINESS ASSOCIATE retains the protected health information;
 - d. Not use or disclose the protected health information retained by BUSINESS ASSOCIATE other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section 1.e and 1.f above, which applied prior to termination; and
 - e. Return to CITY or, if agreed to by CITY, destroy, the protected health information retained by BUSINESS ASSOCIATE when it is no longer needed by BUSINESS ASSOCIATE for its proper management and administration or to carry out its legal responsibilities.
 - f. Survival. The obligations of BUSINESS ASSOCIATE under this Section shall survive the termination of this Agreement.
4. **Remedies.** If CITY determines that BUSINESS ASSOCIATE has breached or violated a material term of this Agreement, CITY may, at its option, pursue any and all of the following remedies:
 - a. Exercise any of its rights of access and inspection under Section A.7.e. of this Agreement;

- b. Take any other reasonable steps that CITY, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
 - c. Terminate this Agreement immediately.
5. **Injunction.** CITY and BUSINESS ASSOCIATE agree that any violation of the provisions of this Agreement may cause irreparable harm to CITY. Accordingly, in addition to any other remedies available to CITY at law, in equity, or under this Agreement, in the event of any violation by BUSINESS ASSOCIATE of any of the provisions of this Agreement, or any explicit threat thereof, CITY shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section C.4. shall survive termination of the Agreement.
6. **Indemnification.** BUSINESS ASSOCIATE shall indemnify, hold harmless and defend CITY from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the negligent acts or omissions of BUSINESS ASSOCIATE in connection with the representations, duties and obligations of BUSINESS ASSOCIATE under this Agreement. The parties' respective rights and obligations under this Section 5 shall survive termination of the Agreement.
- Covered Entity shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Business Associate and its respective employees, directors, and agents from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorney's fees, including at trial and on appeal) asserted or imposed against the Business Associate arising out of the negligent acts or omissions of Covered Entity or any of its employees, directors, or agents related to the performance or nonperformance of this Addendum

C. Miscellaneous

1. **Regulatory References.** A reference in this Agreement to a HIPAA section means the section as in effect or as amended.
2. **Amendment.** CITY and BUSINESS ASSOCIATE agree that amendment of this Agreement may be required to ensure that CITY and BUSINESS ASSOCIATE comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of protected health information. CITY may terminate this Agreement upon 60 days written notice in the event that BUSINESS ASSOCIATE does not promptly enter into an amendment that CITY, in its sole discretion, deems sufficient to ensure that CITY will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between the parties and signed by duly authorized representatives of both parties.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.
4. **Notices.** Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the address to which notices are sent by sending written notice of such change of address to the other party.

CITY: City of El Paso
Attn: City Manager
P. O. Box 1890
El Paso, Texas 79950-1890

COPY TO: City of El Paso
Purchasing & Strategic Sourcing Department
P.O. Box 1890
El Paso, TX 79950-1890

BUSINESS ASSOCIATE: Cure MD
ATTN: President
120 Broadway, 35th Floor
New York, NY 10271

5. **Non-Waiver.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.
6. **Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
7. **Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflict of laws, with venue in El Paso County, Texas.
8. **Compliance with Laws.** BUSINESS ASSOCIATE agrees that its obligations pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, BUSINESS ASSOCIATE reserves the right to notify CITY in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
9. **Severability.** In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.
10. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than CITY and BUSINESS ASSOCIATE, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
11. **Entire Agreement; Counterparts.** This Agreement and the Services Agreement constitutes the entire Agreement between CITY and BUSINESS ASSOCIATE regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document.

(Signatures begin on following page)

