

## WELLNESS PROGRAM MASTER AGREEMENT

This Wellness Program Master Agreement, together with any and all exhibits attached hereto, (the "Agreement") is dated and is effective as of July 3, 2017 (the "Effective Date") by and between Interactive Health Solutions, Inc. d/b/a Interactive Health ("Interactive Health") and San Jose Unified School District ("Client") (collectively referred to as the "Parties" and individually as a "Party").

### 1. DEFINITIONS.

- A. "HIPAA" shall mean The Health Insurance Portability and Accountability Act of 1996, as amended, and the rules and regulations thereunder.
- B. "HITECH" shall mean Health Information Technology for Economic and Clinical Health Act, as amended, and the rules and regulations thereunder.
- C. "Employee" shall mean one of the Employees.
- D. "Employees" shall mean the employees of Client (and their spouses and domestic partners authorized by Client) that Client authorizes to take part in the Programs/Services with Interactive Health.
- E. "Programs/Services" shall mean any wellness program and its corresponding services or any other such services that Client and Interactive Health mutually agree for Interactive Health to provide to Employees during the term of this Agreement as set forth in the exhibits attached hereto. None of the Programs/Services shall consist of, or involve, Interactive Health or its agents providing medical advice or medical care to any Employees.

2. **TERM AND TERMINATION.** The term of this Agreement shall begin on the Effective Date and, unless sooner terminated, in accordance with the termination provisions below, shall continue for an initial term of three years and shall continue thereafter until terminated in accordance with the termination provisions below.

- A. **Termination for Cause.** Either Party may terminate this Agreement for cause with thirty (30) days advance written notice to the other Party. Cause shall consist of material breach of this Agreement, including, but not limited to, Client's failure to pay fees in accordance with Exhibit B. The Party claiming the material breach shall notify the breaching Party in accordance with the notice provisions of this Agreement of the facts upon which the claim of breach is made, and such other Party shall have thirty (30) days to cure the stated breach (the "Cure Period"). If the breach is not cured within the Cure Period, this Agreement will terminate on the 30<sup>th</sup> day after notification or on such later date as may be designated in the notification.
- B. **Termination for Convenience.** Following the first anniversary of the Effective Date, either Party may terminate the Agreement at any time, without cause, by providing the other Party not less than ninety (90) days prior written notice of termination.
- C. **Termination for Insolvency.** Either Party may terminate this Agreement at any time in the event that the other Party shall be unable to fulfill its duties and responsibilities under this Agreement due to the fact that the Party applied for, or consented to, appointment of a

receiver, trustee or liquidator of the Party to a substantial part of its assets, is the subject of a voluntary or involuntary proceeding in bankruptcy, or shall admit in writing its inability to pay its debts, file a petition or answer seeking reorganization or arrangements with creditors or to take advantage of any insolvency laws.

- D. **Effects of Termination.** Within thirty (30) days of receipt of written notice of termination of this Agreement under the terms of this Section 2, Client and Interactive Health will create a plan of termination and transition which shall consist of the following:
  - i. Date(s) on which the Programs/Services to Employees will cease including orderly termination of access by Client and Employees to Interactive Health's portal.
  - ii. Interim reports to be provided to the Client, if applicable.
  - iii. Compensation for services performed prior to termination.

This provision 2.D shall survive the termination of the Agreement.

### 3. OBLIGATIONS OF CLIENT - GENERAL.

- A. Client will work with Interactive Health to develop a mutually agreeable process to identify and verify the eligibility of Employees for Programs/Services, provided however, that Client is responsible for confirming the eligibility of Employees for the Programs/Services.
- B. Client will provide Interactive Health with the number of Employees and represents that such number accurately reflects, on the date that this information is provided to Interactive Health, the population of Employees eligible to receive the Programs/Services. Client shall provide Interactive Health with an annual list of new Employees that are eligible to receive the Programs/Services during the year.
- C. Client will provide Interactive Health with a copy of all Client-developed Employee education and promotional material pertaining to the Programs/Services. Interactive Health shall not be responsible or liable for, or bound to abide by, any statements, information or omissions in such educational or promotional material which are different than the written material provided by Interactive Health to Client relating to the Programs/Services.
- D. Client is responsible for its compliance with the state and federal laws and regulations governing its employee benefit plans and programs of which the Programs/Services may be a part.
- E. Interactive Health shall not be considered to be a Plan Administrator, Plan Sponsor or Fiduciary (as defined in ERISA) with respect to Client's wellness program, including the Program/Services or any Client benefit plan under which such wellness program or Programs/Services is a part.
- F. Other obligations of Client specific to Programs/Services are included in the exhibits attached hereto.



#### 4. OBLIGATIONS OF INTERACTIVE HEALTH - GENERAL.

- A. Interactive Health will provide the Programs/Services as set forth in this Agreement. Field expedient Finger Stick Lipid and Glucose Screening is provided by Health Solutions Services, Inc. ("HSSI"), a wholly owned subsidiary of Interactive Health. The obligations, conditions, representations and warranties of Interactive Health under this Agreement shall apply to and are binding on HSSI with respect to HSSI's provision of services under this Agreement.
- B. Interactive Health shall maintain any licensure/certification required of it or of its employees and agents by applicable law so as to allow Interactive Health to provide the Programs/Services under this Agreement.
- C. Interactive Health shall furnish Client with such standard reports as may be mutually agreed upon, provided, however, such reports may not include any personal information of Employees that may not be disclosed to Client by Interactive Health under applicable law.
- D. Interactive Health personnel providing Programs/Services under this Agreement shall possess commercially reasonable competence and ability and shall be properly educated, trained for, and experienced in providing the Programs/Services they are to perform in accordance with their job requirements and in accordance with the terms of this Agreement.
- E. Other obligations specific to Programs/Services are included in the exhibits attached hereto.

5. **FEES.** Interactive Health will invoice Client and Client, or Client's third party administrator, as applicable, will pay Interactive Health in accordance with the fee schedule and terms contained in Exhibit B.

6. **CONFIDENTIALITY.** The term "Confidential Information" means any confidential and proprietary information and data, including in tangible, electronic or other form, that is identified as confidential or proprietary at the time of disclosure by one Party ("Disclosing Party") to the other Party ("Receiving Party") or which the Receiving Party should reasonably understand to be confidential. The Receiving Party agrees that it will (i) not use Confidential Information of the Disclosing Party in any way, except as necessary to perform its obligations under this Agreement, (ii) not disclose the Confidential Information of the Disclosing Party to any third party, and (iii) will take all reasonable precautions to protect the confidentiality of such Confidential Information. Each Party shall remain the sole and exclusive owner of such Party's Confidential Information and intellectual property (including, without limitation, any know-how, processes, methods, discoveries, inventions, patents, copyrights, trademarks and trade secret rights (collectively "Intellectual Property")), and neither Party is granted any right to the other Party's Confidential Information or Intellectual Property, except the limited rights necessary to perform their respective obligations under this Agreement.

7. **DATA.** Interactive Health and Client each expressly acknowledge and agree to the following terms and conditions with respect to the ownership and use of all data and information provided to and/or collected by Interactive Health through the provision of the Programs/Services:

- A. **Compliance with Laws.** In collecting, generating, compiling, storing, maintaining or otherwise processing any personal health information of Employees,

Interactive Health and Client will each comply with all confidentiality, data protection, security and privacy requirements of the laws applicable to it and all confidentiality or other obligations owed by each to third parties under contract.

- B. **Business Associate Agreement.** In connection with Interactive Health providing the Programs/Services under this Agreement, Interactive Health may create or receive "protected health information" (defined under HIPAA) on behalf of the Client's employee benefit plans and programs. Client and Interactive Health will enter into a business associate agreement in the form attached as Exhibit C, to protect the privacy and provide for the security of such protected health information in compliance with HIPAA and HITECH, and to govern the use, disclosure and maintenance of protected health information by Interactive Health.
- C. **Restrictions.** Interactive Health shall not resell Employees' data and information to any third party. Interactive Health may use aggregated data that is not identifiable to any Employee in order to provide periodic reports to the Client and to report industry trend information, provided that in all cases, Interactive Health fully complies with all applicable privacy rules and regulations, and business associate agreements.

#### 8. INDEMNIFICATION AND REPRESENTATIONS.

- A. **Indemnification.**
  - i. By Interactive Health. Interactive Health shall indemnify, defend and hold Client and its subsidiaries, directors, officers, employees and agents harmless from and against any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and expenses), in connection with any claim, cause of action, suit or proceeding, or judgment resulting or arising from (a) the negligence or willful misconduct of Interactive Health, or (b) a material violation of law by Interactive Health, or (c) a material breach of Interactive Health's obligations under this Agreement, except to the extent that such third party damages, losses, liabilities, costs and expenses in clauses (a) – (c) above are due, in whole or in part, to the negligence or willful misconduct of Client or Client's material violation of law or Client's material breach of this Agreement. Client shall promptly notify Interactive Health in writing of any such claim, action, suit or proceeding. Client shall be entitled to participate in any such claim, action, suit or proceeding, but only at its own expense.
  - ii. By Client. Client shall indemnify, defend and hold Interactive Health, and its subsidiaries, directors, officers, employees and agents harmless from and against any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and expenses), in connection with any claim, cause of action, suit or proceeding, or judgment resulting or arising from (a) the negligence or willful misconduct of Client, (b) a material breach of Client's obligations under this Agreement, or (c) a material violation of law by the Client, except to the extent that such third party damages, losses, liabilities, costs and expenses in clauses (a)-(c) above are due to the negligence or willful



misconduct of Interactive Health. Interactive Health shall promptly notify Client in writing of any such claim, action, suit or proceeding. Interactive Health shall be entitled to participate in any such claim, action, suit or proceeding, but only at its own expense.

- iii. In no event will either Party be liable to the other Party for unforeseen incidental, consequential, special, or punitive damages (including loss of profits, data, business or goodwill, or government fines, penalties, taxes or filing fees), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise.
- iv. Survival. Client's and Interactive Health's obligations to indemnify, defend and hold harmless under this Section 8.A shall survive the expiration or termination of this Agreement by either Party.

**B. Mutual Representations and Warranties.** Each Party represents and warrants to the other that:

- i. it has the power and authority to execute and deliver this Agreement, to perform its obligations and to carry out the transactions contemplated under this Agreement;
- ii. this Agreement has been duly authorized, executed and validly delivered by it and constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms; and
- iii. the execution and delivery of this Agreement and the performance of its obligations under this Agreement will not violate any law, regulation or court order, or breach or cause a default under any agreement to which it is a party.

**C. Representations of Interactive Health.** Interactive Health represents and warrants to Client that:

- i. Interactive Health shall treat all Employees' data and medical records and information in accordance with all applicable state and federal laws, rules and regulations (including, without limitation, drug and alcohol, psychiatric and HIV laws and regulations) regarding their confidentiality; and
- ii. Interactive Health will use its commercially reasonable efforts to provide the Programs/Services in a manner that meets in all material respects, professional and industry standards for work of a similar nature provided by a like service provider.

9. **INSURANCE.** Client and Interactive Health, at each organization's sole cost and expense, shall provide and maintain separate policies of general liability and professional liability insurance and other as shall be commercially reasonable and customary, but not less than required by law, to insure each organization against any claim or claims for damages arising by reason of personal injury or death occasioned directly or indirectly in connection with the operation of each organization.

10. **RIGHTS OF THIRD PARTIES.** Except as specifically provided in this Agreement, nothing in this Agreement is intended to be

construed, or be deemed to create, any right or remedies in any third party, including but not limited to, any Employee.

- 11. **FORCE MAJEURE.** Neither Party shall be liable for non-performance or delays caused by an act of God or war, terrorist activities, any act of any military or civil authority, or outage of communications, power or other utility.
- 12. **ASSIGNMENT.** Neither Party may assign, delegate, or transfer this Agreement in whole or in part without the other Party's consent (whose consent shall not be unreasonably withheld), except in the case of an assignment to any entity which succeeds to all or substantially all of such Party's business through a sale, merger or other transaction. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of each Party.
- 13. **INDEPENDENT CONTRACTORS.** Each Party is an independent contractor, not an employee or agent, of the other. Nothing in this Agreement shall render either Party or any of its agents or employees, an employee or agent of the other, nor authorize or empower either Party or its agents or employees to speak for, represent or obligate the other in any way.
- 14. **CONSTRUCTION/SEVERABILITY.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. The invalidity, illegality or unenforceability of any provision of this Agreement, by statute, court or otherwise, shall not affect the validity, legality or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- 15. **NOTICES.** Notices given under this Agreement shall be by certified mail, return receipt requested, or national overnight courier which can confirm receipt, directed to the Parties at the addresses listed below, or to such other addresses as a Party may subsequently designate by written notice.

If to Client: San Jose Unified School District  
Attention: Socorro Vigil  
855 Lenzen Avenue  
San Jose, CA 95126

If to Interactive Health: Interactive Health  
Attention: Chief Executive Officer  
1700 East Golf Road  
Suite 900  
Schaumburg, IL 60173

- 16. **DESCRIPTIVE HEADINGS.** The headings of the paragraphs of this Agreement are inserted for convenience and shall not be deemed to be part of this Agreement, and shall not limit, extend or delineate the scope or intent of the provisions hereof.
- 17. **ENTIRE AGREEMENT.** This Agreement, including all exhibits, constitutes the entire agreement among the Parties and supersedes any and all other agreements, either oral or written, between the Parties with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement shall be valid or binding.
- 18. **AMENDMENTS.** This Agreement may be amended at any time only by written agreement of duly authorized representatives of both Parties.
- 19. **COMPLIANCE WITH FEDERAL AND STATE LAWS.** Each of Interactive Health and Client agrees to comply in all material respects with all applicable federal and state laws which govern its activities under this Agreement.

20. **BRAND IDENTITY.** Each Party agrees to comply with all visual identity standards as they relate to any use of the other Party's brand and logotype. Use of a Party's brand/logotype for marketing, sales, or communication materials is expressly forbidden without written consent by such Party for each particular use.
21. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to its choice of laws doctrine.
22. **COUNTERPARTS.** This Agreement may be executed in counterparts, including by facsimile signature, each of which when so executed, shall be deemed to be an original, and both of which together shall constitute and be one and the same instrument.

**IN WITNESS WHEREOF,** the authorized representatives of Interactive Health and Client have duly executed this Agreement as of the date first written above.

**Interactive Health Solutions, Inc. d/b/a  
Interactive Health**

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

Name: Catherine Kenworthy

Title: President and CEO

**Client: San Jose Unified School District**

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

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

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

## **Exhibit A – Description of Services**

Interactive Health will make available to Employees a wellness solution as described below.

### **1. Onsite Health Screening**

- Field expedient Finger Stick Lipid and Glucose Screening (options as defined here):
  - a. Expanded Panel Fasting Test: Total Cholesterol, HDL, LDL, TC/HDL Ratio, Fasting Glucose, Triglycerides, with instantaneous results
  - b. Regular Panel Non-Fasting Test: Total Cholesterol, HDL, TC/HDL Ratio, Random Glucose with instantaneous results
- Blood Pressure with manual readings (automated cuffs available on request).
- Measured Height, Weight, Waist Circumference.
- Health Coaching (5 – 7 minutes) to review biometric results and comparative reference ranges, provide tips and recommendations for lifestyle behavior change, referral for follow up on results to personal physician and/or health resources available through Client benefits or ancillary programs.
- Provision of education displays and educational handouts to augment onsite screenings and coaching. Furnishing of all testing supplies, material and labor (including proper disposal of bio-hazardous material).
- Health Screenings will be offered at the Client's worksite with a minimum of 25 Members that are scheduled to participate in a Health Screening, or through a network of laboratory facilities located across the United States.
- Furnishing Client with marketing materials to help plan, promote Programs / Services among the Client's Employees.
- Making available telephone access for Employees to schedule appointments for Health Screenings. The Telephone Call Center will be available Monday through Friday from 8:00 am to 6:00 pm Central Standard Time.
- Providing Employees with access to the Interactive Health web portal to schedule appointments for a Health Screening. The website will be available 24/7 with the exception of downtime for maintenance requirements.
- The health assessment questionnaire is readily completed online through the Interactive Health web portal.
- Secured data collection, warehousing and reporting.

### **2. Post Screening Materials, Tools and Actions for Employees**

The following will be available to Employees following completion of their Health Screening:

- Within 7-10 days of completing the Health Screening, Healthy Start participants will be able to access their biometric screening results through the Interactive Health web portal.

### **3. Reporting**

Aggregate client reports summarizing key health risks and satisfaction of Employees within 15 business days of the last Health Screening event.

### **4. Interactive Health Standard Tools and Resources**

All Employees will have access to standard tools and resources through a personalized website to review test results, nutrition planning and tracking tools, healthy meal planning and healthy recipes, exercise planning, a health library, a monthly newsletter, and regularly scheduled webinars and mobile application access.

- Interactive Health will work with Client to customize appropriate tools and resources to be made available to Employees.

Changes to the program components described in Exhibit A must be mutually agreed upon by Client and Interactive Health.



**Exhibit B – Fee Schedule**

The annual fee will be \$51.00 per Employee who completes a Health Screening. See Exhibit D for Performance Guarantees related to this Program Fee.

Travel will be invoiced as a pass-through cost (estimates provided during program implementation)

Payment shall be made by Client to Interactive Health within thirty (30) days of receipt of an invoice from Interactive Health.

Cancellation fees will be assessed at 20% of total projected event cost per cancelled event for events cancelled within 14 days of scheduled execution.

The minimum number of Employees for onsite screening events is 25, in addition to anticipation of 3 participants per hour per staff member (estimated at 75% of projected attendance).

**Onsite seminars** can be purchased for \$377 for the 1st presentation; if the same lecture is presented multiple times on the same day, it is an additional \$225 per each additional lecture. Additional fees for transportation and lodging will be added for long distance travel. (See Exhibit E)

Approved by:

**CLIENT: San Jose Unified School District**

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

Date: \_\_\_\_\_

**Exhibit C – Business Associate Agreement**

[Form Attach]

## Exhibit D

### Performance Guarantees:

#### Proposed Performance Metrics and Service level agreement

Interactive Health proposes to put 10% of its annual fees at risk based on mutually-agreed-upon performance metrics.

Interactive Health supports performance metrics that promote a long term partnership based on achievement of results achievement and for metrics that Interactive Health has control over. The performance metrics most typically included are summarized in the chart below.

<b>Task/Item</b>	<b>SLA Performance Metric</b>	<b>Proposed % Fees at Risk</b>
<b>Aggregate Reporting:</b> aggregate report provided to Client Point of Contact detailing levels of health status and risk level, and participation lists	Within 30 business days post screening provided an average of 99% of time	3%
<b>Participant Satisfaction:</b> overall satisfaction with service delivery and experience	>90% of participants will score 3.5+ (scale 1-4) on Participant Satisfaction Survey	3%
<b>Client Point of Contact Satisfaction:</b> overall satisfaction with health screening services	>90% of participants will score 3.5+ (scale 1-4) on Client Point of Contact Satisfaction Survey	3%
<b>Invoicing Timing and Accuracy:</b> provided to the client – we will invoice each of the 6 business groups separately	Invoices are submitted to client by the last day of the month for the prior month's events 99% of the time with a 99% error-free rate	1%



## **Exhibit E:**

### **Wellness Seminar/ Webinar Menu**

We offer a large variety of diverse topics designed to appeal across your entire population. Each class can be tailored to meet your company's preferences for length and audience type. Generally, our seminars and webinars are 30-60 minutes in length. Classes can be offered standalone or as a series.

#### **PROGRAM BENEFITS**

- Timely, evidence-based health and wellness content from credible sources.
- Speakers are degreed health educators, registered dietitians, and exercise specialists with dynamic public speaking experience.
- On-site seminars provide visible engagement including a question and answer period with the expert, interactive quizzes and teaching visuals.
- Webinars provide an interactive learning experience utilizing webinar technology such as live polls, quizzes, and a question and answer period with the expert.
- Professionally designed marketing materials and health education handouts are included.

#### **HOW TO SCHEDULE:**

Lectures can be purchased for \$377 for the 1st presentation; if the same lecture is presented multiple times on the same day, it is an additional \$225 per each additional lecture. Additional fees for transportation and lodging will be added for long distance travel.

To schedule please contact Jessica Moore, Health Education and Training Manager: [j.moore@interactivehealthinc.com](mailto:j.moore@interactivehealthinc.com) Phone: (847) 754-2747

## **EXHIBIT C**

### **HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered on July 3, 2017 by and between Interactive Health Solutions, Inc. d/b/a Interactive Health ("Business Associate") and San Jose Unified School District (the "Company") for itself and on behalf of its wellness program to the extent it constitutes a "group health plan" under the HIPAA Rules as defined below (the "Plan").

Business Associate has been retained to perform services in connection with the Plan. In connection with Business Associate's provision of services, the Plan may disclose to Business Associate information that is "Protected Health Information" (PHI) under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and/or Business Associate may create or receive PHI on behalf of the Plan. The Plan and Business Associate intend to protect the privacy and provide for the security of PHI in compliance with HIPAA and as further provided by the HITECH Act (defined below). The parties agree to enter into this Agreement to govern the use, disclosure and maintenance of PHI by Business Associate.

#### **I. GENERAL PROVISIONS**

1.1. Definitions. Capitalized terms used and not defined in this Agreement shall have the same meaning as those terms in the HIPAA Rules. Notwithstanding the foregoing, PHI is limited, for purposes of this Agreement, to the information created, received, maintained or controlled by Business Associate in connection with the Plan.

1.2. Independent Contractor. Business Associate's status at all times in connection with the Plan shall be that of an independent contractor.

#### **II. USE AND DISCLOSURE OF PHI**

2.1. Business Associate agrees that it shall receive, protect, store, use, disclose, maintain and transmit all PHI in accordance with the terms of this Agreement. Except as otherwise specifically limited in this Agreement, Business Associate may:

- (a) Use and disclose PHI as reasonably required or contemplated in connection with the performance of services in connection with the Plan, excluding the use or further disclosure of such PHI in a manner that would violate the requirements of HIPAA, the HITECH Act or the HIPAA Rules, if done by the Plan; provided, however, Business Associate may:
  - (i) Use PHI in its possession for Business Associate's proper management and administration and to fulfill any present or future legal responsibilities of Business Associate provided that such uses are permitted under HIPAA, the HITECH Act and the HIPAA Rules, as provided in 45 C.F.R. § 164.504(e)(4).
  - (ii) Disclose PHI in its possession to third parties for the purpose of Business Associate's proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that (i) that the disclosures are Required by Law; or (ii) Business Associate has received from the third party written assurances that PHI will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party, and the third party agrees to notify Business Associate of any instances

of which it is aware in which the confidentiality of PHI has been breached.

- (b) De-identify any and all PHI, provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b) and that Business Associate maintains such documentation as required by applicable law, as provided for in 45 C.F.R. § 164.514(b). The parties understand that properly de-identified information is not PHI under the terms of this Agreement.
- (c) Business Associate may provide Data Aggregation services relating to the Health Care Operations of the Plan to the extent required or contemplated in connection with the performance of services in connection with the Plan.

2.2. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as required by applicable law.

2.3. Business Associate will use appropriate administrative, physical and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.

2.4. Business Associate will report to the Plan any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware.

2.5. To the extent Business Associate uses one or more Subcontractors to perform any services in connection with the Plan, and such Subcontractors create, receive, maintain, transmit or have access to PHI, Business Associate will ensure that each such Subcontractor shall sign an agreement with Business Associate containing the same restrictions, conditions and requirements that apply to Business Associate with respect to such PHI.

2.6. Business Associate shall provide reasonable access (including inspection and obtaining copies), at the written request of the Plan or an Individual, to PHI held by Business Associate to the extent such PHI is maintained by Business Associate in a Designated Record Set, to Plan representatives or the Individual or Individual's designee, in order to meet the requirements of 45 C.F.R. § 164.524, as well as provide a copy of the PHI maintained electronically in a Designated record Set (including, but not limited to, an electronic health record) in an electronic format upon request in accordance with 45 C.F.R. § 164.524(c).

2.7. Business Associate will, at the written request of the Plan or an Individual, make available PHI held by Business Associate to the extent such PHI is maintained by Business Associate in a Designated Record Set, for amendment and incorporate any amendments to such information in accordance with 45 C.F.R. § 164.526.

2.8. Business Associate will, at the written request of the Plan or an Individual, make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528.

2.9. Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI created or received on behalf of the Plan, available to the Plan and the Secretary of the U.S. Department of Health & Human Services for purposes of determining the Plan's compliance with the Privacy Rule.



2.10. Business Associate will:

- (a) Use appropriate safeguards (administrative, physical, and technical) and comply, where applicable with the Security Rule with respect to Electronic PHI
- (b) To the extent Business Associate uses one or more Subcontractors to perform any services in connection with the Plan, and such Subcontractors create, receive, maintain, transmit or have access to Electronic PHI, Business Associate will ensure that each such Subcontractor agrees to use appropriate safeguards and to comply with the Security Rule to protect such Electronic PHI, by signing an agreement with Business Associate containing the same restrictions, conditions and requirements that apply to Business Associate with respect to such Electronic PHI; and
- (c) Report to the Plan any attempted (other than those routinely blocked by protective software/systems) or successful unauthorized access, use, disclosure, modification, or destruction of such Electronic PHI or interference with system operations in an Information System (as defined in 45 C.F.R. § 164.304) affecting such Electronic PHI of which Business Associate becomes aware.

2.11. Until such time as final guidance on what constitutes “minimum necessary” are promulgated and effective as required by Section 13405(b) of the HITECH Act (42 U.S.C. §17935(b)), in performing the services in connection with the Plan, Business Associate agrees, in so far as Business Associate has access, to limit uses and disclosures of, or requests for, PHI: (i) to the Limited Data Set, to the extent practicable; and (ii) in all other cases, subject to 45 C.F.R. § 164.502(b), to the minimum necessary PHI to accomplish the intended purpose of the use, disclosure or request.

2.12. With respect to the performance of services in connection with the Plan, to the extent Business Associate is to carry out one or more obligations of the Plan, Business Associate agrees to comply with the applicable requirements of the Privacy Rule in the performance of such obligations.

2.13. Notwithstanding any other provision of this Agreement, to the extent that fulfillment of its obligations under this Agreement requires Business Associate to disclose or provide access to PHI to the Company or any employee or other person under the control of the Company, Business Associate shall not be obligated to disclose or make available PHI to persons not identified in the attached Designated Persons Appendix (as may be updated and communicated to Business Associate).

2.14. Plan Obligations.

- (a) The Company and the Plan shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA, the HITECH Act, or the HIPAA Rules, if done by the Plan (or the Company).
- (b) The Plan shall notify Business Associate, in writing and in a timely manner, of any arrangements permitted or required of the Plan under 45 C.F.R. Parts 160 and 164 that may impact in any manner the use and/or disclosure of PHI by Business Associate under this Agreement, including but not limited to, limitations in the notice of privacy practices of the Plan, restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by the Plan, and any elections or authorizations exercised by any Individual with respect

to marketing and/or fundraising activities of the Plan pursuant to 45 C.F.R. §164.514(f).

- (c) The Plan will secure or cause to be secured, as applicable, Individual authorizations and/or consents as may be required for the use disclosure of PHI, including, without limitation, permitting Business Associate to use and disclose data, in connection with the performance of services to the Plan. The Plan shall also provide Business Associate with any changes in, revocation or withdrawal of, the consent or authorization or permission provided to the Plan by Individuals pursuant to 45 C.F.R. § 164.506 and § 164.508 that may impact in any manner the use and/or disclosure of PHI by Business Associate under this Agreement.

#### 2.15. Other Business Associates.

- (a) In the event Business Associate is requested or directed by the Plan for the purpose of facilitating its services in connection with the Plan, or if Business Associate is otherwise requested, directed, or instructed by the Plan, to disclose PHI to other business associates (as defined in the HIPAA Rules) of the Plan, or to disclose PHI to any other entities or persons, and when the Company is Required by Law to obtain from such business associates, entities or persons a business associate agreement, confidentiality agreement or other type of nondisclosure agreement, the Plan will be responsible for obtaining such agreements with such business associates, entities or persons, together with any and all individual consents required under applicable law. The Plan shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA, the HITECH Act, or the HIPAA Rules if done by the Plan. Business Associate shall not be obligated to disclose or make available PHI to such other business associates of the Plan unless and until an authorized representative of the Plan directs the Business Associate in writing and executes the attached Other Business Associates Appendix (as may be updated and communicated to Business Associate), and Business Associate has an opportunity to consider and approve the request. This Section 2.15(a) does not limit or diminish Business Associate's obligations under Section 2.1, Section 2.5, or Section 2.10(b).
- (b) The Company and the Plan shall indemnify and hold harmless Business Associate and its officers, directors, shareholders, employees, representatives and agents, from and against any and all actual and threatened losses, liabilities, damages, claims and all related costs and expenses (including (x) reasonable legal fees and costs of arbitration, litigation, settlement, judgment, interest, fines and penalties, and (y) all costs associated with resolving a Security Incident, including (without limitation) conducting an investigation, notifying individuals and others as required by law, and responding to consumer, regulator and media inquiries) (collectively, "Losses") related to, arising from, or in connection with (i) Business Associate's disclosure of PHI as requested by the Plan pursuant to Section 2.15(a) of this Agreement; or (ii) the negligence and/or willful misconduct, or the acts or omissions of, the Plan or the Company and such other of its (or their) business associates or other persons, including any employees, agents, representatives, contractors or subcontractors, in connection with the use or disclosure of PHI (disclosed by Business Associate as requested by the Plan pursuant to Section 2.15(a)), by such persons or entities, including, without limitation, Losses sustained by third parties that may at any time be incurred by Business Associate.



- (c) The Business Associate shall indemnify and hold harmless the Company and the Plan and its officers, directors, shareholders, employees, representatives and agents, from and against any and all actual and threatened losses, liabilities, damages, claims and all related costs and expenses (including (x) reasonable legal fees and costs of arbitration, litigation, settlement, judgment, interest, fines and penalties, and (y) all costs associated with resolving a Security Incident, including (without limitation) conducting an investigation, notifying individuals and others as required by law, and responding to consumer, regulator and media inquiries) (collectively, "Losses") related to, arising from, or in connection with the negligence and/or willful misconduct, or the acts or omissions of, the Business Associate and such other of its (or their) employees, agents, representatives, contractors or subcontractors, in connection with the improper use or disclosure of PHI, including, without limitation, Losses sustained by third parties that may at any time be incurred by the Company and the Plan.

### **III. BREACH, REPORTING AND MITIGATION**

3.1. Business Associate shall notify the Plan, in writing, within fifteen (15) business days of Business Associate becoming aware of:

- (i) Any use or disclosure of PHI by Business Associate or its Subcontractors not provided for by this Agreement of which Business Associate becomes aware; and/or
- (ii) Any Security Incident (including each Breach of Unsecured PHI it discovers, to the extent Business Associate accesses, maintains, retains, modifies, records, stores or otherwise holds, uses or discloses Unsecured PHI) of which it becomes aware that relates to, or may impact, the Plan's PHI.

3.2. With respect to each impermissible use or disclosure or Security Incident, the notice required in Section 3.1 shall include, at minimum, the following:

- (i) A brief description of what happened, including the date of the incident and the date of the discovery of the incident, if known;
- (ii) A description of the types of PHI that were involved in the incident;
- (iii) Business Associate's assessment of whether there is a low probability that the PHI has been compromised based on the elements of a risk assessment provided at 45 C.F.R. § 164.402;
- (iv) Identification of the individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed; and
- (v) Any steps individuals should take to protect themselves from potential harm resulting from the incident.

3.3. Business Associate will undertake reasonable steps to stop any such use and/or disclosure and to mitigate, to the extent practicable, harmful effects of such Security Incident or impermissible use or disclosure.



#### **IV. TERM AND TERMINATION**

4.1. This Agreement takes effect on the date first set forth above or, if later, on the date immediately preceding the first date on which Business Associate provides services in connection with the Plan. This Agreement replaces any HIPAA business associate agreement previously entered into between the parties hereto in respect of the Plan, and the terms and conditions of this Agreement supersede and control over any conflicting or inconsistent terms and provisions of any other agreement, to the extent relating to the Plan, of which Business Associate is a party.

4.2. This Agreement is automatically terminated at the end of the last date on which Business Associate provides services in connection with the Plan. This Agreement may also be terminated by the Plan upon thirty (30) business days' prior written notice to Business Associate in the event that Business Associate materially breaches any obligation of this Agreement, unless Business Associate cures the breach, to the satisfaction of the Plan, within such thirty (30) business day period. This Agreement may also be terminated by Business Associate upon thirty (30) business days' prior written notice to the Plan in the event that the Plan materially breaches any obligation of this Agreement, unless the Plan cures the breach, to the satisfaction of Business Associate, within such thirty (30) business day period.

4.3. Upon the termination of this Agreement for any reason, Business Associate, with respect to PHI received from the Plan, or created by Business Associate in connection with the Plan, that Business Associate maintains in any form, recorded on any medium, or stored in any storage system, shall:

- (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- (b) return or destroy the remaining PHI that Business Associate maintains in any form;
- (c) extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any PHI retained after termination of this Agreement, including if the return or destruction under Section 4.3(b) is not feasible;
- (d) limit any further uses and/or disclosures of PHI retained by Business Associate to the purposes for which such PHI was retained and subject to the same conditions set out at Sections 2.1(a)(i) and 2.1(a)(ii) which applied prior to termination; and
- (e) return or destroy the PHI 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, or when the reasons which made the return or destruction not feasible are no longer present.

4.4. The obligations of Business Associate under this Section IV shall survive the termination of this Agreement.

#### **V. NO THIRD PARTY BENEFICIARIES**

5.1. Except as required by law, the parties hereto do not intend to confer, nor does anything express or implied in this Agreement confer any rights, remedies or obligations or liabilities whatsoever upon any person other than parties hereto and their respective successors or assigns.

## VI. MISCELLANEOUS

6.1. This Agreement shall be construed as broadly as necessary to implement and comply with applicable laws. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable laws. Where provisions of this Agreement are different than those mandated in the HIPAA Rules, HIPAA or the HITECH Act, but are nonetheless not prohibited by such rules or laws, the provisions of this Agreement shall control.

6.2. This Agreement may be amended at any time and for any reason by a written instrument executed by both parties. In the event that this Agreement, or any practices which could be, or are, employed in exercising rights under this Agreement, are inconsistent with or do not satisfy the requirements of HIPAA, the HITECH Act, the HIPAA Rules or other applicable laws the parties shall take any action necessary to bring performance under this Agreement into compliance, including, without limitation, amending or modifying this Agreement. If the parties are unable to mutually agree on an appropriate compliance methodology or approach, or if changes to applicable laws or other applicable laws impose further obligations on either party with regard to the privacy and security of PHI, then the parties agree to meet in good faith (in person or via telephone) to discuss the impact of such additional obligations and to negotiate modifications or additions to this Agreement in order to achieve compliance with HIPAA, the HITECH Act, the HIPAA Rules and the other applicable laws.

6.3. In the event that one or more provisions of this Agreement shall for any reason be found void, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall nonetheless remain in full force and effect, and shall be construed by the court (to the greatest extent possible) in such a way as to confer upon the parties the benefits and rights which they would have possessed under this Agreement as a whole, had the invalidated provisions remained in effect.

6.4. All notices, requests, demands and other communications shall be in writing and shall be deemed to have been duly given if in writing personally delivered or sent by certified mail, postage prepaid, return receipt requested, recognized overnight courier (charges prepaid), or confirmed facsimile transmission, to the foregoing addresses (or at such other addresses as to which a party may have notified the other) and shall be effective when personally delivered, as of the third (3<sup>rd</sup>) business day after mailing, the next business day after delivery to the overnight courier, or on the date of receipt of a facsimile.

Company: San Jose Unified School District  
855 Lenzen Avenue  
San Jose, CA 95126  
Attention: Socorro Vigil

Business Associate: Interactive Health Solutions, Inc.  
1700 East Golf Road, Suite 900  
Schaumburg, IL 60173  
Attention: Privacy and Security Officer  
Facsimile No.: 847-590-0267



6.5. This Agreement may be executed in counterparts, including by facsimile signature, each of which, when so executed, shall be deemed to be an original, and both of which together shall constitute and be one and the same instrument.

## VII. DEFINITIONS

“Breach Notification Rule” means the regulations on the Notification in the Case of Breach of Unsecured Protected Health Information as set forth in 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.

“Data Aggregation” has the same meaning given to such term under 45 C.F.R. § 164.501.

“Designated Record Set” has the same meaning given to such term under 45 C.F.R. § 164.501.

“Electronic Protected Health Information” or “Electronic PHI” has the same meaning given to such term under 45 C.F.R. § 160.103.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

“HIPAA Rules” means the regulations codified at 45 C.F.R. Parts 160, 162 and 164, including without limitation the Privacy Rule, Security Rule and Breach Notification Rule.

“HITECH Act” means the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009.

“Individual” has the same meaning given such term under 45 C.F.R. § 160.103 and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

“Limited Data Set” has the same meaning given to such term under 45 C.F.R. § 164.514(e)(2).

“Privacy Rule” means the standards for Privacy of Individually Identifiable Health Information, as set forth in 45 C.F.R. Parts 160 and 164, as may be amended from time to time.

“Protected Health Information” or “PHI” has the same meaning given to “protected health information” under 45 C.F.R. § 160.103. Notwithstanding the foregoing, PHI is limited, for purposes of this Agreement, to the information created, received, maintained, transmitted or controlled by Business Associate in connection with the Plan.

“Security Incident” shall have the same meaning given such term in 45 C.F.R. § 164.304, and shall include both attempted (excluding attempts routinely blocked by security software/system) and successful unauthorized access, use, disclosure, modification, and destruction of information, or interference with system operations. For purposes of this Agreement, Security Incident shall include incidents for which the Plan may be required to treat as a Breach of Unsecured PHI under the HITECH Act and the Breach Notification Rule.

“Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information as set forth in 45 C.F.R. Parts 160 and 164, as may be amended from time to time.

“Subcontractor” means a person to whom Business Associate delegates a function, activity or service, other than in the capacity of a member of the Workforce of Business Associate.

“Unsecured PHI” means PHI that is not secured through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health & Human Services in any annual



guidance published pursuant to the HITECH Act specifying the technologies and methodologies that render PHI unusable, unreadable, or indecipherable to unauthorized persons.

**IN WITNESS WHEREOF**, the parties execute this Agreement by their duly authorized representatives on the date first set forth above.

San Jose Unified School District

INTERACTIVE HEALTH SOLUTIONS, INC.

D/B/A INTERACTIVE HEALTH

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

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

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

Name: Jim Kasoff

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

Title: Privacy Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## DESIGNATED PERSONS APPENDIX

### Persons Authorized to Receive Protected Health Information

In accordance with Section 2.13 of this Agreement, disclosure of PHI may be made to the following employees or other persons under the control of the Company:

Title/Office	Name	Phone	Fax	E-mail

*Confidential information will be provided only to the individuals identified above.*

San Jose Unified School District

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

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

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

Date: \_\_\_\_\_

## OTHER BUSINESS ASSOCIATES APPENDIX

### Other Business Associates of the Plan Authorized to Receive Protected Health Information

In accordance with Section 2.15 of this Agreement, disclosure of PHI may be made to the following other business associates of the Plan:

Other business associate name and address	Title	Name of individual	Phone/Fax	E-mail

*Confidential information will be provided only to the other Plan business associates identified above. The Plan (by and through the Company) hereby represents and warrants to Business Associate, that the Plan has obtained a HIPAA business associate agreement, or such other confidentiality agreement or nondisclosure agreement, together with any and all individual consents, each as required under applicable law.*

San Jose Unified School District

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

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

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

Date: \_\_\_\_\_



	Healthy Advantage	Healthy Triumph
<b>Package bundle includes:</b>	<b>\$51.00</b> Per Participant Per Year*	<b>\$170.00</b> Per Participant Per Year

<b>Health Evaluations</b>		
<b>Test On Site</b> (No location minimum, will bill for min. of 25 participants)	Included finger stick	Included venipuncture
<b>Test at a Lab</b>	Included (Administered via venipuncture)	Included
<b>Physician Verification Form</b> PVF pricing in lieu of \$51 or \$170 program fee. Provides members access to all program components.	\$20 per form	\$60 per form
<b>Finger Stick Testing:</b> Fasting Regular Panel via: HDL, LDL, Total Cholesterol, fasting Glucose, Triglycerides, TC/HDL Ratio	Included	n/a
<b>Onsite Teachable Moment –</b> 1 on 1 health coaching session & review of clinical and health behavior data	Included	n/a
<b>Venipuncture Testing:</b>		
<b>Lipid Profile</b>	n/a	n/a
<b>Comprehensive Blood Panel (36 tests)</b>	n/a	Included
<b>Smart Testing (A1C, PSA, TSH)</b>	n/a	Included
<b>Blood Pressure (onsite only)</b>	Included	Included
<b>6-month re-test –</b> available to all members at lab facility	n/a	Included
<b>Health Assessment</b>	Online only	Included
<b>Program Marketing/Member Communications-</b> English/Spanish	Included	Included
<b>Table/Display for Client Specific Health &amp; Wellness Info</b>	Included	n/a
<b>Registration: English &amp; Spanish</b>		
800# Enrollment	Included	Included
Online Enrollment	Included	Included
Client Manual Enrollment	Included	Included
<b>Appointment Reminders (text &amp; email)</b>	Included	Included
<b>Fax results to physician</b>	n/a	Included
<b>Member Test Results Provided</b>	Onsite/Online	Mailed/Online
<b>*Travel &amp; Expense</b>	Treated as a pass-through expense to client	Included

<b>Health Coaching/Ongoing Engagement</b>		
<b>Immediate Intervention</b>	Onsite Teachable Moment	n/a
<b>Immediate Intervention</b> (1-2 calls within 24-48hrs of lab results – for Critical lab results - occurs in 4% of the population.) <b>Outbound Ongoing Outreach</b> (for moderate risk conditions - occurs in 30-35% of the population). Contact within 5-10 days to individuals with the following: <ul style="list-style-type: none"> <li>• Diabetes</li> <li>• Pre-Diabetes</li> <li>• Metabolic Syndrome</li> <li>• Hypertension (High Blood Pressure)</li> <li>• Hyperlipidemia (High Cholesterol)</li> </ul>	n/a	Included
<b>Emotional Health Outreach</b>	n/a	n/a
<b>Inbound Health Coaching Telephonic “Opt-in” courses</b> (10 courses available in English & Spanish) <ul style="list-style-type: none"> <li>• Tobacco Free for Life</li> <li>• Better Nutrition</li> <li>• Diabetes Prevention &amp; Control</li> <li>• Personalized Fitness</li> <li>• Lifestyles for Successful Weight Loss</li> <li>• Achieving Balance- Stress Reduction</li> <li>• Managing Cholesterol Levels</li> <li>• Why Managing Your Medication Matters</li> <li>• Managing &amp; Preventing High Blood Pressure</li> <li>• Getting a Good Night’s Sleep</li> </ul>	n/a	Included
<b>Client Aggregate Report</b>	Included	Included
<b>Dedicated Account Manager</b>	Included	Included
<b>Member Web Portal</b> <b>Optional Member Website Customizations</b> <ul style="list-style-type: none"> <li>• add client logo</li> </ul>	Optional: \$1,000 one time	Optional: \$1,000 one time
<b>My Results:</b>		
Health Assessment	Included	Included
Personal Health Score & Goal	n/a	Included
Lab Results	Included	Included
Risk Analysis	Included	Included
Out of Range Conditions	Included	Included
<b>My Support Team:</b>		
My Physicians (Add your personal physician(s) to fax results directly to them)	n/a	Included
Ask an Expert – submit secure questions to a member of our medical staff.	Included	Included





# San Jose Unified School District

## Solution Overview

My Health Library:		
Educational Videos	Included	Included
Monthly Health Webinars	Included	Included
Kids Health	Included	Included
Medical Encyclopedia (Powered by HealthWise)	Included	Included
Symptom Checker	Included	Included
Monthly Health Newsletters	Included	Included

The following programs are enhancements and can be added to either program options above.

<b>Expanded Healthy Activities Web Portal</b>	
<b>Healthy Activities:</b> <i>Per participant is based on the number of participants that go through the biometric screening</i>	\$23.50 per participant
<b>Personal Health Action Plan:</b> Program strategy & design for incentives and points tracking	Included
<b>Individual &amp; Team Challenges:</b> Individuals can earn points and rewards when they participate in team challenges designed to promote healthy living. Choose from topics such as: <ul style="list-style-type: none"> <li>– Physical Activity</li> <li>– Stress Management</li> <li>– Weight loss</li> <li>– Nutrition</li> </ul> Challenges can be configured to meet client needs	Included
<b>Personalized Wellness Workshops:</b> 53 online workshops addressing a multitude of risks and interests. Including: <ul style="list-style-type: none"> <li>– Diabetes Prevention</li> <li>– Heart Health</li> <li>– Nutrition</li> <li>– Exercise</li> <li>– Weight Management</li> <li>– Stress</li> <li>– Tobacco Cessation</li> </ul>	Included
Chat with a Coach	Included
Social Networking	Included
<b>Health Logs:</b>	
Blood Pressure Log	Included
Glucose Log	Included
Heart Rate Log	Included
Weight Log	Included
Body Measurements	Included
<b>Exercise:</b>	
Cardio Log	Included
Steps Log	Included
Device Integration	Included
<b>Nutrition:</b>	
Food Log	Included
Workshops	Included



Onsite Seminars	
<b>Onsite Seminars – 1 hour sessions</b> <i>See attached document with Seminar Topics</i>	\$377 plus T&E when applicable

Thank you!

Jennifer Becker, Region Market Leader



515.422.6324

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