

Approved

REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Carla Hester **TODAY'S DATE:** Jan. 23, 2019

DEPARTMENT: County Judge's Office

SIGNATURE OF DEPARTMENT HEAD:

REQUESTED AGENDA DATE: ~~February 11, 2019~~ *January 28, 2019*

SPECIFIC AGENDA WORDING: Consideration of WebTPA Employer Services, LLC Administrative Services Agreement with Johnson County Indigent Healthcare and to authorize the County Judge to sign

PERSON(S) TO PRESENT ITEM: County Judge Roger Harmon

SUPPORT MATERIAL: (Must enclose supporting documentation)

TIME:	ACTION ITEM: <u> X </u>
	WORKSHOP _____
(Anticipated number of minutes needed to discuss item)	CONSENT: _____
	EXECUTIVE: _____

STAFF NOTICE:

COUNTY ATTORNEY: X	IT DEPARTMENT:
AUDITOR: <u> X </u>	PURCHASING DEPARTMENT: <u> X </u>
PERSONNEL: _____	PUBLIC WORKS: _____
BUDGET COORDINATOR:	OTHER: INDIGENT HEALTH CARE: _____

*****This Section to be Completed by County Judge's Office*****

ASSIGNED AGENDA DATE _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL _____ Date _____

Confidential



**WebTPA Employer Services, LLC
Administrative Services Agreement with
Johnson County Indigent Healthcare**

October 1, 2018

ADMINISTRATIVE SERVICES AGREEMENT

This “**Administrative Services Agreement**” (“**Agreement**”) is entered into this 1st day of October 2018 (the “**Effective Date**”) between **WebTPA Employer Services, LLC** (“**WebTPA**”) and **Johnson County Indigent Healthcare** (“**JCIH**”). WebTPA and JCIH may be collectively referred to in this Agreement as the “**Parties**”, or each separately as a “**Party**”.

Background

- JCIH has established the Johnson County Indigent Healthcare Program (the “**Program**” in order to provide health care services to indigent residents of Johnson County (collectively, “**Participating Members**”);
- JCIH wishes to contract with an independent third party to perform certain administrative services for the Program as outlined in this Agreement;
- WebTPA provides administrative services and has agreed with JCIH to perform certain administrative services for the Program (the “**Services**”; *see* EXHIBIT A, attached);

In consideration of the terms and covenants of this Agreement, the Parties agree:

ARTICLE I: TERM & TERMINATION

1.1 Term. This Agreement shall be effective for an initial term of two (2) years commencing on the Effective Date (the “**Initial Term**”). This Agreement shall automatically renew upon the same terms and conditions each year for successive one-year periods, (each a “**Renewal Term**”) unless modified or terminated as described below. Together, the Initial Term and any Renewal Term(s) are the “**Term**” of this Agreement.

After the Initial Term, WebTPA may modify its Services and Fees (“**Fees**” defined below, Section 3.1) associated with this Agreement by providing sixty (60) days’ prior written notice to JCIH.

1.2 Termination. Either Party may terminate this Agreement at any time, upon 90 days’ prior written notice to the other Party unless the Parties agree to waive the advance written notice requirement.

(a) If JCIH terminates this Agreement during the Initial Term, JCIH shall pay WebTPA all Fees (“**Fees**” defined below, Section 3.1) that would be due to WebTPA during the entire Initial Term as liquidated damages, and not as a penalty. Such damages would be calculated based on the Program’s average enrollment from the Effective Date of the Agreement until the date of Termination, and as specified on Exhibit A.

(b) In the event JCIH terminates this Agreement under Section 1.2, and does not provide the required prior written notice, JCIH shall pay WebTPA three (3) month’s Fees as liquidated damages, and not as a penalty, in addition to Fees already billed, due, and payable.

(c) Upon termination of this Agreement, if JCIH requests that WebTPA continue to process and pay claims pending transition to a new administrative services vendor, such services shall be outside the scope of this Agreement and the duration of such services shall not be considered part of the required notice to terminate.

(d) Either Party may terminate this Agreement if the other Party materially breaches its obligations under this Agreement and fails to cure any such default within ten (10) business days of receiving written notice outlining the alleged material breach(es).

(e) Upon termination of this Agreement, WebTPA shall have no further duties or responsibilities under this Agreement. The Parties may negotiate a short-term extension of this Agreement for WebTPA to pay unpaid, but pending claims as of the termination date.

ARTICLE II: WEBTPA'S RESPONSIBILITIES

WebTPA shall have the following responsibilities during the Term. WebTPA shall use commercially reasonable efforts to perform its Services under this Agreement. WebTPA shall be entitled to rely, without further investigation or inquiry, upon any written, electronic, or oral information or communication from JCIH or representatives of JCIH to WebTPA. Services provided under this Agreement will be performed in accordance with Program guidelines provided to WebTPA by JCIH, which set forth the eligibility and benefit provisions of the Program.

JCIH delegates to WebTPA only those powers and responsibilities which are specifically enumerated in this Agreement. This Agreement does not give WebTPA any discretionary responsibility or authority for the administration of benefits under the Program. JCIH has sole discretion and final authority to administer, manage, and fund the Program in compliance with applicable law. WebTPA does not assume any responsibility for the design of the Program, the adequacy of its funding, or any act or omission or breach of duty by JCIH. Except as otherwise designated in writing by JCIH, all final determinations as to a Participating Member's entitlement to benefits under the Program are to be made by JCIH, including any determination upon appeal of a previously-denied claim for Program benefits.

2.1 Eligibility. WebTPA will:

(a) accept electronic eligibility files in WebTPA's required file format according to a schedule and in a manner agreed upon by the Parties;

(b) if agreed upon by the Parties, process manual entry of ongoing enrollment by accepting completed enrollment forms from the JCIH. With certain exceptions, Participating Member additions and terminations will be done at the direction of the JCIH;

(c) make reports available to JCIH to assist in managing eligibility; and

2.2 Benefit Determination. WebTPA will initially determine claim(s) benefits payable according to the Program guidelines provided by JCIH. However, WebTPA shall have no

discretion to adjudicate claims for benefits under the Program. If any benefit determination requires an interpretation of the Program or the exercise of discretion, WebTPA will contact JCIH and request guidance. If JCIH does not provide WebTPA the requested Program interpretation or other guidance in writing within seven (7) days, WebTPA will continue pending or deny the claim or benefit as if WebTPA were acting under the direction of JCIH to deny the claim.

WebTPA shall refer to JCIH or its authorized representative for final determination, any appeal of a claim for benefits or coverage after initial adverse determination(s), or any class of claims that JCIH may specify, including:

- (a) any question of eligibility or entitlement to coverage under the Program;
- (b) any question about the amount of benefit(s) due under the Program; and
- (c) any other appeal.

2.4 Claim Payment and Notification. This Agreement shall not be deemed to be a contract of insurance under any laws or regulations. WebTPA does not insure, guarantee, or underwrite the liability of JCIH under the Program and shall have no obligation to contribute funds to the Program to pay any Program Liabilities ("Program Liabilities" defined below, Section 3.2). WebTPA shall have no duty to use or advance any of its funds for the payment of Program Liabilities. In the event a federal government agency withholds payments to WebTPA because that agency determines that Program benefits are payable under the Program, JCIH shall reimburse WebTPA for the cost of those Program benefits.

WebTPA will process claims in a timely manner consistent with standard industry practice, and pay claims from a designated account established and owned by JCIH to pay Program Liabilities (the "Claims Payment Account"). The Parties acknowledge and agree that JCIH exclusively owns the Claims Payment Account. WebTPA shall not be obligated to pay more for any Program Liabilities than the current balance in the JCIH's designated account. WebTPA provides reimbursement services only and does not assume any financial risk or obligation with respect to Program Liabilities. In the event WebTPA makes any overpayments for claims in good faith, upon WebTPA discovering any such error(s), it will promptly notify JCIH of the error(s) and make reasonable efforts to recover any overpayments. However, WebTPA is not liable for any such overpayments that are not recovered. Additionally, WebTPA will:

- (a) support the receipt of claims and required supporting documentation via paper and electronic means;
- (b) notify the appropriate provider and Participating Member if additional information is required to process a claim; and
- (d) notify Participating Members and applicable providers about benefit determinations under the Program, including, without limitation, payment, adjustment, denial, or pending claims.

2.5 Program History (Records and Files). The Parties shall maintain or cause to be maintained as required by applicable law and their respective document retention policies, books and records of all Program transactions. After termination of the Agreement, WebTPA shall provide JCIH with reasonable access to Program records and files, and assist transferring this information to JCIH or its designee. All costs associated with the copying and transfer of the Program records shall be paid by JCIH.

2.6 Customer Service. WebTPA will:

(a) provide a toll-free Customer Service phone line staffed by Customer Service Representatives during normal business hours as determined by WebTPA, Monday through Friday, except during WebTPA holidays;

(b) implement and provide Participating Members and JCIH online access to Program information twenty-four (24) hours a day, seven (7) days a week, except during periods of system maintenance or loss of access outside WebTPA's control; and

(c) document electronic communications with Participating Members, JCIH, and pertinent third-parties.

2.7 Billing and Payment. WebTPA will calculate and invoice JCIH the fees for vendor services administered or managed by WebTPA, as detailed on EXHIBIT A. WebTPA will submit vendor requests for payment to JCIH for approval. Upon JCIH's approval and if authorized, WebTPA will pay the vendors' fees from the Claims Payment Account.

2.8 Reporting. WebTPA agrees to:

(a) provide JCIH with WebTPA's standard reports on either a monthly or quarterly basis;

(b) provide JCIH with a check register for each check run;

(c) provide JCIH with access to its Program data in either a text file or Microsoft™ database format, subject to the applicability of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") Privacy Rule;

(d) if JCIH requests, provide additional reporting at WebTPA's standard hourly rates, and

2.9 Confidentiality. WebTPA agrees to take reasonable precautions to prevent the unauthorized disclosure of confidential information to persons unrelated to the Program's administration except as required by a regulatory authority or legal process. WebTPA will use commercially reasonable computer data security measures (including, without limitation access codes, passwords, secure physical location, secure data back-up, and firewall software) to protect against unauthorized access, acquisition, use, deletion or alteration of data. Unless directed otherwise, WebTPA agrees to make Program administrative data accessible to JCIH's personnel

who are directly involved in the administration of the Program, subject to compliance with the HIPAA Security Rule and Privacy Rule. During the Term, the Parties shall comply with HIPAA privacy and security requirements as outlined on EXHIBIT B, attached.

ARTICLE III: JCIH'S RESPONSIBILITIES

JCIH shall have the following responsibilities during the Term and agrees to furnish WebTPA all information it reasonably requests to satisfy WebTPA's obligations under this Agreement.

3.1 Fees. JCIH shall arrange to timely pay WebTPA its fees and the vendor fees specified on EXHIBIT A (collectively, "Fees"). All Fees are due within 30 days from the date of invoice. Once JCIH arranges to timely pay Fees, if necessary, and authorized by JCIH, WebTPA will timely pay the Fees on JCIH's behalf. JCIH may grant WebTPA the authority and provide necessary documentation to draft Fees from the Claims Payment Account when the Fees are due.

The Parties agree to adjust any fees due to WebTPA, *pro rata*, in the event JCIH's actual Program Participation decreases below ninety percent (90%) of expected Program Participation.

3.2 Financial Responsibility. JCIH is solely responsible for, and shall pay all Program liabilities and obligations, including without limitation: (i) all claims and benefits due Participating Members under the Program; (ii) other expenses to administer the Program; and (iii) fees, fines, assessments and penalties incurred in connection with the administration of the Program (collectively, (i), (ii), and (iii) above, are "Program Liabilities").

3.3 Benefit Determination, Funding, and Liability. JCIH retains full discretionary control authority, and responsibility to maintain a compliant Program, including required amendments to ensure: (i) ongoing compliance with applicable law; (ii) accurate determination of benefits and payment of claims; and (iii) timely, proper funding, operation, and administration of the Program, to ensure JCIH does not breach this Agreement. Further, JCIH is solely responsible for: (iv) giving all legal notices required under applicable law; and (ii) any other documentation required to ensure compliance.

Additionally, JCIH will:

- (a) Establish, maintain, and timely fund the Claims Payment Account to pay all Program Liabilities;
- (b) Pay or grant WebTPA the authority to pay Program Liabilities out of the Claims Payment Account pursuant to the Program guidelines provided by JCIH;
- (c) Pay or grant WebTPA the authority to pay Fees out of the Claims Payment Account according to EXHIBIT A of this Agreement;
- (d) Grant WebTPA authority and provide necessary documentation for WebTPA to have check-signing authority on the Claims Payment Account; and

(e) JCIH shall ensure Program compliance with applicable laws, including without limitation: (i) file any required tax or other government-required returns and forms related to the Program; (ii) adjudicate Participating Members' claim(s) appeals; (vi) execute and retain required Program and claims documentation; and (iii) take all other steps necessary to maintain and operate the Program in compliance with applicable provisions of the Program, and applicable laws.

3.4 Eligibility. JCIH shall:

(a) provide WebTPA with current and accurate Program eligibility and coverage records;

(b) timely verify employee or Participating Member eligibility;

(c) identify and timely provide to WebTPA written verification of Participating Members' terminations. WebTPA is not obligated to reimburse Fees on terminations reported more than 90 days after the actual termination date; and

3.5 Taxes and Other Fees. JCIH is solely responsible to file any returns and pay any and all taxes, licenses, and fees levied by any local, state, or federal authority in connection with the Program and administration of the Program.

ARTICLE IV: REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties. Each Party represents and warrants to the other that: (i) each Party is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which such Party is organized, and has all requisite legal power and authority to own, lease, operate, and conduct its business as it is now being conducted; (ii) each Party has taken all necessary and appropriate action to approve, execute, deliver, and perform this Agreement, which is enforceable against such Party according to its terms; (iii) each Party's execution, delivery, and performance of this Agreement will neither violate, conflict with, or result in a breach of either Party's governing-entity documents, any indebtedness, license, franchise, permit, lease, contract, agreement, or other written commitment or obligation to which such Party may be bound or affected; or violate any order, writ, injunction, decree, judgment, legal ruling, law, rule, or regulation of any court or governmental authority, domestic or foreign, applicable to such Party; (iv) no consent, approval, or authorization of, notice or declaration to, or filing a registration with, any third party or governmental or regulatory authorities is necessary in connection with the execution, delivery, and performance of this Agreement; and (v) each Party has not, in any material respect, violated any applicable law, regulation, order of any jurisdiction, other requirement of any government, regulatory, or administrative agency, or court or that would impair either Party's rights or duties under this Agreement.

4.2 Licensure/Compliance. WebTPA agrees to: (i) comply with any state licensing requirements to perform its duties under this Agreement, including without limitation being duly licensed as a Third Party Administrator in all jurisdictions requiring such license; and (ii) maintain such licenses throughout the Term of this Agreement.

ARTICLE V: GENERAL

5.1 Entire Agreement. This Agreement and EXHIBITS collectively supersede any and all prior representations, statements, understandings, proposals, negotiations, or other agreements between JCIH and WebTPA, that relate to WebTPA's systems and Services which will be rendered to JCIH and assist with its administration of the Program. This Agreement combined with its EXHIBITS constitute the Parties' entire agreement and understanding respecting WebTPA's provision of administrative services to the Program. This Agreement shall not be modified or amended except in writing signed by both Parties.

5.2 Relationship of the Parties. The Parties and their respective representatives shall be deemed independent contractors for all purposes under this Agreement. This Agreement shall not be deemed or construed to create the relationship of employer and employee, partnership, or any type of joint venture between the Parties. This Agreement is between JCIH and WebTPA and shall not be construed to create any rights or legal relations between WebTPA and any Participating Members or beneficiaries of the Program.

5.3 Applicable Law. Except as otherwise specified or pre-empted, this Agreement and the Parties' legal relations shall be governed by and construed according to the laws of the State of Texas without regard to any conflicts of laws principles that would require the application of different substantive law.

5.4 Assignment. The Parties agree that WebTPA may assign or transfer its rights, interests, duties, or obligations under this Agreement, without JCIH's prior written consent. This Agreement shall be binding upon and inure to the benefit of WebTPA's successors and assigns.

5.5 Third Party Services. WebTPA may perform the Services as specified on EXHIBIT A directly, through subsidiary or affiliate entities. In the event JCIH utilizes third-party vendors to perform services which WebTPA will manage (e.g., network access, utilization review, subrogation, out-of-network repricing, etc.). WebTPA will promptly notify JCIH of any changes to the third-party vendors' rates and services. WebTPA is entitled to modify billings for fees occasioned by any third-party vendor rate changes, without modifying this Agreement as outlined in Section 5.1, above. JCIH agrees to comply and will cause its subcontractors' (if any) to comply with WebTPA's, reasonable, third-party vendor confidentiality requirements, for all such third-party vendors providing Services to the Program (*see* Exhibit A), for which JCIH receives timely notice from WebTPA.

5.6 Indemnification. To the extent allowed by law, JCIH will indemnify, defend, and hold WebTPA and its officers, directors, employees, agents, attorneys, and affiliates harmless from and against any and all claims, suits, actions, liabilities, Program Liabilities, losses, fines, penalties, damages, and expenses of any kind related to the Program including, but not limited to direct, incidental, consequential, exemplary or punitive damages, expenses and fees, including court costs, defense costs, arbitration costs, and reasonable attorneys' fees (collectively, "Damages") asserted against or incurred by WebTPA, to the extent that such Damages are caused by, arise from or are based upon:

- (a) JCIH's negligence, willful misconduct, or violation of any common law, statute, or government regulation in the performance of its duties under this Agreement or administering the Program;
- (b) any Program interpretation, any eligibility determination, and decisions about: coverage, benefits payable under the Program, and appeals of previously-denied claims;
- (c) any claim for benefits under the Program; and

WebTPA will indemnify, defend, and hold JCIH and its officers, directors, employees, agents, attorneys, and affiliates harmless from and against any and all Damages incurred by JCIH, to the extent that such Damages are based upon a legal finding that WebTPA's gross negligence, willful misconduct, or criminal conduct caused JCIH the Damages for which it seeks indemnity; provided, however, that WebTPA shall not be liable for any Damages incurred by JCIH resulting from WebTPA's actions taken at JCIH's specific direction.

The Parties agree that a Party seeking indemnity ("Indemnified Party") will give written notice to the other Party ("Indemnifying Party") within thirty (30) days of Indemnified Party receiving notice of facts that may give rise to an indemnity claim ("Indemnity Claim"). The Indemnified Party will provide the Indemnifying Party an opportunity to control the defense of any Indemnity Claim. However, Indemnified Party's failure to notify Indemnifying Party will not relieve Indemnifying Party of any liability that it may have to Indemnified Party, except to the extent that Indemnifying Party demonstrates that the defense of any Indemnity Claim is materially prejudiced by Indemnified Party's failure to give such notice. Indemnifying Party shall not settle any Indemnity Claim on behalf of Indemnified Party without its prior written consent, which consent shall not be unreasonably withheld or delayed.

5.7 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court having lawful jurisdiction over the Parties and the subject-matter of any litigation, such provision shall be fully severable. The Parties agree that this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never part of this Agreement, and the remaining terms shall remain in full force and effect, unaffected by the illegal, invalid, or unenforceable provision.

5.8 Non Solicitation. JCIH agrees that during the Term and for two (2) years thereafter, JCIH shall not directly or indirectly, induce or attempt to induce any WebTPA employee to leave their employment or engagement with WebTPA.

5.9 Notices. All notices required to be given under this Agreement shall be deemed given: (i) three (3) days after deposit in U.S. Mail, first class postage prepaid, certified mail, return receipt requested; or (ii) one (1) day after arranging for delivery the next day, prepaid, by a nationally-recognized, next day courier... and addressed as follows:

To WebTPA at:

WebTPA Employer Services, LLC
8500 Freeport Parkway South
Suite 400
Irving, TX, 75063
Attn: Joe Pascullo


To JCIH at:
Johnson County Indigent Healthcare
Johnson County Indigent Healthcare
2 North Main Street
Cleburne, TX 76033
Attn: Roger Harmon, County Judge

5.10 Limitation of Liability. The cumulative liability of WebTPA to JCIH for any actual or alleged losses, claims, suits, controversies, breaches, attorneys' fees, or damages for any cause arising out of, based on or relating to this agreement, whether based upon breach of contract, tort (including negligence), indemnity or any other legal theory, shall not exceed the total amount of WebTPA's Medical Administration Fees actually paid under this agreement by JCIH to WebTPA during the twelve months immediately preceding JCIH's claim. However, nothing in the preceding sentence shall limit WebTPA's liability for its criminal conduct, or fraud. In no event shall WebTPA be liable to JCIH under any legal or equitable theory for any indirect, special, incidental, consequential, punitive or exemplary damages, even if such damages were foreseeable or WebTPA has been advised of the possibility of such damages.


5.11 Force Majeure. Neither Party shall be deemed in default under this Agreement for any cessation, interruption, or delay in the performance of its obligations under this Agreement caused by forces beyond its reasonable control, including, but not limited to, natural disaster, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

The Parties have duly executed this Agreement as of the date first indicated above.

WebTPA Employer Services, LLC

By: 
Name: Joe Pascullo
Title: Executive Vice President

Johnson County Indigent Healthcare

By: 
Name: Roger Harmon
Title: County Judge

**EXHIBIT A
FEES FOR ADMINISTRATIVE SERVICES
JOHNSON COUNTY INDIGENT HEALTHCARE**

JCIH shall pay the following amounts as "Fees" according to Section 3.1 of the Agreement. For purposes of this Exhibit A, the term PEPM shall mean "Per Employee Per Month."

WSP/TPA Claims Administration Services	Fees
<ul style="list-style-type: none"> • Claims Administration <ul style="list-style-type: none"> • Claim Adjudication • Customer Service • Eligibility Coordination • State Required Reporting • Program Reporting • Ad-hoc Reporting 	<p>\$10.42 Per Transaction</p>

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT B BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is effective October 1, 2018 between **Johnson County Indigent Healthcare** (the "Covered Entity") and **WebTPA Employer Services, LLC**, a Texas limited liability company (the "Business Associate").

Covered Entity is receiving, and Business Associate is providing services in connection with the operation of Covered Entity, pursuant to the terms of an agreement between them dated October 1, 2018 (the "Services Agreement"). This Agreement sets forth certain terms that apply to the relationship between Covered Entity and Business Associate that arises out of the Services Agreement, and which are required by the Health Insurance Portability and Accountability Act, Public Law 104-191, as amended ("HIPAA"). The terms of this Agreement shall be interpreted and applied consistently with HIPAA. In the event no effective date is entered above, this Agreement will be effective as of the date the Agreement is executed.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties intend to be legally bound and agree as follows:

SECTION 1 DEFINITIONS

Unless otherwise specified in this Agreement, all capitalized terms not otherwise defined shall have the meanings established for purposes of Title 45, Parts 160, 162 and 164, of the United States Code of Federal Regulations, as amended from time to time. For purposes of clarification, the following terms are defined as set forth herein below:

- 1.1 **"Breach"** means the acquisition, access, use, or disclosure of protected health information in a manner not permitted which compromises the security or privacy of such information. Breach does not include the three exceptions contained in 45 C.F.R. § 164.402(1).
- 1.2 **"Breach Notification Rule"** means the HIPAA Regulations pertaining to breaches of Unsecured PHI as codified in 45 C.F.R. Parts 160 and 164.
- 1.3 **"Discovery"** means the first day on which a Breach is known to Business Associate (including any person, other than the individual committing the breach, that is a workforce member or other agent of Business Associate), or by exercising Reasonable Diligence would have been known to Business Associate, to have occurred.
- 1.4 **"Electronic PHI" or "E PHI"** means PHI that is transmitted by or maintained in electronic media.
- 1.5 **"Electronic Transactions Rule"** shall mean the final regulations issued by the Department of Health and Human Services ("HHS") concerning standard transactions and code sets under 45 CFR Parts 160 and 162.

- 1.6 **“Privacy Rule”** means the HIPAA Regulations as codified in 45 C.F.R. Parts 160 and 164.
- 1.7 **“Protected Health Information”** or **“PHI”** means 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 of 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 has the meaning given to such term in the Privacy Rule.
- 1.8 **“Security Incident”** has the meaning set out in the Security Rule. Generally, a **“Security Incident”** means any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or systems operations in an electronic information system.
- 1.9 **“Security Rule”** means the Security Standards and Implementation Specifications at 45 C.F.R. Parts 160 and 164.
- 1.10 **“Unsecured PHI”** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of either the encryption method or the destruction method, as defined in Department of Health and Human Services (“HHS”) guidance published on April 27, 2009 (74 FR 19006) and modified by guidance published on August 24, 2009 (74 FR 42740). Unsecured PHI can include information in any form or medium, including electronic, paper, or oral.

SECTION 2 PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 2.1 **General Permitted Uses and Disclosures.** Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule (or Covered Entity’s policies and procedures) if done by Covered Entity. Business Associate will, in its performance of the functions, activities, services, and operations specified above or detailed in the Services Agreement, make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered Entity’s PHI reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclosure or request to the minimum necessary. Business Associate and Covered Entity acknowledge that the phrase “minimum necessary” shall be interpreted in accordance with the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), passed as part of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and government guidance of the definition.

- 2.2 Permitted Uses and Disclosures for Legal Responsibilities.** Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- 2.3 Permitted Uses and Disclosures for Administration.** Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are required by law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which he/she is aware in which the confidentiality of the information has been breached.
- 2.4 Permitted Uses and Disclosures to Federal and State Authorities.** Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with Federal and State laws and regulations, provided that Business Associate believes in good faith that Covered Entity had engaged in conduct that is unlawful or otherwise violates professional or clinical standard, or that the care, services, or conditions provided by Covered Entity potentially endangers one or more patients, workers, or the public and the disclosure is to a health oversight agency or public health authority, or an attorney retained by or on behalf of Business Associate.
- 2.5 Permitted Uses and Disclosures for Health Oversight Activities.** Business Associate may disclose PHI to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other appropriate oversight activities, including those necessary for oversight of Government benefit programs for which health information is relevant to beneficiary eligibility.
- 2.6 Data Aggregation and De-Identification.** Except as otherwise limited in this Agreement, Business Associate may use PHI to perform data aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B). Business Associate also may de-identify PHI received or created pursuant to this Agreement, provided that the de-identification process conforms to the requirements of 45 C.F.R. § 164.514(b).

SECTION 3 OBLIGATIONS OF BUSINESS ASSOCIATE

- 3.1 Use of PHI.** Business Associate shall not use or further disclose PHI other than as expressly permitted or required by this Agreement or as required by law. However, Business Associate may use PHI for the purpose of managing its internal business processes relating to its functions under this Agreement. Finally, Business Associate shall require that any subcontractors that create, receive, maintain, or transmit PHI on behalf of

Business Associate agree to comply with the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

3.2 Disclosure of PHI. Business Associate shall:

- (a) not disclose PHI to any person other than employees or subcontractors of Business Associate, except as approved by Covered Entity in writing. Any such disclosure to a subcontractor shall be made only upon the execution of a separate business associate agreement by the subcontractor and the Business Associate to be bound by the provisions of this Agreement, for the express benefit of Business Associate and Covered Entity;
- (b) not disclose PHI to its employees unless Business Associate has advised them of Business Associate's obligations under this Agreement, and the consequences for employees and for Business Associate of violating them. Business Associate shall take appropriate disciplinary action against any employee who uses or discloses PHI in contravention of this Agreement; and
- (c) disclose PHI to any person other than employees or subcontractors of Business Associates only according to the Notice of Privacy Practices provided to Business Associate by Covered Entity.

3.3 Appropriate Safeguards. Business Associate shall use appropriate safeguards and comply, when applicable, with the Security Rule with respect to EPHI, to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall provide Covered Entity with such information concerning such safeguards as Covered Entity may from time to time request.

3.4 Compliance with the Security Rule. The Business Associate will comply, when applicable, with the Security Rule with respect to EPHI.

3.5 Subcontractors. Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to comply with the applicable requirements of the Security Rule by entering into a contract or other arrangement that complies with the Privacy Rule, Security Rule, Breach Notification Rule, and this Agreement.

3.6 Delegation of Covered Entity's Duties. To the extent Business Associate is to carry out Covered Entity's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule in performance of such obligations.

3.7 Access to Networks. Business Associate agrees that while present at any Covered Entity facility and/or when accessing the Covered Entity's computer network(s), it and all of its employees, agents, representatives and subcontractors shall at all times comply with any network access and other security practices, procedures and/or policies established by the

Covered Entity including, without limitation, those established pursuant to HIPAA's Security Rules.

- 3.8 Reporting.** Business Associate shall provide Covered Entity with information regarding all unauthorized uses and disclosures of PHI by Business Associate, its employees or subcontractors not permitted by this Agreement and of which it becomes aware, including Breaches of Unsecured PHI as required by the Breach Notification Rule, and the remedial action taken or proposed to be taken with respect to such prohibited use or disclosure.
- 3.9 Mitigation.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 3.10 Access to PHI.** Business Associate shall, at the request of Covered Entity, provide PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements of an individual's right of access and requests for access to his or her PHI. For PHI contained in an electronic health record, the Business Associate must provide a copy in an electronic format, if requested by the Covered Entity or the individual.
- 3.11 Accounting of Disclosures.** Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI; and provide to Covered Entity or an individual, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI by providing the requested documentation of disclosures promptly to Covered Entity.

If it is determined that the Business Associate maintains an electronic health record as defined by the HITECH Act, the Business Associate will, in addition to documenting disclosures for purposes other than for treatment, payment, or health care operations, document disclosures for the purposes of treatment, payment, or health care operations in accordance with the provisions of the HITECH Act.

- 3.12 Amendment to PHI.** Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to at the request of Covered Entity or an individual, and in the time and manner designated by Covered Entity.
- 3.13 Unauthorized Uses and Disclosures.** In the event Business Associate becomes aware of a Security Incident involving EPHI, by itself or any of its agents or subcontractors, Business Associate shall promptly notify Covered Entity, in writing, of such Security Incident. For any Security Incidents that are attempted but unsuccessful, Business Associate may notify Covered Entity in a monthly aggregate report. Covered Entity and Business Associate agree to act together in good faith to take reasonable steps to investigate and mitigate any harm caused by such unauthorized use or Security Incident.

3.14 Breach of Unsecured PHI. When a Breach of Unsecured PHI occurs, the Business Associate shall notify the Covered Entity without unreasonable delay and in no case later than sixty (60) calendar days after Discovery. The notification shall include the identification of each individual affected or reasonably believed by the Business Associate to be affected by the Breach. In addition, the Business Associate will provide the Covered Entity with any information that the Covered Entity needs for the required notifications under the Breach Notification Rule without unreasonable delay. The Business Associate will be responsible for the reasonable costs of the Covered Entity that are incurred due to a Breach that occurs while the Business Associate is responsible for the privacy and security of the information.

3.15 Sale of PHI. Business Associate is prohibited from exchanging PHI for direct or indirect remuneration without obtaining the individual's authorization, unless an exception applies pursuant to 45 CFR 164.502(a).

3.16 Marketing. The Business Associate may receive financial remuneration and use or disclose PHI for marketing communications that:

(a) are refill reminders or other communications about a drug or biologic that is currently being prescribed for an individual, but only if any financial remuneration received by the Business Associate in exchange for making the communication is reasonably related to the Business Associate's cost of making the communication; or

(b) are made by the Program with a HIPAA-compliant authorization from the individual.

Business Associate may also make communications for treatment of an individual by a health care provider, including case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual, or for case management or care coordination, contacting of individuals with information about treatment alternatives, and related functions to the extent these activities do not fall within the definition of treatment, but may not receive financial remuneration for such communications. For the purposes of this Section 3.16, financial remuneration means direct or indirect payment from or on behalf of a third party whose product or service is being described. Direct or indirect payment does not include any payment for treatment of an individual.

3.17 Compliance. Business Associate shall make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, documentation required by the Security Rule relating to safeguards, and documentation required by the Breach Notification Rule available to Covered Entity, or to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule, Security Rule, and Breach Notification Rule.

- 3.18 Compliance With Electronic Transactions Rule.** If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any of its own subcontractors it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transactions Rule and of any operating rules adopted by HHS with respect to Transactions.
- 3.19 Amendment of Agreement.** Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to Business Associate, amend this Agreement in such manner as Covered Entity determines necessary to comply with such law or regulation.

SECTION 4 OBLIGATIONS OF COVERED ENTITY

- 4.1 Obligations of Covered Entity.** The Covered Entity shall:
- (a) provide Business Associate with a copy of its Notice of Privacy Practices, and will notify Business Associate of any limitation(s) in its Notice of Privacy Practices, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
 - (b) notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI;
 - (c) notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity agreed to with an individual, to the extent that such restriction may affect Business Associate's use or disclosure of PHI. The Covered Entity is required to agree to a restriction, and the Business Associate must comply with the restriction, in the case of a disclosure to a health plan for payment or health care operations (and is not for the purposes of carrying out treatment) and the PHI pertains solely to a health care item or service for which the health care provider involved has been paid by the patient or participant in full and not by the health plan; and
 - (d) ensure that it has properly executed business associate agreements with all other entities that create, receive, maintain, or transmit PHI on behalf of Covered Entity. The Business Associate may rely on Covered Entity's representation that it has properly executed such agreement in the case that Covered Entity directs Business Associate to exchange, transfer or accept PHI with a separate business associate of the Covered Entity. Additionally, if any subcontractor is working on behalf of a separate business associate who is assisting the Covered Entity, Business

Associate may rely on Covered Entity's representation that the separate business associate has properly executed a subcontractor agreement that complies with HIPAA with such subcontractor; and

- (e) notify Business Associate if an individual has requested that PHI be provided directly to a third party pursuant to a written request signed by the individual that clearly identifies the third party.

SECTION 5 REQUESTS BY COVERED ENTITY

- 5.1 Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

SECTION 6 TERM AND TERMINATION

- 6.1 Term.** The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is not feasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement.

- 6.2 Business Associate's Failure to Comply with HIPAA Obligations.**

- (a) Opportunity to Cure: Termination. If Business Associate notifies Covered Entity, or Covered Entity otherwise has reason to believe, that Business Associate has violated a material term of any of the requirements set forth in this Agreement and Covered Entity determines that a cure of such violation is possible, not later than five (5) business days following Covered Entity's request, the Parties shall meet (in person or by telephone) to discuss Covered Entity's concerns. Following such meeting, Business Associate shall advise Covered Entity whether it agrees or disagrees with Covered Entity's concerns. If Business Associate agrees with Covered Entity's concerns, not later than five (5) business days after such meeting, Business Associate shall propose to Covered Entity a course of action to address Covered Entity's concerns (a "Corrective Plan") and, if necessary, the Parties thereafter shall engage in good faith discussions in an effort to reach agreement on the terms of the Corrective Plan. If Business Associate materially fails to implement the terms of the mutually agreed Corrective Plan, then, in addition to any other rights and remedies that may be available to Covered Entity, upon written notice to Business Associate, Covered Entity shall have the right to terminate the Agreement in its entirety. If Business Associate disagrees with Covered Entity's concerns, then the Parties will engage in good faith discussions at successively higher levels of management until the dispute has been resolved. Notwithstanding

the foregoing, if the Parties are unable to reach agreement on the terms of the Corrective Plan or otherwise are unable to reach agreement with respect to Covered Entity's concerns within sixty (60) calendar days following Covered Entity's initial request for a meeting as described above, and Covered Entity has determined that Business Associate has violated a material term of any of the requirements set forth in this Agreement then, upon written notice to Business Associate, Covered Entity shall have the right to terminate the Agreement in its entirety.

- (b) No Opportunity to Cure: Termination. If Business Associate notifies Covered Entity, or Covered Entity otherwise has reason to believe, that Business Associate has violated a material term of any of the requirements set forth in this Agreement and the Covered Entity believes that a cure of such violation is not possible, then Covered Entity shall have the right upon written notice to Business Associate to terminate the Agreement in its entirety. If Covered Entity determines that the termination of the Agreement is not feasible, it shall report the violation to the Secretary of Health and Human Services.

6.3 Covered Entity's Failure to Comply with HIPAA Obligations.

- (a) Opportunity to Cure: Termination. If Covered Entity notifies Business Associate, or Business Associate otherwise has reason to believe, that Covered Entity has violated a material term of any of the requirements set forth in this Agreement and Business Associate determines that a cure of such violation is possible, not later than five (5) business days following Business Associate's request, the Parties shall meet (in person or by telephone) to discuss Business Associate's concerns. Following such meeting, Covered Entity shall advise Business Associate whether it agrees or disagrees with Business Associate's concerns. If Covered Entity agrees with Business Associate's concerns, not later than five (5) business days after such meeting, Covered Entity shall propose to Business Associate a course of action to address Business Associate's concerns (a "Corrective Plan") and, if necessary, the Parties thereafter shall engage in good faith discussions in an effort to reach agreement on the terms of the Corrective Plan. If Covered Entity materially fails to implement the terms of the mutually agreed Corrective Plan, then, in addition to any other rights and remedies that may be available to Business Associate, upon written notice to Covered Entity, Business Associate shall have the right to terminate the Agreement in its entirety. If Covered Entity disagrees with Business Associate's concerns, then the Parties will engage in good faith discussions at successively higher levels of management until the dispute has been resolved. Notwithstanding the foregoing, if the Parties are unable to reach agreement on the terms of the Corrective Plan or otherwise are unable to reach agreement with respect to Business Associate's concerns within sixty (60) calendar days following Business Associate's initial request for a meeting as described above, and Business Associate has determined that Covered Entity has violated a material term of any of the requirements set forth in this Agreement then, upon written notice to Covered Entity, Business Associate shall have the right to terminate the Agreement in its entirety.

(b) No Opportunity to Cure: Termination. If Covered Entity notifies Business Associate, or Business Associate otherwise has reason to believe, that Covered Entity has violated a material term of any of the requirements set forth in this Agreement and the Business Associate believes that a cure of such violation is not possible, then Business Associate shall have the right upon written notice to Covered Entity to terminate the Agreement in its entirety. If Business Associate determines that the termination of the Agreement is not feasible, it shall report the violation to the Secretary of Health and Human Services.

6.4 Effect of Termination. Except as provided in the following paragraph, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity that it maintains in any form or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors of Business Associate. Business Associate shall retain no copies of the PHI.

In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

SECTION 7 MISCELLANEOUS

7.1 Amendment and Addenda. The parties agree to amend this Agreement from time to time as necessary for Covered Entity to comply with the requirements of HIPAA. Any addenda attached as an appendix to this Agreement shall be an integral part of this Agreement, and this Agreement and any such addenda shall be interpreted as one and the same instrument unless otherwise stated in such addenda.

7.2

7.3 Survival. The respective rights and obligations of Business Associate under Section 6.4 of this Agreement shall survive the termination of this Agreement.

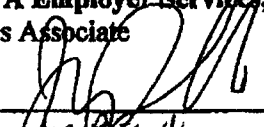
7.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA.

7.5 Counterpart Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together constitute one and the same instrument.


7.6 **No Third-Party Beneficiaries.** The parties agree that there shall be no incidental or intended third-party beneficiaries under this agreement. Nor shall any other person or entity have rights arising from the same.

IN WITNESS WHEREOF, the parties have caused this BAA to be duly executed effective as of the date first written above.

WebTPA Employer Services, LLC
Business Associate

By: 
Name: Joe Pisculli
Title: Executive Vice President

Johnson County Indigent Healthcare
Covered Entity

By: 
Name: Roger Harman
Title: County Judge