

**REQUEST FOR AGENDA PLACEMENT FORM**

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

**SUBMITTED BY:** Bill Moore

COMMISSIONERS COURT

**TODAY'S DATE:** April 5, 2022

APR 11 2022

**DEPARTMENT:** County Attorney

**SIGNATURE OF DEPARTMENT HEAD:**

**Approved**

**REQUESTED AGENDA DATE:** April 11, 2022

**SPECIFIC AGENDA WORDING:** Consideration of Commissioners Court Order # 2022-23 Granting an Exemption Under Section 262.024, Local Government Code, From the Bidding Requirements of Section 262.023, Local Government Code, Upon the Commissioners Court Finding that the Medical Services provided by Texas Health Physician's Group for OBGYN services are Professional Services.

Consideration and approval of Agreement for Professional Services between Johnson County and Texas Health Physician's Group for OBGYN services and associated services.

**PERSON(S) TO PRESENT ITEM:** David Blankenship

**SUPPORT MATERIAL:** Agreement and Commissioners Court Order attached

**TIME:** 3 Minutes

**ACTION ITEM:**  X

**WORKSHOP:** \_\_\_\_\_

(Anticipated number of minutes needed to discuss item) **CONSENT:** \_\_\_\_\_

**EXECUTIVE:** \_\_\_\_\_

**STAFF NOTICE:**

COUNTY ATTORNEY:  x

IT DEPARTMENT: \_\_\_\_\_

AUDITOR: \_\_\_\_\_

PURCHASING DEPARTMENT:  x

PERSONNEL: \_\_\_\_\_

PUBLIC WORKS: \_\_\_\_\_

BUDGET COORDINATOR: \_\_\_\_\_

OTHER:  Sheriff

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

ASSIGNED AGENDA DATE: \_\_\_\_\_

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE \_\_\_\_\_

COURT MEMBER APPROVAL \_\_\_\_\_ Date \_\_\_\_\_

## PURCHASED SERVICES AGREEMENT

This Purchased Services Agreement (the "Agreement") is effective the later of April 1, 2022, or the date signed by the parties, and is by and between Texas Health Physicians Group, a Texas non-profit corporation ("Group"), and Johnson County, Texas (a political subdivision of the State of Texas) Correctional Facility ("Client").

### RECITALS

WHEREAS, Client is a County correctional facility that desires to engage a physician to provide professional services in the specialty of Obstetrics/Gynecology to its patients in custody;

WHEREAS, Group employs Landon Lorenz, M.D., a physician who is licensed to practice medicine in Texas and is qualified and willing to provide professional services in the specialty of Obstetrics/Gynecology (the "Physician"); and

WHEREAS, Client desires for Group to provide professional services in the specialty of Obstetrics/Gynecology through Physician, and Group is willing to provide such services.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Services to be Provided. Subject to Physician's availability, Group hereby agrees to provide professional services in the specialty of Obstetrics/Gynecology to patients in custody of Client (the "Services").
2. Term and Termination.
  - 2.1 Term. The term of this Agreement shall commence on the effective date stated above and shall continue for a period of one (1) year; with an option to extend the contract for two additional one-year terms upon written agreement of both parties
  - 2.2 Termination. Either party may terminate this Agreement at any time with or without cause upon thirty (30) days written notice to the other party. In the event Group becomes unavailable or incapable of performing the Services, Client may terminate this Agreement immediately. In the event a party terminates this Agreement, Client's sole liability hereunder shall be payment to Group for undisputed amounts Services rendered prior to the termination date.

Client may terminate the Services at any time after the occurrence of Group's failure to perform any of its obligations or responsibilities set forth in this Agreement upon ten (10) days following written notice by Client to Group. In the event of any termination, Group shall be paid for the Services provided, but not paid for, prior to such termination based upon the purchase price agreed to herein.

3. Compensation. For all Services, Client agrees to pay Group a fee as described on Exhibit A which is attached hereto and incorporated herein.

4. Services Standards. Group shall perform the Services in accordance with standards in the industry for the same or similar services. Group represents and warrants that the services provided by Group will comply with applicable laws and regulations including the False Claims Act, the Medicare Anti-Kickback Law, and the Medicare fraud and abuse laws, including the Stark law, and that Group will exercise due professional care and competence in the performance of the Services.

5. Client's Obligation to Provide a Guard. Client will provide a Law Enforcement Officer/Jailer/Forensic Staff Member (a "Guard") to accompany a patient in custody when receiving Services. A patient in custody will never be left unattended by a Guard for any reason. A Guard will accompany the patient in custody to all treatment areas and will stay in the room or in the hallway near the door at all times.

6. Indemnification; Insurance.

6.1 Indemnification. Group shall indemnify Client for any liabilities, losses, (including attorneys' fees and expenses) arising out of the Services provided by Group including liabilities, losses, interest, penalties, and settlement amounts which exceed actual overpayments payable by Client to any government or private payor as part of a federal or state regulatory review or payor review of Client and any acts related to the performance of Group's employees. Such indemnity shall survive termination or expiration of this Agreement.

6.2 Insurance Coverage. Group agrees to carry insurance coverage with minimum coverage amounts as follows:

Professional Liability Insurance covering Group, its employees, and any other persons contracting with Group for the Services hereunder. Said policies shall contain minimum limits of liability of \$1,000,000 per claim/occurrence and \$3,000,000 in the aggregate.

General Liability Insurance covering third party claims for bodily injury and property damage arising from the premises and operations of Group. Such policy shall contain minimum limits of liability of \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate.

Worker's Compensation and Employers' Liability Insurance covering its statutory and legal obligations for employee job related injuries or illnesses. Said policy shall provide for statutory benefits and contain minimum limits of liability of \$500,000.00 per accident. Such policy shall be supplemented by an excess general liability umbrella policy with a minimum limit of liability of \$5,000,000.

Group agrees to provide Client with certificates of insurance reflecting the above insurance coverage requirements prior to or upon execution of this Agreement.

Group further agrees to notify Client of any changes to her insurance coverage in the above categories subsequent to the execution of this Agreement.

7. Miscellaneous.

- 7.1 Amendment. This Agreement may be amended only by written agreement of both parties.
- 7.2 Amendment/Modification of Agreement for Continued Compliance. In the event that any provision of this Agreement becomes impermissible or unlawful, or otherwise has or may have an adverse impact upon the tax-exempt status of Group or any tax-exempt bond or covenant of Group or any Group affiliate (or any Obligated Group of which Group is a member), the status of Client as a provider under the Medicare or Medicaid programs, or Group's accreditation of Client by The Joint Commission or other accrediting body, as a result of: (a) any law, (b) any rules, ruling or regulation enacted or promulgated by any federal, state or other governmental administrative body, (c) any court or governmental administrative agency decision, (d) any bond covenant, or (e) any standard of The Joint Commission or other accrediting body, then based upon the advice of legal or tax counsel to Group, if Group determines that such provision, as well as any other provisions of this Agreement, must be modified for this Agreement to remain in compliance with any such law, rule, regulation, decision or standard, Group shall give notice of such fact to Client. In such event, the parties shall have a period of thirty (30) days following the giving of such notice to renegotiate the affected provision(s) in a manner which preserves the original purposes and intent of this Agreement. If an agreement cannot be reached within such thirty (30) day period, either party may terminate this Agreement upon providing thirty (30) days prior written notice to the other party.
- 7.3 Assignment. Neither party may assign or transfer this Agreement, or any portion thereof, without the prior written consent of the other party. Any assignment or transfer of this Agreement or any portion thereof without such written consent will void this Agreement. However, Group shall have the power and right to assign its interest in the Agreement to any successor-in-interest of Group or to any subsidiary, parent corporation, sponsor, wholly owned or controlled affiliate of Group.
- 7.4 Audit of Agreement. Group agrees to cooperate with Client's or any state or federal entity regarding any audit of this Agreement including allowing Client access to any of Group's books and records that are relevant and necessary to verify the nature and cost of services Group provided under this Agreement.
- 7.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes any and all prior and contemporaneous oral or written understandings. This Agreement may not be altered, amended or modified except by a written document executed by both parties.

7.6 Governing Law, Jurisdiction and Venue. This Agreement shall be governed by, construed and enforced in accordance with the substantive laws of the State of Texas (but not including its conflict of laws rules if and to the extent such rules would apply the substantive laws of another jurisdiction). Venue for litigation of any dispute arising under this agreement or any lawsuit to enforce or interpret this Agreement shall be in an appropriate court located in the county in which Client is located. The parties agree that the county in which Client is located is the county in which performance of this Agreement shall take place.

7.7 Medicare Access to Records. To the extent required by Section 1395x(v)(1)(I) of Title 42 of the United States Code, until the expiration of four years after the termination of this Agreement, Group shall, upon written request, make available to the Secretary of the United States Department of Health and Human Services, or to the Comptroller General of the United States General Accounting Office, or to any of their duly authorized representatives, or to Texas Health and Human Services Commission or to the Department of Aging and Disabilities or to Texas State Auditor's Office or to the Office of the Attorney General of Texas or the Office of the Inspector General, a copy of this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs of the services Group provided under this Agreement.

7.8 Notices. Any notice, request or other communication required under this Agreement shall be in writing and shall be deemed to have been given or made if delivered personally, by overnight delivery service, by United States mail, to the parties at the following addresses, or at such other addresses as shall be specified in writing by either of the parties to the other in accordance with the terms and conditions of this subsection:

If to Group: Texas Health Physicians Group  
612 E. Lamar Boulevard, Suite 500  
Arlington, Texas 76011  
Attention: President

Copy to: Legal Department  
Texas Health Resources  
612 E. Lamar Blvd, Suite 900  
Arlington, Texas 76011  
Attention: General Counsel

If to Client: Johnson County Correctional Center  
Health Services Administrator  
1800 Ridgemar Drive  
Cleburne, Texas 76031  
Attention: Ashley Lawrence

Copy for legal issues to: Johnson County Attorney's Office  
Johnson County Attorney Bill Moore  
Guinn Justice Center  
204 South Buffalo Avenue  
Suite 410  
Cleburne, Texas 76033-5404

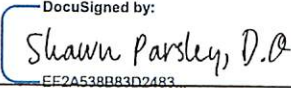
- 7.9 Relationship of Parties. Nothing in this Agreement shall be construed to constitute either party as a partner, employee or agent of the other, it being intended that Group shall be an independent contractor of Client under this Agreement and solely responsible for its own actions. No employee or agent of one party hereto shall be considered an employee or agent of the other party. Neither Group nor Client has the right to bind the other party hereto.
- 7.10 Severability. Should any clause or provision of this Agreement be held or ruled unenforceable or ineffective by a court of law, such a ruling will in no way affect the validity or the enforceability of any other clause or provision contained herein.
- 7.11 Survival of Agreement. The following paragraphs shall survive termination of this Agreement: 6, 7.
- 7.12 Waiver. No waiver by Group or Client of any breach of any term, provision or condition contained in this Agreement, or the failure to insist upon strict performance thereof shall be deemed to be a waiver of such term, provision or condition as to any subsequent breach thereof or a waiver of any other term, provision or condition contained in this Agreement. The exercise of any right or remedy hereunder shall not be deemed to preclude or effect the exercise of any other right or remedy provided herein.
- 7.13 Warranty of Services. Group represents and warrants that all services provided under this Agreement comply with applicable laws. Group represents and warrants that (a) Group is not excluded from any federal health care program, as defined under 42 U.S.C. Section 1320a-7b(f), for the provision of items or services for which payment may be made under a federal health care program; (b) no basis for exclusion from any health care program exists; (c) Group has not arranged or contracted (by employment or otherwise) with any employee, Group, or agent that Group knows or should know are excluded from participation in any federal health care program; and (d) no final adverse action, as such term is defined under 42 U.S.C. Section 1320a-7e(g), has occurred or is pending or threatened against Group or its affiliates or to their knowledge against any employee, Group or agent engaged to provide items or services under this agreement (collectively "Exclusions/Adverse Actions"). Group, during the term of this agreement, shall notify Client of any Exclusions/Adverse Actions or any basis therefore within fifteen (15) days of its learning of any such Exclusions/Adverse Actions or any basis therefore.
- 7.14 Confidentiality of Protected Health Information. The parties hereto agree to the provisions of the Business Associate agreement located at Exhibit B and incorporated herein by reference.

7.15 Taxes and Insurance. Group shall maintain sole and direct responsibility for compensation of Group Employees under this Agreement, including payment of wages, tax withholdings, workers' compensation, social security and other obligations imposed by federal, state and local law. It is understood that all employees provided by Group are employees of Group and will be compensated by Group for hours worked. Group agrees to indemnify and hold harmless Client hereof from and against any and all liability arising from any failure of Group to pay any wages or other employee benefits when due.

7.16 Group must maintain the following certifications, registrations, licenses or permits: Texas Group licensure, accreditation in good standing, not on Center for Medicaid Medicare Services "hit" list.

**TEXAS HEALTH PHYSICIANS GROUP**

**JOHNSON COUNTY CORRECTIONAL CENTER**

By:  DocuSigned by:  
Shawn Parsley, D.O.  
EE2A538B83D2483

By: 

Printed Name: Shawn Parsley, D.O.

Printed Name: Judge Roger Harmon

Title: President

Title: Johnson County Judge

Date: 4/19/2022

Date: 4-11-22

## Exhibit A

### Invoices & Payments

1. Invoices. Invoices will be submitted on HCFA 1500 Claim Forms.
2. Invoice Address. Invoices shall be submitted securely via fax to 817-556-6116 or via email to [scoburn@johnsoncountytexas.org](mailto:scoburn@johnsoncountytexas.org).
3. Payment. Group hereby agrees to provide Services at 100% of the **Medicaid rate** in effect on January 1 of the year in which the Services are rendered.



## EXHIBIT B

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is by and between Texas Health Physicians Group (“Covered Entity”) and Johnson County (“Business Associate”).

#### RECITALS

WHEREAS, Covered Entity has an underlying agreement with Business Associate (“the Underlying Agreement”) by which it has engaged Business Associate to perform services or provide goods, or both;

WHEREAS, Covered Entity possesses Protected Health Information that is protected under HIPAA and the HIPAA Regulations and state law including the Texas Medical Records Privacy Act (MRPA), and is permitted to manage such information only in accordance with HIPAA and the HIPAA Regulations and MRPA;

WHEREAS, Business Associate may receive such information from Covered Entity, or create, receive, maintain or transmit such information on behalf of Covered Entity, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, the parties desire to comply with all state and federal health information privacy and security regulations; and

WHEREAS, Under HIPAA and HITECH, Covered Entity is required to enter into protective agreements, generally known as “business associate agreements,” with certain downstream entities that will be entrusted with HIPAA-protected health information, including health information organizations or other persons that provide data transmission services with respect to HIPAA-protected health information and that require access on a routine basis; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Protected Health Information;

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. **Definitions.** The parties agree that capitalized terms used in this Business Associate Agreement (“BAA”), but not otherwise defined, shall have the meaning given them in the Privacy Rule, the Security Rule, or the Breach Notification Rule.
2. **Permitted Uses and Disclosures.**
  - a. **Performance of Services.** Except as otherwise permitted by this Agreement, Business Associate may create, receive, maintain or transmit PHI on behalf of, Covered Entity only in connection with the performance of the services contracted for in the Underlying Agreement or as Required by Law (as that term is defined by 45 CFR § 164.103).

b. **Proper Management and Administration.** Business Associate may use PHI received by Business Associate in its capacity as Covered Entity's Business Associate, for the proper management and administration of Business Associate in connection with the performance of services in the Underlying Agreement, as permitted by this Agreement or as Required by Law (as that term is defined by 45 CFR § 164.103), and to carry out the legal responsibilities of Business Associate. Business Associate may disclose Covered Entity's PHI for such proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate. Any such disclosure of PHI shall only be made if a Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that: (1) the 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 person, and (2) Business Associate will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

c. **Data Aggregation.** Business Associate may use and disclose PHI received by Business Associate in its capacity as Covered Entity's Business Associate in order to provide Data Aggregation services relating to Covered Entity's health care operations.

3. **Nondisclosure.**

a. **As Provided in Agreement.** Business Associate shall not use or further disclose Covered Entity's PHI otherwise than as permitted or required by this Agreement or as Required by Law (as that term is defined by 45 CFR § 164.103).

b. **Disclosures Required By Law.** Business Associate shall not, without prior written consent of Covered Entity, disclose any PHI on the chance that such disclosure is required by law without notifying, to the extent legally permitted, Covered Entity so that the Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such a disclosure, Business Associate, shall, to the extent permissible by law, refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 2b that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI when a disclosure is required by law.

c. **Additional Restrictions.** If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of Covered Entity's PHI pursuant to HIPAA or the HIPAA Regulations as outlined in 45 C.F.R. § 164.522, Business Associate shall be bound by such additional restrictions and shall not disclose Covered Entity's PHI in violation of such additional restrictions to the extent possible consistent with Business Associate's obligations set forth in the Underlying Agreement.

d. **Remuneration.** Business Associate shall not directly or indirectly receive remuneration in exchange for disclosing PHI received from or on behalf of Covered Entity except as permitted by HITECH Act § 13405, the MRPA, and any implementing regulations that may be promulgated or revised from time to time.

e. Business Associate shall not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. part 164, or MRP, if done by the Covered Entity itself except as authorized under the section of this Agreement entitled "Permitted Uses and Disclosures."

4. **Minimum Necessary.**

Covered Entity and Business Associate agree to limit, to the extent practical and except as permitted by 45 C.F.R. § 164.502(b)(2), its uses, disclosures and requests of PHI under this Agreement to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request. This provision will cease to apply on the effective date of guidance issued by the Secretary of HHS in accordance with HITECH Act § 13405(b)(1)(C). Business Associate will disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

5. **Additional Business Associate Obligations.**

a. **Safeguards.** Use appropriate safeguards and comply with Subpart C of 45 C.F.R. §164 with respect to electronic PHI to prevent use or disclosure of the PHI other than as provided for by this Agreement.

b. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. §164 (Privacy Rule) Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of the obligations.

c. **Business Associate's Agents and Subcontractors.**

1) Business Associate shall ensure that any agents, and subcontractors, to whom it provides PHI, agree to create, receive, maintain or transmit PHI on behalf of the Business Associate under the same restrictions that apply to Business Associate. Such agreement between Business Associate and subcontractor or agent must be in writing and must comply with the terms of this Agreement and the requirements outlined at 45 C.F.R. §164.504(e)(2); 45 C.F.R. §164.502(e)(1)(ii); 45 C.F.R. §164.314; and 45 C.F.R. §164.308(b)(2).

2) If Business Associate knows of a pattern of activity or practice of its subcontractor or agent that constituted a material breach or violation of the agent or subcontractor's obligation under the contract or other arrangement, the Business Associate must take steps to cure the breach and end the violation and if such steps are not successful, must terminate the contract or arrangement if feasible. If it is not feasible to terminate the contract, Business Associate must promptly notify the Covered Entity.

3) Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of the agent and subcontractor in providing the services as if they were the Business Associate's own acts, failures or omissions, to the extent permitted by law.

d. **Reporting.** Business Associate shall, as soon as practicable but not more than two (2) business days after becoming aware of any Security Incident or use or disclosure of Covered Entity's PHI in violation of this Agreement, report any such use or disclosure to Covered Entity. A "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, "pings," or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

e. **Breach of Unsecured PHI.** With the exception of law enforcement delays that satisfy the requirements under 45 C.F.R. § 164.412 or as otherwise required by applicable state law, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than sixty (60) calendar days upon discovery of a Breach of Unsecured PHI. Such notice must include, to the extent possible, the name of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. Business Associate shall also provide, to the extent possible, Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. For purposes of this Agreement, a Breach of Unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate (including any person, other than the individual committing the breach, who is an employee, officer, or other agent of Business Associate, as determined in accordance with the federal common law of agency) or should reasonably have been known to Business Associate following the exercise of reasonable diligence.

f. **Mitigation.** Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any Use or Disclosure (as defined by 45 C.F.R. § 160.103) on behalf of Business Associate, or its agent or subcontractor on behalf of Business Associate, of Covered Entity's PHI in violation of this Agreement or applicable law.

g. **United States Department of Health and Human Services.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health and Human Services for purposes of determining Covered Entity's compliance with HIPAA and the HIPAA regulations, provided that Business Associate shall promptly notify Covered Entity upon receipt by Business Associate of any such request for access by the Secretary of the United States Department of Health and Human Services, and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto, unless otherwise prohibited by law.

h. **Training.** Business Associate shall provide such training in the privacy and security of PHI to its Workforce (as that term is defined by 45 C.F.R. § 160.103) as is required for Business Associate's compliance with HIPAA, HITECH, and the MRPA.

6. **Obligation to Provide Access, Amendment and Accounting of PHI.**

a. **Access to PHI.** Should Business Associate maintain a Designated Record Set, the Business Associate shall make available to Covered Entity, in the time and manner designated by the Covered Entity, such information as necessary to allow Covered Entity to meet its obligations under the HIPAA Regulations, PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, and copies of, PHI in accordance with HIPAA and the HIPAA Regulations and MRPA. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall notify Covered Entity within two (2) business days that such request has been made.

b. **Amendment of PHI.** Should Business Associate maintain a Designated Record Set, the Business Associate shall make available to Covered Entity PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to amend PHI in accordance with HIPAA and the HIPAA Regulations. In addition, Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such information maintained by Business Associate. In the event that any Individual requests amendment of PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within two (2) business days.

c. **Recording of Disclosures of PHI.** Business Associate shall maintain a record of all disclosures of PHI received from, or created or received by Business Associate on behalf of Covered Entity, including the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure which includes an explanation of the reason for such disclosure. Business Associate shall make this record available to Covered Entity upon Covered Entity's request. In the event that any Individual requests an accounting of disclosures of PHI directly from Business Associate, Business Associate shall notify Covered Entity within two (2) business days that such request has been made and provide Covered Entity with record of disclosures within 20 days of Individual's request. If request from Individual comes directly to Covered Entity and Covered Entity notifies Business Associate that it requires information from Business Associate in order to respond to Individual, Business Associate shall make available to Covered Entity such information as Covered Entity may require within twenty (20) days from the time of request by Covered Entity.

7. **Material Breach, Enforcement and Termination.**

a. **Term.** This Agreement shall become effective on the effective date of the Underlying Agreement (the "Effective Date") and shall continue unless or until the Agreement is terminated in accordance with the provisions of this Agreement, the Underlying Agreement between the parties terminates or the Business Associate has completed performance of the services in the Underlying Agreement, whichever is earlier.

b. **Termination.** Covered Entity may terminate this Agreement:

- 1) immediately if Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA or the HIPAA Regulations;
- 2) immediately if a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined; or completed performance of the services in the Underlying Agreement, whichever is earlier.
- 3) pursuant to Sections 7c or 8b of this Agreement.

c. **Remedies.** Upon one party's knowledge of a material breach by the other party, the non-breaching party shall either:

- 1) provide an opportunity for the breaching party to cure the breach and end the violation or terminate this Agreement and the Underlying Agreement if the breaching party does not cure the breach or end the violation within ten (10) business days; or
- 2) immediately terminate this Agreement and the Underlying Agreement if cure is not possible.

d. **Knowledge of Non-Compliance.** Any non-compliance by Business Associate with this Agreement will automatically be considered a breach or violation of a material term of this Agreement if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

e. **Injunctions.** Covered Entity and Business Associate agree that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law or in equity, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

f. **Indemnification.** Each party agrees to pay all expenses associated with any breach of this Agreement caused by such party related to investigation, notification, credit monitoring, and fines and penalties assessed by governmental agencies against such non-breaching party and all expenses related to claims and lawsuits by or on behalf of individuals. The indemnification provisions of this Agreement are subject to the limitations of Texas law including the Texas Constitution and the Texas Tort Claims Act.

## 8. **General Provisions.**

a. **Amendment.** Covered Entity and Business Associate agree to enter into good faith negotiations to amend this Agreement to come into compliance with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of PHI.

Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations.

b. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

c. **Ambiguities.** The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, MRPA, HIPAA, the HIPAA Regulations, and the HITECH Act.

d. **Primacy.** To the extent that any provision of this Agreement conflicts with the provisions of any other agreement or understanding between the parties, this Agreement shall control.

e. **Effect of Termination.** Business Associate agrees that, pursuant to 45 C.F.R. § 164.504 (e) (2) (ii) (I), upon termination of this Agreement or the Underlying Agreement, for whatever reason,

1) Business Associate shall return or destroy all PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity that the Business Associate still maintains in any form and retain no copies of such information. A certificate of destruction for the PHI will be provided by the Business Associate to the Covered Entity within a reasonable time upon receipt of written request of Covered Entity.

2) Where Business Associate asserts that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this BAA to that PHI and limit further uses and disclosures of that PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains the PHI. Business Associate represents to Covered Entity that Business Associate maintains a backup copy for archival purposes of all data received from Covered Entity under the Services Agreements, including PHI, in an encrypted and secure format that is stored off-site. Business Associate will extend the protections of this BAA for so long as Business Associate maintains the PHI.

3) The Business Associate shall also require their subcontractors and agents to agree to comply with Subpart C of 45 C.F.R. Part 164 (Security Rule).

f. **No Offshore Work.** In performing the functions, activities or services for, or on behalf of Covered Entity, Business Associate shall not, and shall not permit any of its agents or subcontractors who receive Covered Entity's Protected Health Information to transmit or make available any Protected Health Information to any entity or individual outside the United States without prior written consent of Covered Entity.

g. **Change in Law.** Should a federal or state privacy law be enacted after the execution of this Business Associate Agreement, the parties agree to abide by the applicable regulations.

h. **Integration.** This Agreement embodies and constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments and understandings pertaining to the subject matter hereof.

i. **Governing Law.** This Agreement is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Texas without regard to choice of law principles.

j. **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

To Covered Entity: Texas Health Resources  
612 East Lamar Boulevard, Suite 1400  
Arlington, Texas 76011  
Attention: System Privacy Officer  
Fax: 682-236-6150

With a copy to: Texas Health Resources  
612 East Lamar Boulevard, Suite 1400  
Arlington, Texas 76011  
Attention: General Counsel  
Fax: 682-236-6150

To Business Associate: Johnson County Correctional Center  
Health Services Administrator  
1800 Ridgemar Drive  
Cleburne, Texas 76031  
Attention: Ashley Lawrence  
Fax 817-556-6084

Copy for legal issues to: Johnson County Attorney's Office  
Johnson County Attorney Bill Moore  
Guinn Justice Center  
204 South Buffalo Avenue  
Suite 410  
Cleburne, Texas 76033-5404  
Fax 817-556-6331

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.



k. **Privilege.** Notwithstanding any other provision in this Agreement, this Agreement shall not be deemed to be an agreement by Business Associate to disclose information that is privileged, protected or confidential under applicable law to the extent that such privilege, protection or confidentiality (a) has not been waived or (b) is not superseded by applicable law.