

INTERLOCAL FEE AGREEMENT FOR
EMERGENCY MEDICAL GROUND TRANSPORTATION SERVICES

This Interlocal Fee Agreement (“Agreement”) is entered into between the City of Austin, (“City”) a Texas home rule municipality, and the Travis County Healthcare District, doing business as Central Health, a Texas hospital district (“Central Health”), (each a “Party,” and collectively the “Parties”). The City’s Emergency Medical Services Department (“EMS”), a department of the City of Austin, Texas, is licensed by the State of Texas to provide ground emergency medical services. These services are provided within the City’s corporate limits and, through an interlocal agreement with Travis County, in the portions of Travis County that are outside the City’s corporate limits. Central Health has established a Medical Assistance Program to pay for certain health care services provided to eligible beneficiaries who live in Travis County.

1.0 DEFINITIONS

1.1 “Central Health,” “Travis County Healthcare District” or “District” means the hospital district created under Chapter 281, Texas Health and Safety Code, whose boundaries are co-extensive with Travis County, Texas.

1.2 “Board of Managers” means the governing body of the Travis County Healthcare District.

1.3 “City” means the City of Austin, a Texas home rule municipality.

1.4 “Services” means ground emergency medical transportation services provided by EMS.

1.5 “EMS” means the City’s Emergency Medical Services Department.

1.6 “Eligible MAP Patient” means a person who is enrolled in the Central Health’s Medical Assistance Program (“MAP”) at the time the person receives services under this Agreement and whose eligibility for MAP benefits has been verified using the Central Health’s on-line MAP eligibility system.

1.7 “Contract Manager” mean the individual appointed by each Party who shall be responsible for monitoring performance of this Agreement and for managing this Agreement on behalf of his or her employer. The Contract Manager for City shall be John Ralston, Assistant Director of EMS, and the Contract Manager for Central Health shall be Robin Hudgins, Manager, Contract Claims. Each party will notify the other regarding appointment of the Contract Manager within ten (10) days of making any changes.

2.0 Term. The term of this Agreement shall be October 1, 2012 (“Effective Date”), through September 30, 2013, (“2012-2013 Term”) unless terminated earlier in accordance with the terms of this Agreement. The Parties have an option to renew this Agreement for three additional one-year terms (“Renewal Term”), on the same terms or different terms, by written agreement signed by authorized representatives of each Party.

3.0 Amendments.

3.1 Written. Any change to the terms of this Agreement or any attachments to it, as well as any renewals beyond the 2012-2013 Term, shall be made in writing and signed by both Parties following approval of each Party’s governing body.

3.2 Authority to Amend. Each Party acknowledges that no officer, agent, employee or representative of the other Party has any authority to change the terms of this agreement or any attachments to it unless expressly granted that authority by the Party’s governing body.

4.0 Ground Emergency Medical Services. City, through EMS, shall provide ground emergency medical transportation services to Central Health’s Eligible MAP Patients in accordance with the reimbursement described in this Agreement (“Services”). EMS agrees to provide Services in accordance with all applicable federal, state and local laws and regulations, including but not limited to those set forth in Chapter 773 of the Texas Health and Safety Code and the Austin City Code.

5.0 Payment

5.1 City agrees to accept from Central Health, and Central Health agrees to pay City, compensation for Services provided to Eligible MAP Patients as described below. Central Health shall pay City the amount of Six Hundred Ninety-six Thousand, Eight Hundred Twenty-two Dollars (\$696,822) (“Payment”) for City’s provision of EMS Services as specified under Section 4.0 of this Agreement.

The Parties acknowledge that the Payment amount for EMS Services is based upon historical utilization data. No later than ninety (90) days prior to the expiration of the 2012-2013 Term, the Contract managers shall meet to review utilization data and costs, as well as historical trends, related to Services provided to Eligible MAP Patients, including but not limited to the costs per response and per transport for MAP patients. Based on such data and any other available data, the Parties agree to negotiate in good faith the terms of any renewal. No amount above \$696,822 shall be payable by Central Health for Services provided during the 2012-2013 Term unless an amendment to this Agreement has been executed. City agrees to not bill Eligible MAP Patients for Services provided during the term of this Agreement.

5.2 Timing of Disbursement. Central Health will disburse to City quarterly payments in the amount of One Hundred Seventy-Four Thousand Two Hundred and Five Dollars and Fifty Cents (\$174,205.50) each within thirty (30) days of Central Health’s receipt of an invoice as specified in Section 8.0.

6.0 Verification of Eligibility. EMS shall verify an individual's eligibility for MAP benefits using the Central Health's on-line MAP eligibility system. Central Health agrees to maintain on this system up-to-date, accurate information regarding individuals who are Eligible MAP Patients, and to provide EMS employees with uninterrupted access to this system. Central Health agrees that EMS can rely upon the eligibility information contained in the Central Health's system. If EMS personnel have inquiries regarding the status of an individual's eligibility, Central Health agrees to respond to such inquiries within three (3) business days.

7.0 Claims Submission and Payment Deadlines City shall submit a separate and complete U.S. Centers for Medicare and Medicaid Services (CMS) 1500 form for each Eligible MAP Patient to whom EMS services were provided within ninety-five (95) calendar days after the date services are provided. EMS shall use its best efforts to submit electronic claims through Central Health's third party administrator. At a minimum, each CMS 1500 claim form shall include the following information for each Eligible MAP Patient:

- ID number;
- Name;
- Date of birth;
- Residence address;
- Date of service;
- Procedures/services provided (CPT);
- Modifiers;
- Diagnoses (ICD-9); and
- Fee for each procedure/service provided.

8.0 Invoice

(a) City shall submit to Central Health quarterly invoices, each in the amount of One Hundred Seventy-four Thousand Two Hundred and Five Dollars and Fifty Cents (\$174,205.50). Invoices for the current quarter in which services are provided may be submitted no sooner than one day after the current quarter ends. Central Health shall pay the invoiced amount within thirty (30) calendar days of receipt of the invoice. Such invoice must contain the following information:

- Date sent to the Central Health;
- City's name, department, address, and telephone number;
- Remittance address;
- Date range of Services (example: October 1, 2012 – December 31, 2012);
- Invoice number; and
- Invoice amount.

(b) EMS shall submit invoices for services provided to Eligible MAP Patients to the address referenced in the section entitled, "Claims" in the MAP Provider Handbook. The current address as per the MAP Provider Handbook is:

Sendero Health Plans
P.O. Box 3869
Corpus Christi, TX. 78463

9.0 Access to and Confidentiality of EMS Records

9.1 Right to Audit. As payor, Central Health has the right to obtain copies of EMS records related to costs and expenses for Services to Eligible MAP Patients under this Agreement. EMS shall provide copies of such records to Central Health within seventy-two (72) hours of receipt of Central Health's written request. All records pertinent to the performance of this Agreement shall be maintained by City until an audit is completed and all questions arising there from are resolved or four (4) years after termination of this Agreement, whichever occurs first, unless a longer retention period is required by law; except that records will be retained beyond the fourth year if an audit is in progress and/or the findings of a completed audit have not been satisfactorily resolved, and/or litigation involving this Agreement or the Services provided hereunder is still pending.

9.2 Records and Confidentiality. The Parties each agree to comply with all applicable federal and state laws and regulations regarding the privacy and confidentiality of patient records, including but not limited to the federal Health Information Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations, as amended. Attachment A sets out the responsibilities of business associates under HIPAA.

9.3 Quality. Upon request, EMS shall provide Central Health with access to clinical records of Eligible MAP Patients for review of compliance with the quality assurance provisions of federal, state, or local law or regulation. Central Health may perform special quality and utilization reviews/audits upon three (3) business days notice to the EMS Director. EMS shall provide suitable space for Central Health staff to perform on-site retrospective reviews in a confidential setting.

10.0 Utilization. Central Health agrees in good faith to continue to implement appropriate utilization management of its Eligible MAP Patients' use of Services.

11.0 Current Revenues. This Agreement is authorized by Chapter 791 of the Texas Government Code, titled "Interlocal Cooperation Act." Notwithstanding any other provision of this Agreement, each Party's payment obligations under this Agreement are payable solely from the current fiscal year revenues appropriated and available for the payment of such obligations.

12.0 Termination

12.1 Termination for Default. If either Party defaults in the performance of its obligations (including compliance with any covenants) under the Agreement and such default is not cured within thirty (30) days of the receipt of written notice, then the non-defaulting Party shall have the right (in addition to any other rights that it may have) by further written notice to terminate the Agreement on any future date that is not less than thirty (30) days from the date of that further notice.

12.2 Termination for Convenience. In addition to, and without restricting any other legal, contractual, or equitable remedies otherwise available, either Party may terminate the Agreement without cause by giving the other Party at least one hundred and twenty (120) days written notice.

12.3 Funding Out. Despite anything to the contrary in the Agreement, if, during the Central Health's annual budget planning and adoption process, Central Health fails to provide funding for the Agreement for the following Central Health fiscal year, Central Health may terminate the Agreement after giving EMS thirty (30) days written notice that the Agreement is terminated due to the failure to fund it. Central Health agrees to submit payments to City for Services provided prior to the termination date, and to submit such payments within thirty (30) days of receipt of an invoice from EMS.

13.0 Claims Notification. If any claim or other action, including a proceeding before an administrative agency, is made or brought by any person, firm, corporation, or other entity against either Party in relation to the performance of this Agreement, such Party shall give written notice to the other Party of the claim or other action within three (3) working days after being notified of it or the threat of it, including the name and address of the person, firm, corporation or other entity that made or threatened to make a claim or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action or proceeding; the court or administrative tribunal, if any, where the claim, action, or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice shall be given in the manner provided in this Agreement.

14.0 Entire Agreement. All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement, including the applicable terms of the Agreement, have been reduced to writing and are contained in this Agreement.

15.0 Governing Law/Venue. The Parties agree that this Agreement shall be governed by the laws of Texas, and venue for any dispute that arises under this Agreement shall be in Travis County, Texas.

16.0 No Third Party Beneficiaries. Nothing in this Agreement is intended to benefit or give any rights to any person or entity other than the Parties hereto including, but not limited to, any Eligible MAP Patient.

17.0 No Waiver; Amendments. No course of conduct or verbal waiver or consent shall be deemed a waiver by either Party of its rights hereunder. No amendment to or

assignment of this Agreement shall be binding on the Parties unless set forth in writing, approved by the Parties' governing bodies, and signed by the Party sought to be bound.

18.0 Notice. Any notice required or permitted by this Agreement shall be sufficient for all purposes if delivered in writing to the applicable Party at its address set forth below or such other address as may be designated by such Party in writing.

City:

Marc Ott, City Manager
P.O. Box 1088
Austin, Texas 78767-8804
(if by mail)

Marc Ott, City Manager
City Hall
301 West 2nd, Fourth Floor
Austin, Texas 78701
(if by hand-delivery)

With copies to:

City Attorney
P.O. Box 1088
Austin, Texas 78767-8804
(if by mail)

City Attorney
City Hall,
301 West 2nd, Fourth Floor
Austin, Texas 78701
(if by hand-delivery)

Ernesto Rodriguez, Director
City of Austin EMS Department
15 Waller, Second Floor
Austin, Texas 78702

Central Health:

Patricia A. Young Brown
President and CEO
Travis County Healthcare District
1111 E. Cesar Chavez, Suite B
Austin, Texas 78702
(if by mail)

19.0 Holdover. Upon expiration of the 2012-2013 Term or any Renewal Term, City agrees to hold over under the terms and conditions of this Agreement for such a period of time as is reasonably necessary to negotiate or award a new contract for the Services encompassed by this Agreement.

20.0 Attachment. The attachment to this Agreement is hereby made a part of this Agreement as if set forth verbatim herein and constitute promised performances by the parties in accordance with all terms of this Agreement.

21.0 Assignment-Delegation. The Agreement shall be binding upon and inure to the benefit of Central Health and City and their respective successors and assigns. City may not assign or transfer any of its rights or obligations under this Agreement without prior written consent of Central Health. Central Health may make such assignment or transfer upon providing not less than thirty (30) days written notice to City. The Agreement is not intended to confer rights or benefits on any person, firm, or entity not a party hereto, it being the intention of the Parties that there be no third-party beneficiaries to the Agreement.

22.0 Waiver of Breach. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

23.0 Force Majeure. Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while, and to the extent such default or delay is caused by acts of God, acts of domestic or foreign terrorism, fires, floods, riots, sabotage, strikes, or any other cause beyond the reasonable control of such party. Force majeure does not include economic or market conditions that affect a party's cost but not its ability to perform. The party invoking force majeure shall give prompt, timely, and adequate notice to the other party by facsimile transmission or by telephone confirmed promptly thereafter in writing and shall use due diligence to remedy the event of force majeure as soon as reasonably possible. In the event of default or delay in Agreement performance due to any of the foregoing causes, then the time for completion of the service(s) will be extended by a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

24.0 Subcontracts

24.1 Prior Approval Required. City shall not enter into any subcontracts for any service or activity relating to the performance of this Agreement without the prior written approval or the prior written waiver of this right of approval from Central Health. To the extent that City has existing subcontracts as of the Effective Date of this Agreement, those subcontracts are hereby approved.

24.2 HUB Subcontracting. If a subcontract is approved, City must make a "good faith" effort to take all necessary and reasonable steps to insure that HUBs (Historically Underutilized Business, as defined in Texas Government Code, Section

2161.001), have a maximum opportunity to be subcontractors under this Agreement. City must obtain Central Health approval of all proposed HUB subcontractors. Failure by City to make a good faith effort to employ HUBs as subcontractors constitutes a breach of this Agreement and may result in termination of this Agreement.

25.0 Contingent Fees. City warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, Central Health shall have the right, in addition to any other right or rights, to cancel this Agreement without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

26.0 Rights, Copyrights, Patents, and Licenses. City warrants and agrees that: (a) all applicable copyrights, patents, and licenses that may exist on materials used in this Agreement have been adhered to; (b) Central Health shall not be liable for any infringement of those rights; and (c) any rights granted to Central Health shall apply for the duration of this Agreement.

27.0 Authority to Obligate Central Health. City acknowledges that no Central Health officer, agent, employee, or representative other than the Central Health Board of Managers has any authority to sign any document obligating Central Health unless expressly granted that authority by the Central Health Board of Managers under a specific provision of this Agreement or by separate action by the Central Health Board of Managers.

28.0 Debarment, Suspension and Other Responsibility Matters. City, by signing this Agreement, hereby certifies that, to the best of its knowledge and belief, it:

- (a) is not presently debarred suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) has not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal of State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction or records, making false statements, or receiving stolen property;
- (c) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b); and

- (d) has not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

Where City is unable to certify to any of the statements in this section, City shall provide an explanation of such inability prior to the Effective Date of this Agreement for Central Health’s consideration and evaluation, with the understanding that such inability may result in termination of this Agreement by Central Health.

29.0 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice, or disturb the validity of the remainder of this Agreement, which shall be in full force and effect and enforceable in accordance with its terms.

IN WITNESS WHEREOF, this Agreement has been executed and delivered on behalf of the Central Health and the City by their duly authorized representatives in one or more counterparts, which together shall constitute one agreement.

TRAVIS COUNTY HEALTHCARE
DISTRICT d/b/a CENTRAL HEALTH

CITY OF AUSTIN

By: _____

By: _____

Patricia A. Young-Brown
President and CEO

Marc Ott, City Manager,
City of Austin

Date: _____

Date: _____

ATTACHMENT A

BUSINESS ASSOCIATE AGREEMENT

For purposes of this Attachment, District is hereby referred to as “Covered Entity” and Contractor is referred to as “Business Associate” (collectively, the “Parties”). For clarification, in this Attachment A, “the BA Agreement” refers to the Business Associate Agreement and “the Agreement” refers to the Interlocal Fee Agreement for Emergency Medical Ground Transportation Services between the City of Austin and the Travis County Healthcare District.

1. **Definitions.** The parties agree that terms used, but not otherwise defined, in this BA Agreement, shall have the same meaning as defined in:

- a. The HIPAA Privacy and Security Rules set out in more detail in the Federal Health Insurance Portability and Accountability Act, Public Law 104-191 (“HIPAA”);
- b. The Privacy, Security and Breach Notification Rules, 45 CFR part 160 and 45 CFR part 164, subparts A, C, D and E; (“Privacy, Security and Breach Notification Rules”) issued by the U.S. Department of Health and Human Services (“HHS”) thereunder; and
- c. The Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“HITECH Standards”).

2. **Status of Parties.** Business Associate hereby acknowledges and agrees that Covered Entity is a Covered Entity and that Business Associate is a Business Associate of Covered Entity.

3. **Permitted Uses and Disclosures.**

a. *Performance of Services.* Business Associate may use and disclose PHI in connection with the performance of the services set forth in the Agreement if such use or disclosure of PHI would not violate HIPAA, the Privacy, Security and Breach Notification Rules or the HITECH Standards if done by Covered Entity or such use or disclosure is expressly permitted under Section 3(b) or 3(c) of the BA Agreement.

b. *Proper Management and Administration.* Business Associate may use PHI for the proper management and administration of Business Associate in connection with the performance of services as set forth in the Agreement and as permitted by this BA Agreement. If it is necessary for the Business Associate to make an appropriate disclosure of PHI to a third party, Business Associate shall, prior to the disclosure, obtain in writing reasonable assurances from the third party 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 third party; and (2) Business Associate will be notified by such third party of any instances in which it becomes aware that PHI has been improperly disclosed.

c. *Other Permitted Uses.* Unless otherwise limited herein, the Business Associate may also: (1) perform Data Aggregation for the Health Care Operations of Covered Entity; (2)

may use, analyze, and disclose the PHI in its possession for the public health activities and purposes set forth at C.F.R. §164.512(b); and (3) de-identify any and all PHI provided that Business Associate implements de-identification criteria in accord with 45 C.F.R. §164.514(b).

d. *Minimum Necessary.* Business Associate agrees that, when using or disclosing PHI, it shall limit PHI, to the extent practicable, to a limited data set as defined at 45 CFR §164.514(e)(2) or, if needed, to the minimum necessary to accomplish the intended purpose or disclosure.

e. Business Associate agrees to comply with HIPAA, the Privacy, Security and Breach Notification Rules and the HITECH Standards, as applicable.

4. Nondisclosure.

a. *As Provided In Agreement.* Business Associate shall not use or further disclose PHI except as permitted or required by the BA Agreement or as required by law.

b. *Disclosures Required By Law.* Business Associate shall not, without the prior written consent of Covered Entity, disclose any PHI on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Business Associate shall 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 3(b) hereof that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI on the basis that such 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 PHI pursuant to HIPAA, the Privacy, Security and Breach Notification Rules and the HITECH Standards, Business Associate shall be bound by any additional restrictions set forth by HHS and shall not disclose PHI in violation of such additional restrictions.

5. Safeguards, Reporting, Mitigation and Enforcement.

a. *Safeguards.* Business Associate shall use any and all appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided by the BA Agreement. Business Associate further agrees to use appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of any Electronic PHI in accordance with the HIPAA Security Regulations (after the compliance date of the HIPAA Security Regulations) and the HITECH Standards and Breach Notification Rule.

b. *Business Associate's Agents.* Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI agree in writing to be bound by the same restrictions and conditions that apply to Business Associate with respect to such PHI; provided, however, that Business Associate shall not disclose or provide access to PHI to any subcontractor or agent without the prior written consent of Covered Entity.

c. *Reporting.* Business Associate shall report to Covered Entity any use or disclosure of

PHI in violation of this BA Agreement or applicable law of which it becomes aware no later than three (3) business days after discovery. Business Associate further agrees to report to Covered Entity any security incident (as defined by the HIPAA Security Regulations, as amended) on or after the compliance date of the HIPAA Security Regulations of which it becomes aware no later than three (3) business days after discovery. In addition, Business Associate shall immediately report to Covered Entity any Breach consistent with the regulations promulgated under the HITECH Standards.

d. *Mitigation.* Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of PHI in violation of the BA Agreement or applicable law.

e. *Covered Entity's Rights of Access and Inspection.* From time to time upon reasonable notice, upon a reasonable determination by Covered Entity that Business Associate has breached the BA Agreement, or when Business Associate reports the inappropriate disclosure of PHI to Covered Entity, Covered Entity may inspect the facilities, systems, books and records of Business Associate to monitor compliance with the BA Agreement. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with the BA Agreement, nor does Covered Entity's (1) failure to detect or (2) detection of, but failure to notify Business Associate or require Business Associate's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under the BA Agreement. The parties' respective rights and obligations under this Section 5(e) shall survive termination of the Agreement.

f. *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, and the security of Electronic PHI, available to the Secretary of the United States Department of Health and Human Services ("HHS") for purposes of determining Covered Entity's compliance with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards after the compliance dates, respectively, of these regulations and standards; provided, however, that Business Associate shall immediately notify Covered Entity upon receipt by Business Associate of any such request for access by the Secretary of HHS, and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto. The parties' respective rights and obligations under this Section 5(f) shall survive termination of the Agreement.

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

a. *Access to, amendments of, and accounting of disclosures of, PHI.* Business Associate shall make available to Covered Entity such information as Covered Entity may require in accordance with HIPAA, the HIPAA Privacy Regulations, and the HITECH Standards in order to fulfill Covered Entity's obligations to provide access to, and copies of, PHI; amend PHI; or provide an accounting of disclosures with respect to PHI. Business Associate shall provide access to, and permit inspection and copying of, PHI by Covered Entity, and shall amend PHI maintained by Business Associate as requested by Covered Entity.

b. *Requests From Individual.* In the event that any individual requests access to or

amendment of PHI directly from Business Associate, Business Associate shall notify Covered Entity within two (2) days of such request. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or Business Associate to violate HIPAA, the HIPAA Privacy Regulations, or the HITECH Standards, Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable. In response to a request for an accounting of disclosures from an individual, Business Associate shall make available to Covered Entity information required for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision.

7. Compliance with HITECH Standards. Notwithstanding any other provision in the BA Agreement, no later than February 17, 2010, unless a separate effective date is specified by law or the BA Agreement for a particular requirement (in which case the separate effective date shall be the effective date for that particular requirement), Business Associate shall comply with the HITECH Standards, including, but not limited to: (i) compliance with the requirements regarding minimum necessary under HITECH § 13405(b); (ii) requests for restrictions on use or disclosure to health plans for payment or health care operations purposes when the provider has been paid out of pocket in full consistent with HITECH § 13405(a); (iii) the prohibition of sale of PHI without authorization unless an exception under HITECH § 13405(d) applies; (iv) the prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 C.F.R. § 164.501 unless permitted by the BA Agreement and Section 13406 of HITECH; (v) the requirements relating to the provision of access to certain information in electronic access under HITECH § 13405(e); (vi) compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards) and 164.316 (Policies and Procedures and Documentation Requirements); and (vii) the requirements regarding accounting of certain disclosures of PHI maintained in an Electronic Health Record under HITECH § 13405(c).

8. Material Breach, Enforcement and Termination.

a. *Term.* The BA Agreement shall be effective as of the Effective Date set forth in the Agreement, and shall continue until the later of the time the Agreement is terminated in accordance with the provisions of Section 8(b), the contractual relationship between the parties terminates, or the Business Associate no longer retains Covered Entity's PHI.

b. *Termination.* Covered Entity may terminate the BA Agreement:

- (1) immediately if Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, or the HITECH Standards;
- (2) immediately if a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, HITECH or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined; or
- (3) pursuant to Sections 8(c) or 9(b) of the BA Agreement.

c. *Remedies.* If Covered Entity determines that Business Associate has breached or violated a material term of the BA Agreement, Covered Entity may, at its option, pursue any and all of the following remedies:

- (1) exercise any of its rights of access and inspection under Section 5(e) of the BA Agreement;
- (2) take any other reasonable steps that Covered Entity, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
- (3) immediately terminate the BA Agreement and Agreement.

If Business Associate determines that Covered Entity has breached or violated a material term of the BA Agreement, Business Associate may, at its option, pursue any and all of the following remedies:

- (1) take any reasonable steps that Business Associate, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
- (2) immediately terminate the BA Agreement and Agreement.

d. *Knowledge of Non-Compliance.* Any non-compliance by Business Associate with the BA Agreement or with HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, or the HITECH Standards automatically will be considered a breach or violation of a material term of the BA 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 and provide notice to Covered Entity within three (3) business days.

e. *Reporting to United States Department of Health and Human Services.* If Covered Entity's efforts to cure any breach or end any violation are unsuccessful, and if termination of the BA Agreement is not feasible, Covered Entity shall report Business Associate's breach or violation to the Secretary of HHS, and Business Associate agrees that it shall not have or make any claim(s), whether at law, in equity, or under the BA Agreement, against Covered Entity with respect to such report(s). If Business Associate's efforts to cure any breach or end any violation are unsuccessful, and if termination of the BA Agreement is not feasible, Business Associate shall report Covered Entity's breach or violation to the Secretary of HHS, and Covered Entity agrees that it shall not have or make any claim(s), whether at law, in equity, or under the BA Agreement, against Business Associate with respect to such report(s)

f. *Return or Destruction of Records.* Upon termination of the BA Agreement for any reason, Business Associate shall return or destroy all PHI; except that Business Associate may retain such records as necessary for purposes of their rights, if any, to conduct audits related to such records, to utilize such records in connection with an audit of Business Associate, and/or to retain records in accordance with their records retention policies and/or obligations. If Business Associate retains such records, it shall continue to extend the protections of the BA Agreement to such information and limit further use and disclosure of such PHI. Destruction of records shall be in accordance with the HITECH Standards and related guidance documents promulgated by HHS.

g. *Injunctions.* The Parties agree that any violation of the provisions of the BA Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under the BA

Agreement, in the event of any violation by Business Associate of any of the provisions of the BA Agreement, or any explicit threat thereof, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section 8(g) shall survive termination of the Agreement.

h. *Indemnification.* Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under the BA Agreement. The parties' respective rights and obligations under this Section 8(h) shall survive termination of the Agreement.

9. Miscellaneous Terms.

a. *State Law.* Nothing in the BA Agreement shall be construed to require Business Associate to use or disclose PHI without a written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

b. *Amendment.* The Parties agree that amendment of the BA Agreement may be required to ensure that the Parties comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of PHI, including, but not limited to, changes under the HIPAA Privacy Rule, the HIPAA Security Rule, the Breach Notification Rule and the HITECH Standards. Covered Entity may terminate the BA Agreement upon 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. The BA Agreement may not otherwise be amended except by written agreement between both parties.

c. *No Third Party Beneficiaries.* Nothing express or implied in the BA Agreement is intended or shall be deemed to confer upon any person other than the Parties, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

d. *Ambiguities.* The parties agree that any ambiguity in the BA 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, HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards.

e. *Primacy.* To the extent that any provisions of the BA Agreement conflict with the provisions of any other agreement or understanding between the parties, the BA Agreement shall control with respect to the subject matter of the BA Agreement.

f. *Ownership of PHI.* As between the Parties, Covered Entity holds all right, title and interest in and to any and all PHI received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity, and Business Associate does not hold, and will not acquire by virtue of the BA Agreement or by virtue of providing any services or goods to Covered Entity, any right, title or interest in or to such

PHI or any portion thereof. Except as specified in Section 3(c) above or as otherwise agreed to in writing by both parties, Business Associate shall have no right to compile and/or distribute any statistical analysis or report utilizing such PHI, any aggregate information derived from such PHI, or any other health and medical information obtained from Covered Entity.