

**AGREEMENT BETWEEN
THE CITY OF AUSTIN
AND
THE CENTER AT PARMER REHABILITATION CENTER**

This Agreement is made by and between the City of Austin (the “City”) a home-rule municipality incorporated by the State of Texas, and the Center at Parmer, LLC, a limited liability company (the “Center” and with the City, the “Parties” and each individually a “Party”).

1. **TERM.** The term of this Agreement shall commence on March 30, 2022 (the “Commencement Date”), and shall expire at 11:59 p.m. on April 30, 2022, with such rights of termination as may be hereinafter expressly set forth (the “Term”). The Term of this Agreement may be extended by the City for three successive one-month extension terms by sending written notice to the Center on or before the tenth calendar day prior to the expiration of the Term or any extension thereof (the “Extension Terms”). The Extension Terms shall automatically commence upon expiration of the Term or the previous Extension Term. Any Extension Term shall be on the same terms as set forth herein.

2. **OCCUPANCY.** The City may, at any time during the Term of this Agreement, occupy and have the exclusive use of at least one guestroom, with appurtenances, located in a COVID-19 isolation unit owned and operated by the Center (the “Facility”), including guestrooms that will accommodate two-person occupancy, located at 13800 N FM 620 Rd, Austin, TX 78717-1126. After the City occupies one room, the Center will make another room available for exclusive use by the City, ensuring that during the Term of this Agreement, there is always one additional room available for the City's use until the Center reaches its maximum capacity.

3. **SERVICES.** The Center will provide the following services in strict accordance with the terms, covenants, and conditions of this Agreement and all applicable federal, state, and local laws, rules, and regulations:

- a. Fresh linens, towels, and toiletries for each guest initially and replacements as needed during the stay or every occupied room
- b. Onsite support staff for guests that is available 24 hours per day, 7 days a week
- c. Intake services for new guest 24 hours per day, 7 days a week
- d. Daily discharging of guests that complete isolation requirements
- e. Daily monitoring of guest discharge timelines
- f. Recordkeeping of name, DOB, admission and discharge date, length of stay, morning and evening temperature and symptom checks and what assistance was provided
- g. Basic over the counter medications for guests as requested
- h. Three meals per day delivered to each occupied room with a vegetarian option upon request.
- i. TV and Internet access for guests

- j. Access to a phone for mental health consultations, telemedicine visits, and other wrap-around services
- k. Cleaning, disinfection, and janitorial services for the Facility

4. **RESPONSIBILITIES OF THE CENTER.** The Center shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in this Agreement and shall assure that all Agreement provisions are met by any third-party performing services for the Center.

5. **EARLY TERMINATION.** The City may terminate this Agreement at any time by giving written notice to the Center at least 14 days prior to the date when such termination shall become effective.

6. **CONSIDERATION.**

- a. The City will pay to the Center, by check or wire transfer, \$500 per day for every guestroom actually occupied by the City during the Term of this Agreement.
- b. Consideration and other payments due pursuant to this Agreement shall:
 - 1. be made payable to Center at Parmer, LLC; and
 - 2. be mailed or delivered to 13800 N. FM 620 Road, Austin, TX 78717

7. **CONDITIONS PRECEDENT TO CITY'S OBLIGATIONS.** Any provision in this Agreement to the contrary notwithstanding, it is understood and agreed that the City's obligations under this Agreement are subject to the approval of this Agreement by the City Council. If approval of this Agreement is not obtained, this Agreement shall terminate and shall be of no further force and effect.

8. **NOTICE.** Unless specifically stated otherwise in this Agreement, all notices, demands, requests, consents, approvals, or other communications (for purposes of this section collectively referred to as "Notices") shall be in writing and delivered to the addresses set forth below, by one the following methods:

- a. personal delivery, whereby delivery is deemed to have occurred at the time of delivery;
- b. overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier;
- c. registered or certified mail, postage prepaid, return receipt requested, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service; or
- d. electronic transmission provided that such transmission is completed no later than 5:00 pm Central Time on a business day and the original is also sent by personal delivery, overnight

delivery, or by mail in the manner previously described, whereby delivery is deemed to have occurred at the end of the business day on which the electronic transmission is complete.

To the Center: Center at Parmer, LLC

Name: ~~Bob Esmas~~ *Ricky Lopez*
Address: 13800 N. FM 620 Road, Austin, TX 78717
Phone: (737) 236-6400
Email: ~~BEsmas@veritasmg.com~~ *rlopez@centeratparmer.com*

With a copy to: Veritas Management Group

Name: *Ricky Lopez* ~~Bob Esmas~~
Address: 1155 Kelly Johnson Blvd. Ste. 205, Colorado Springs, CO 80920
Phone:
Email: ~~rlopez@centeratparmer.com~~ *besmas@veritasmg.com*

To the City:

Michael Gates
Interim Officer
FSD – Real Estate Services
City of Austin
P.O. Box 1088
Austin, Texas 78767
Phone No.: (512) 974-1416
Email: Michael.gates@austintexas.gov

With a copy to:

Sean Creegan
Assistant City Attorney
P.O. Box 1088
Austin, Texas 78767
Phone No. (512) 974-6461
Email: sean.creegan@austintexas.gov

9. INSURANCE

a. The Center shall maintain and shall require that any permitted assignee and any Manager, contractor and/or subcontractor performing any work on or in the Facility (the "Center's Representative") maintain the following types of insurance:

1. Workers Compensation insurance in full satisfaction of applicable laws and Employers Liability insurance with a limit not less than \$1,000,000 each accident for bodily injury, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 policy limit for disease. The policy shall include the following endorsements in favor of the City:
 1. Waiver of Subrogation, form WC 420304, or equivalent;
 2. 30 Day Notice of Cancellation, form WC 420601, or equivalent.
2. Commercial General Liability (CGL) insurance with a limit of coverage not less than \$1,000,000 each occurrence covering liability arising from independent contractors, products-completed operations, personal injury and advertising injury, and liability

assumed under an insured contract. The policy shall include the following endorsements in favor of the City:

1. Additional Insured, form CG 2010, or equivalent
 2. 30 Day Notice of Cancellation, form CG 0205, or equivalent
 3. Waiver of Subrogation, form CG 2404, or equivalent
3. If the Center or Center's Representative's scope of work under this Agreement requires or involves the ownership, maintenance or use of an auto, Business Auto Insurance with a combined single limit of insurance not less than \$1,000,000 per accident covering all owned, non-owned, and hired vehicles. The policy shall include the following endorsements in favor of the City:
1. Additional Insured, form CA 2048, or equivalent
 2. 30 Day Notice of Cancellation, form CA 0244, or equivalent
 3. Waiver of Subrogation, form CA 0444, or equivalent
4. If the Center or Center's Representative's scope of work under this Agreement includes providing nursing or medical care, provide coverage, at a minimum limit of \$1,000,000 per claim and \$3,000,000 aggregate, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement. If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.
5. If the Center or Center's Representative's scope of work under this Agreement includes the collection, storing, or transmission of personally identifiable information and/or healthcare/HIPPA protected information, coverage of not less than \$1,000,000 for each claim and annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy. If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the expiration or early termination of the Agreement.

b. Insurance companies affording the coverage required above shall have an AM Best Rating of no less than B+/VII. The insurance coverages required above are required minimums and are not intended to limit the responsibility or liability of the Center or Center's Representative. Failure to maintain the required insurance may result in termination of the Agreement.

c. Center and Center's Representative shall furnish City with certificates of insurance providing evidence of compliance with the above requirements within three (3) days of City providing notice to commence the agreement. If City is not furnished with the required certificates of insurance within three (3) days, City may, at its sole and only discretion, extend the Commencement Date or terminate this Agreement. All endorsements naming the City as additional insured, waivers, and notice of cancellation endorsements as well as certificates of insurance shall indicate: City of Austin, attn.: Property Management, P.O. Box 1088, Austin, Texas 78767.

10. **AUTHORITY.** Each party warrants and represents to the other that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the party.

11. **PERFORMANCE STANDARDS.** Center warrants and represents that all services provided under this Agreement shall be fully and timely performed in a good and workmanlike manner in accordance with generally accepted community standards and, if applicable, professional standards and practices. Center may not limit, exclude, or disclaim this warranty or any warranty implied by law, and any attempt to do so shall be without force or effect. If the Center is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may purchase conforming services from other sources. In such event, the Center shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

12. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS.** The Center, Center's Representatives, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA), and those found in the Clean Air Act (42 U.S.C. 7401–7671q), the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387), and the Energy Policy and Conservation Act (42 U.S.C. 6201). In case of conflict, the most stringent safety requirement shall govern. The Center shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of the Center's obligations under this paragraph.

13. INDEMNITY

a. CENTER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (THE "INDEMNIFIED PARTIES"), AGAINST ALL COSTS, LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS ("CLAIMS"), TO THE EXTENT ARISING, DIRECTLY OR INDIRECTLY, OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY CENTER, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS OR ASSIGNS, (THE "CENTER PARTIES"), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE CENTER PARTIES IN THIS

AGREEMENT (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE CENTER PARTIES IN CONNECTION WITH THIS AGREEMENT. CLAIMS TO BE INDEMNIFIED UNDER THIS ARTICLE INCLUDE CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE, DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. CENTER'S OBLIGATIONS UNDER THIS ARTICLE ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.

b. City shall give Center written notice of a Claim asserted against an Indemnified Party. Center shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Center of any obligations in this agreement.

c. In no event may Center admit liability on the part of an Indemnified Party without the written consent of City Attorney.

d. Maintenance of the insurance required under this Agreement shall not limit Center's obligations under this section. Center shall require all subcontractors to indemnify City in the same manner as provided in this section.

14. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

a. The Center shall not require or permit any laborer or mechanic employed by the Center, in any workweek in which he or she is employed, to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. In the event of any violation of the clause set forth in this section, the Center shall be liable for the unpaid wages. In addition, the Center shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in this section.

c. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable under this Agreement or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, by and between the City and the Center, such sums as may be determined to be necessary to satisfy any liabilities of the Center for unpaid wages and liquidated damages as provided in the clause set forth in this section.

d. The Center shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Center shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

15. CLEAN AIR ACT.

a. The Center agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

b. The Center agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

c. The Center agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

16. FEDERAL WATER POLLUTION CONTROL ACT.

a. The Center agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

b. The Center agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

c. The Center agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

17. SUSPENSION AND DEBARMENT

a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Center is required to verify that none of the Center's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. The Center must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by the City. If it is later determined that the Center did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d. The Center agrees to include a provision requiring such compliance in its lower tier covered transactions.

18. **BYRD ANTI-LOBBYING AMENDMENT.** Center Certifies, and will submit to the City the Certification attached here as Attachment A, that it has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Center shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded to the City who in turn will forward the certification to the awarding agency.”

19. **ACCESS TO RECORDS.** The following access to records requirements apply to this contract:

a. The Center agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Center which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

b. The Center agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. The Center agrees to provide the FEMA Administrator or his authorized representatives access to the Center .

d. In compliance with the Disaster Recovery Act of 2018, the City and the Center acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

20. **COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS.** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Center will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

21. **NO OBLIGATION BY FEDERAL GOVERNMENT.** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Center, or any other party pertaining to any matter resulting from the Agreement.

22. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.** The Center acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Center’s actions pertaining to this contract.”

23. **DHS Seal, Logo, and Flags.** The contractor shall not use the United States Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

24. **MODIFICATIONS.** The Agreement can be modified or amended only by a written, signed agreement by both parties. No pre-printed or similar terms on any Center invoice, order, or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

25. **INTERPRETATION.** The Agreement is intended by the parties as a final, complete, and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.

26. **DISPUTE RESOLUTION.** If a dispute arises between the parties regarding performance under this agreement, which the parties are unable to resolve through negotiation, the parties agree that the dispute will be submitted for mediation before any suit is filed. If the mediation does not successfully resolve the dispute, each party is free to pursue other remedies available to them.

27. **JURISDICTION AND VENUE.** This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. The courts of Texas shall have jurisdiction of arising out of or concerning this Agreement, either administrative or judicial shall be proper and lie exclusively in Travis County Texas.

28. **INVALIDITY.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

29. **SURVIVABILITY OF OBLIGATIONS.** All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty and indemnity shall survive the expiration or termination of the Agreement.

30. **NON-SUSPENSION OR DEBARMENT CERTIFICATION.** The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from federal, state, or City Agreements. By accepting an Agreement with the City, the Center certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the Exclusions records at SAM.gov, the State of Texas, or the City of Austin.

31. **PUBLIC INFORMATION ACT.** Center acknowledges that the City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act). Under the Public Information Act, this Agreement, and all related information within the City's possession or to which the City has access are presumed to be public and will be released unless the information is subject to an exception described in the Public Information Act.

32. **HIPAA.**

a. As applicable, Center and Center's Representative are required to develop and maintain administrative safeguards to ensure the confidentiality of all protected client information, for both electronic and non-electronic records, as established in the Health Insurance Portability and

Accountability Act (HIPAA) Standards CFR 160 and 164, and to comply with all other applicable federal, state, and local laws and policies applicable to the confidentiality of protected client information. Center must maintain HIPAA-compliant Business Associate agreements with each entity with which it may share any protected client information.

b. If performance of this Agreement involves the use or disclosure of Protected Health Information (PHI), as that term is defined in 45 C.F.R. § 160.103, then Center acknowledges and agrees to comply with the terms and conditions contained in the Business Associate Agreement, attached as Exhibit "A".

33. **ENTIRE AGREEMENT.** This Contract, together with the below Exhibits, and any addenda and amendments thereto constitute the entire agreement between the parties, and this Contract shall not be modified, amended, altered, or changed except with the written consent of the parties.

34. **REMEDIES.** In the event of any breach of the terms of this Agreement by the either Party, the non-breaching Party shall be entitled to pursue all legal and equitable rights and remedies permitted by applicable law.

35. **RELATIONSHIP OF PARTIES.** The relationship between Center and City is solely that of owner and temporary occupant, and will not be deemed a partnership, joint venture, agency, or tenancy.

36. **COUNTERPARTS; ELECTRONIC SIGNATURES.** This Agreement may be executed in any number of duplicate originals and each duplicate original will be deemed to be an original. This Agreement may be executed in any number of counterparts, each of which constitutes an original, and all the counterparts together constitute one and the same Agreement. Electronic copies of this Agreement and signatures thereon will have the same force, effect, and legal status as originals.

In witness whereof, the parties have caused duly authorized representatives to execute this Agreement on the dates set forth below.

[CENTER AT PARMER, LLC]

Signature: _____

Name: _____

Printed Name

Title: _____

Date: _____

CITY OF AUSTIN

Signature: _____

Name: Michael Gates

Title: Interim Officer – Office of Real Estate Services

Date: _____

Approved as to Form

By Sean Creegan

Name: Sean Creegan

Title: Assistant City Attorney

EXHIBIT A
BUSINESS ASSOCIATE AGREEMENT PROVISIONS

BUSINESS ASSOCIATE AGREEMENT PROVISIONS

This Business Associate Agreement (the "Agreement"), is made by and between the Center (Business Associate) and the City of Austin, a Texas home rule municipal corporation (Covered Entity) (collectively the "Parties") to comply with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 ("the Privacy Rule") and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, subpart C ("the Security Rule"), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated thereunder, and any applicable state confidentiality laws.

RECITALS

WHEREAS, Business Associate provides services ("Services") outlined in the AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE CENTER AT PARMER REHABILITATION CENTER to or on behalf of Covered Entity;

WHEREAS, in connection with these Services, Covered Entity discloses to Business Associate certain protected health information ("PHI") that is subject to protection under the HIPAA Rules; and

WHEREAS, the HIPAA Rules require that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received, maintained, or transmitted in the course of providing Services to or on behalf of Covered Entity.

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

- A. Definitions. Terms used herein, but not otherwise defined, shall have the meaning ascribed by the Privacy Rule and the Security Rule.
1. Breach. "Breach" shall have the same meaning as the term "Breach" in 45 C.F.R. §164.402.
 2. Business Associate. "Business Associate" shall have the same meaning as the term "business associate" in 45 C.F.R. §160.103 and in reference to the party to this agreement, shall mean Center.
 3. Covered Entity. "Covered Entity" shall have the same meaning as the term "covered entity" in 45 C.F.R. §160.103 and in reference to the party to this agreement shall mean the City of Austin, a Texas home rule municipal corporation.
 4. Designated Record Set. "Designated Record Set" shall mean a group of records maintained by or for a Covered Entity that is: (i) the medical records and billing records about Individuals maintained by or for a covered

health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

5. HIPAA Rules. The Privacy Rule and the Security Rule, and amendments codified and promulgated by the HITECH Act are referred to collectively herein as "HIPAA Rules."
6. Incident. "Incident" means a Security Incident as defined by 45 CFR 164.304 and includes a potential or attempted unauthorized access, use, disclosure, modification, loss, disruption, or destruction of PHI or interference with system operations in an information system, which has the potential for jeopardizing the confidentiality, integrity, or availability of the PHI.
7. Individual. "Individual" shall mean the person who is the subject of the protected health information.
8. Protected Health Information. "Protected Health Information" or PHI shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of covered entity pursuant to this Agreement.
9. Required by Law. "Required by Law" shall mean a mandate contained in law that compels a use or disclosure of PHI.
10. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services, or his or her Designee.
11. Sensitive Personal Information. "Sensitive Personal Information" shall mean an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: a) social security number; driver's license number or government-issued identification number; or account number, or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or b) information that identifies an individual and relates to: the physical or mental health or condition of the individual; the provision of health care to the individual; or payment for the provision of health care to the individual.
12. Subcontractor. "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 C.F.R. §160.103.
13. Unsecured PHI. "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through

the use of a technology or methodology specified by the Secretary in the guidance issued under Section 13402(h)(2) of Public Law 111-5.

- B. Purposes for which PHI May Be Disclosed to Business Associate. In connection with the Services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may disclose PHI to Business Associate for the purposes of **providing a social service.**
- C. Obligations of Covered Entity. If deemed applicable by Covered Entity, Covered Entity shall:
1. provide Business Associate a copy of its Notice of Privacy Practices ("Notice") produced by Covered Entity in accordance with 45 C.F.R. 164.520 as well as any changes to such Notice;
 2. provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate's permitted or required uses and/or disclosures;
 3. notify Business Associate of any restriction to the use and/or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI;
 4. not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity;
 5. notify Business Associate of any amendment to PHI to which Covered Entity has agreed, that affects a Designated Record Set maintained by Business Associate;
 6. if Business Associate maintains a Designated Record Set, provide Business Associate with a copy of its policies and procedures related to an Individual's right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI; and
 7. direct, review and control notification made by the Business Associate to individuals regarding a Breach of their Unsecured PHI in accordance with the requirements set forth in 45 C.F.R. §164.404.
- D. Obligations of Business Associate. Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the HIPAA Rules applicable to Business Associates, including:
1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use or disclose PHI except as necessary to provide Services described above to or on behalf of Covered Entity, and shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by Covered Entity. Provided,

however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. Business Associate shall in such cases:

- (a) provide information and training to members of its workforce using or disclosing PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement;
 - (b) obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (a) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been Breached; and
 - (c) agree to notify Covered Entity of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules.
- 2. Data Aggregation. In the event that Business Associate works for more than one "Covered Entity," as that term is defined generally in the HIPAA rules, Business Associate is permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Rules.
- 3. De-identified Information. Business Associate may use and disclose de-identified health information if written approval from the Covered Entity is obtained, and the PHI is de-identified in compliance with the HIPAA Rules. Moreover, Business Associate shall review and comply with the requirements defined under Section E. "Permitted Uses and Disclosures by Business Associate" of this Agreement.
- 4. Safeguards.
 - (a) Business Associate shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as Required by Law. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.
 - (b) Business Associate shall assure that all PHI be secured when accessed by Business Associate's employees, agents, or subcontractor. Any access to PHI by Business Associate's employees, agents, or subcontractors shall be limited to legitimate business needs while working with PHI. Any personnel changes by Business Associate, eliminating the legitimate business needs for employees', agents', or contractors' access to PHI – either by

revision of duties or termination – shall be immediately reported to Covered Entity. Such reporting shall be made no later than the third business day after the personnel change becomes effective.

5. Minimum Necessary. Business Associate shall ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed; and the use of limited data sets when possible.
6. Disclosure to Agents and Subcontractors. If Business Associate discloses PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to Business Associate under this Agreement. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of the agent or subcontractor in providing the Services as if they were Business Associate's own acts, failures, or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.
7. Individual Rights Regarding Designated Record Sets. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees as follows:
 - (a) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that Set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524. If the PHI is in electronic format, the Individual shall have a right to obtain a copy of such information in electronic format, and if the Individual chooses, to direct that an electronic copy be transmitted directly to an entity or person designated by the individual in accordance with HITECH Section 13405(c) of the HITECH Act. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible, but not later than **30 days** following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline by responding to the Individual's request within 15 days following receipt of the request. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If Covered Entity maintains the requested records, Covered Entity, rather than

Business Associate, shall permit access according to its policies and procedures implementing the Privacy Rule.

- (b) Individual Right to Amendment. Business Associate agrees, if it maintains PHI in a Designated Record Set, to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. §164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. §164.526.
 - (c) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI, whether PHI is in paper or electronic format, in accordance with 45 C.F.R. §164.528 and Section 13405 (c) of the HITECH Act, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible but not later than **60 days** following receipt of the request. Business Associate agrees to use its best efforts to assist Covered Entity in meeting this deadline but not later than **30 days** following receipt of the request. Such accounting must be provided without cost to the individual or Covered Entity if it is the first accounting requested by an individual within any 12month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the individual in advance of the fee and is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the six years prior to the request (not including disclosures prior to the compliance date of the Privacy Rule) and shall be provided for as long as Business Associate maintains the PHI.
8. Internal Practices, Policies, and Procedures, and Audit. Except as otherwise specified herein, Business Associate shall make available its internal practices, policies, books, records, and procedures relating to the use and disclosure of PHI, received from or on behalf of Covered Entity to the Secretary, or his or her agents for the purpose of determining Covered Entity's compliance with the HIPAA Rules, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity or the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests for PHI by or on behalf of any and all federal, state, and local government authorities.
9. Notice of Privacy Practices. Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any use or

disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.

10. Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.
11. Knowledge of HIPAA Rules. Business Associate agrees to review and understand the HIPAA Rules as it applies to Business Associate, and to comply with the applicable requirements of the HIPAA Rule, as well as any applicable amendments.
12. Incident Notification. To the extent feasible, Business Associate will use commercially reasonable efforts to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with U.S. Department of Health and Human Services (HHS) Guidance published at 74 Federal Register 19006 (April 17, 2009) or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology (also known as "NIST") concerning the protection of identifiable data, such as PHI. Business Associate will report, as required by 45 C.F.R. §164.314(a)(2)(i)(C), Incidents to Covered Entity, including promptly reporting any successful Incident of which it becomes aware and at the request of the Covered Entity, will identify: the date of the Incident; scope of Incident; Business Associate's response to the Incident; and the identification of the party responsible for causing the Incident.
13. Information Breach Notification for PHI. Business Associate expressly recognizes that Covered Entity has certain reporting and disclosure obligations to the Secretary and the Individual in case of a security Breach of unsecured PHI. Where Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured paper or electronic PHI, immediately following the "discovery" (within the meaning of 45 C.F.R. §164.410(a)) of a Breach of such information, Business Associate shall notify Covered Entity of such Breach. Initial notification of the Breach does not need to be in compliance with 45 C.F.R. §164.404(c); however, Business Associate must provide Covered Entity with all information necessary for Covered Entity to comply with 45 C.F.R. §164.404(c) without reasonable delay, and in no case later than **three days** following the discovery of the Breach. Business Associate shall be liable for the costs associated with such Breach if caused by the Business Associate's negligent or willful acts or omissions, or the negligent

or willful acts or omissions of Business Associate's agents, officers, employees, or subcontractors.

14. Breach Notification to Individuals. Business Associate's duty to notify Covered Entity of any Breach does not permit Business Associate to notify those individuals whose PHI has been Breached by Business Associate without the express written permission of Covered Entity to do so. Any and all notification to those individuals whose PHI has been Breached shall be made by the Business Associate under the direction, review, and control of Covered Entity. The Business Associate will notify Covered Entity via telephone with follow-up in writing to include: name of individuals whose PHI was Breached; information Breached; date of Breach; and form of Breach. The cost of the notification will be paid by the Business Associate.
 15. Data Breach Notification and Mitigation Under Other Laws. In addition, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI and referred to hereinafter as "Individually Identifiable Information") and Sensitive Personal Information subject to Section 521.053 of the Texas Business and Commerce Code that, if misused, disclosed, lost or stolen, would trigger an obligation under one or more State data breach notification laws (each a "State Breach") to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information and Sensitive Personal Information is lost, stolen, used or disclosed in violation of one or more State laws, Business Associate shall promptly: (i) notify the Covered Entity within **15 calendar days** of such misuse, disclosure, loss or theft; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (iii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iv) cooperate with Covered Entity regarding the obligations of Covered Entity and Business Associate to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (v) assist with the implementation of any decision by any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach. This requirement shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI, Individually Identifiable Information, or Sensitive Personal Information.
- E. Permitted Uses and Disclosures by Business Associates. 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 this Business Associate Agreement or in a Master Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity, or the minimum necessary policies and procedures of the Covered Entity.

Also, Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with the HIPAA Rules.

1. Use. Business Associate will not, and will ensure that its directors, officers, employees, contractors, and other agents do not, use PHI other than as permitted or required by Business Associate to perform the Services or as required by law, but in no event in any manner that would constitute a violation of the Privacy Rule or Security Rule if used by Covered Entity.
2. Disclosure. Business Associate will not, and will ensure that its directors, officers, employees, contractors, and other agents do not, disclose PHI other than as permitted pursuant to this arrangement or as required by law, but in no event disclose PHI in any manner that would constitute a violation of the Privacy Rule or Security Rule if disclosed by Covered Entity.
3. Right Title and Interest. Business Associate acknowledges and agrees that Covered Entity owns all right, title, and interest in and to all PHI, and that such right, title, and interest will be vested in Covered Entity. Neither Business Associate nor any of its employees, agents, consultants, or assigns will have any rights in any of the PHI, except as expressly set forth above. Business Associate represents, warrants, and covenants that it will not compile and/or distribute analyses to third parties using any PHI without Covered Entity's express written consent.

F. Application of Security and Privacy Provisions to Business Associate.

1. Security Measures. Sections 164.308, 164.310, 164.312 and 164.316 of Title 45 of the Code of Federal Regulations dealing with the administrative, physical, and technical safeguards as well as policies, procedures and documentation requirements that apply to Covered Entity shall in the same manner apply to Business Associate. Any additional security requirements contained in Sub Title D of Title XIII of Division A of the HITECH Act that apply to Covered Entity shall also apply to Business Associate. Pursuant to the foregoing requirements in this Section F.1, the Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, has access to, or transmits. Business Associate will also ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect such information. Business Associate will ensure that PHI contained in portable devices or removable media is encrypted.
2. Annual Guidance. For the first year beginning after the date of the enactment of the HITECH Act and annually thereafter, the Secretary shall annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in Section F.1 "Security Measures" of this Agreement and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations. Business Associate shall, at their own cost and effort, monitor the issuance of such guidance and comply accordingly.

3. Privacy Provisions. The enhanced HIPAA privacy requirements, including but not necessarily limited to accounting for certain PHI disclosures for treatment, restrictions on the sale of PHI, restrictions on marketing and fundraising communications, and payment and health care operations contained in Subtitle D of Title XIII of Division A of the HITECH Act that apply to the Covered Entity, shall equally apply to the Business Associate.
4. Application of Civil and Criminal Penalties. If Business Associate violates any security or privacy provision specified in Section 13404(a) and (b) of the HITECH Act, Sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner that such Sections apply to Covered Entity if it violates such provisions.

G. Term and Termination.

1. Term. This Agreement shall be terminated when all PHI provided to Business Associate by Covered Entity or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.
2. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity or maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof and shall agree to extend the protections of this Agreement to such PHI, and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI. This Section shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI.

H. No Warranty. PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

I. Miscellaneous.

1. Indemnification. To the extent permitted by law, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Business Associate or its agents in connection with the performance of their duties under this Agreement. This indemnity shall apply even if Covered Entity is alleged to be solely or jointly negligent or otherwise solely or jointly at fault; provided, however, that a trier of fact finds Covered Entity not to be solely or jointly negligent or otherwise solely

or jointly at fault. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

Covered Entity shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs, and expenses of which shall be the responsibility of Business Associate. Covered Entity shall provide Business Associate with timely notice of the existence of such proceedings and such information, documents, and other cooperation as reasonably necessary to assist Business Associate in establishing a defense to such action.

These indemnities shall survive termination of this Agreement, and Covered Entity reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

2. Mitigation. If Business Associate violates this Agreement or either of the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.
3. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
4. Survival. The respective rights and obligations of Business Associate under Section E.3 "Right Title and Interest" of this Agreement shall survive the termination of this Agreement.
5. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed in Section 8.7 of the Master Services Agreement between the City and Center or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt.
6. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow Covered Entity to comply with the requirements of the HIPAA Rules.
7. Choice of Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed under the laws of the State of Texas, without regard to applicable conflict of laws principles.
8. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of

its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates, or successor companies. Assignments made in violation of this provision are null and void.

9. Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture, or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.
10. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
11. Equitable Relief. Any disclosure or misappropriation of PHI by Business Associate in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further disclosure or breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.
12. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid, or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid, or unenforceable provision had not been contained herein.
13. No Third-Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not a party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
14. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement.
15. Entire Agreement. This Agreement, together with all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this

Agreement or in any provisions of the Exhibits, Riders, or amendments, the provisions of this Agreement shall control.

16. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.
17. Regulatory References. A citation in this Agreement to the Code of Federal Regulations, the Federal Register, or any other federal guidance or policy shall mean the cited section or reference as they may be amended from time to time.

