

**INTERLOCAL COOPERATION ACT CONTRACT  
TO PROVIDE HEALTH CARE SERVICES  
BETWEEN THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON  
AND WILLIAMSON COUNTY**

This Interlocal Cooperation Act Contract (the "Contract") is entered into pursuant to the authority granted under *Chapter 791, Texas Government Code* by and between **The University of Texas Medical Branch at Galveston**, a component institution of The University of Texas System and an agency of the State of Texas, ("UTMB"), and **Williamson County** ("County") for the provision of the health care services to the County's eligible residents described herein.

This Contract is subject to the provisions of the Texas Indigent Health Care and Treatment Act, *Chapter 61, Texas Health & Safety Code* (the "Act"). However, UTMB and County understand and acknowledge that County shall be liable to UTMB for the treatment and provision of health care services to any Eligible Resident under this Contract, as contemplated and authorized under Section 74.005 (d), Texas Education Code, up to the Cap Out amount.

**I. Definitions:**

- 1.1 **Cap Out:** The maximum County liability under this Contract, which UTMB and County agree shall be \$60,000.
- 1.2 **Eligible Resident:** An Eligible Resident is a County resident who:
  - 1.2.1 Presents a valid County identification card to UTMB; and
  - 1.2.2 Presents a valid referral authorization from the County indigent health care office or from a physician designated by the County indigent health care office as authorized to make referrals; or
  - 1.2.3 Is referred to UTMB for treatment by an authorized County official and/or designated County agent providing a valid authorization.
- 1.3 **Emergency Care:** Any injury or illness that causes serious impairment to bodily functions, serious dysfunction of any bodily organ or part, serious disfigurement and/or in the case of a pregnant woman a threat to the health of the mother or of the fetus.
- 1.4 **Invoice:** An invoice is the demand for payment for services provided by UTMB to Eligible Residents which may be submitted at the election of the County either electronically or in monthly statement form as set out in Section 2.2.2.
- 1.5 **Patient Encounter:** A patient encounter includes each preauthorized inpatient or outpatient visit to UTMB by an Eligible Resident and all medically appropriate procedures, treatments, and ancillary services associated with that visit.

- 1.6 **Primary Care:** General health care services provided by family practitioners, pediatricians, and internal medicine physicians.
- 1.7 **Secondary Care:** Specialty health care services provided by a specialist who is asked to provide more insight and treatment regarding the medical problem of a patient who has been referred to UTMB.
- 1.8 **Tertiary Care:** Health care services provided within a sophisticated specialty care setting that is serving as a referral and support alternative to primary and secondary care.

## II. Responsibilities:

### 2.1 County's Responsibilities:

- 2.1.1 The County agrees to pay UTMB the fees charged to the County by UTMB for health care services rendered pursuant to this Contract within sixty (60) days of date of the Invoice except for amounts specifically disputed in accordance with Section 2.1.2. The undisputed portions of any Invoice will not be withheld and will be paid in accordance with this section 2.1.1.
- 2.1.2 In the event the County disputes all or any portion of an amount included on an Invoice, the County will notify UTMB in writing of the specific reason for which the amount is being disputed. Valid reasons for dispute include (i) appointment not authorized; (ii) Cap Out and (iii) Medicaid patient. In the case of the first two, UTMB and County will consult their respective records to resolve the dispute. In the case of a Medicaid patient, the County will provide the Medicaid Number, the Add Date, Effective Date and Term Date and such other information as is reasonably requested by UTMB. Any other reason for disputing a charge (i.e., duplicate charge) must be accompanied by a full explanation of the reason for non-payment and evidence that such charge is not valid and the County will provide to UTMB such additional information as is reasonably requested by UTMB. All notices of dispute shall be in writing, specific, in good faith, and promptly forwarded to the respective UTMB billing entity, but in no event later than forty-five (45) days from the date of the Invoice containing the disputed charge. Dispute notices received by UTMB later than forty-five (45) days from the date of the Invoice shall be null and void and the disputed amount shall be due and owing from the County to UTMB. Notices for dispute of a charge will be sent directly to the respective UTMB billing entity set forth in Section 2.1.4 and Section 2.1.5 with the appropriate documentation necessary for each such billing entity. UTMB shall respond to any notice of dispute within thirty (30) days of receipt of same. If UTMB's response indicates payment is expected for the amount(s) in dispute, the County shall have thirty (30) days from receipt of UTMB's response to either pay the disputed amount(s) or notify UTMB that the amount remains in dispute. If the



- 2.1.14 County agrees to pay for Emergency Care received by any Eligible Resident at the UTMB Emergency Room, without regard to prior authorization, at rates specified under this Contract.
- 2.1.15 County acknowledges that UTMB is reopening its Emergency Care unit on or about August 1, 2009, through the services of a third-party provider/entity. Based on the final terms of UTMB's contract with such third party, County understands and agrees that a separate agreement will have to be executed between County and such third-party for the provision of Emergency Care physician services under terms and at rates to be determined under such separate agreement.
- 2.1.16 County or its designee agrees to promptly respond to a request from UTMB to authorize additional health care services not previously authorized that are medically necessary when delaying such health care services may be harmful to the Eligible Resident. County or its designee shall utilize its best faith effort to respond within three (3) hours of UTMB's request to authorize additional health care services.
- 2.1.17 County or its designee agrees to notify UTMB by fax at (409) 747-0850 or other mutually agreeable electronic means, including email, when it disenrolls an Eligible Resident from the County's indigent health care program. Such notice shall be delivered within 72 hours of the effective date of the disenrollment, and shall include the name, date of birth, and social security number of the affected individual.
- 2.1.18 County agrees that it will not require Eligible Residents receiving health care services from UTMB under this Contract to obtain any part of those health care services outside of UTMB, including but not limited to radiology, electronic imaging, laboratory and pathology services.

## **2.2 UTMB's responsibilities:**

- 2.2.1 At the time of referral of an Eligible Resident, UTMB agrees to provide health care services within the then current limits of its capacities and capabilities to the County's Eligible Residents at the authorized and agreed upon fee schedule attached as Exhibit D to this Contract.
- 2.2.2 UTMB agrees to submit Invoices on a timely basis to the County from each billing entity.
  - 2.2.2.1 Invoices may be submitted either (i) electronically for each Patient Encounter of an Eligible Resident; or (ii) in a paper statement prepared on a monthly basis reflecting the accumulated amounts due to UTMB from the County for the Patient Encounters of all Eligible Residents during the previous month regardless of the date of a Patient Encounter. The County has elected the method of invoicing indicated on the signature page of this Contract. The

County may change such election only upon written notification to UTMB at least sixty (60) days prior to the date requested for such change to take effect.

- 2.2.2.2 Invoices that are sent in electronic form will be sent within ninety-five (95) days of the date of each Patient Encounter. If submitted in paper statement form, the Invoice will include the amounts due to UTMB from the County for the Patient Encounters of all Eligible Residents accumulated during the previous month regardless of the date of a Patient Encounter, although the Invoice will be sent within one-hundred twenty-five (125) days of the date of any Patient Encounter included on the Invoice. Separate Invoices will be submitted for hospital and physician services.
- 2.2.3 UTMB agrees that it will not "balance bill" for health care services provided to those Eligible Residents who have the appropriate consultation form identified in Exhibit B. UTMB agrees to accept County's payment as payment in full for health care services provided to Eligible Residents. In the event that Eligible Resident is entitled to payment for health care services from a third party payer, UTMB shall not demand from County any amount received by County for reimbursement from a third party payer. In the event that UTMB receives payment from both the County and a third party payer, UTMB agrees to refund the County for the amount received from the County. For purposes of accomplishing the intent of this section, the County assigns to UTMB its rights to collection for any third party claim for services rendered by UTMB to Eligible Residents. Refund should be submitted to the appropriate County within one hundred twenty (120) days of UTMB receipt of payment from third party payer.
- 2.2.4 UTMB agrees to make a best faith effort to provide discharge summaries and consultation reports, procedure and/or operative notes (and case notes, if requested by County) and consult notes for clinic services to the County's referring physician. UTMB shall furnish such information to the County's referring physician not later than ten (10) business days of the date of discharge of the patient. In addition, UTMB shall furnish the same information, as soon as practicable, upon request to the County's indigent healthcare office or its assignee. In the event UTMB fails to provide such information as is required by this section on a timely basis for more than ten percent (10%) of the County's patients treated at UTMB during any calendar month during the term of this Contract, then upon such failure of performance County may immediately institute the dispute resolution procedure set forth in section 5.3 below. UTMB agrees to provide copies of medical records under this section without charge. If additional copies of the same medical records are requested, whether in the same or subsequent request by County, County will pay for the additional copies at the rates then charged by UTMB for such copies under similar circumstances.



- 2.2.5 UTMB agrees to refer all Eligible Residents back to the County's indigent care office for follow-up treatment of the referred condition.
- 2.2.6 UTMB Invoices shall include a HCFA UB-04 for inpatient/hospital services and a HCFA 1500 for outpatient/physician services. UTMB shall provide all necessary documents in its possession to assist County in seeking reimbursement from other sources, including assignments for Medicaid eligible services provided to SSI Appellant Eligible Residents.
- 2.2.7 UTMB agrees to use reasonable efforts to inform the County of the cumulative amount of all Invoices.
- 2.2.8 UTMB agrees to provide names, addresses, and phone numbers for personnel responsible for arranging for health care services under this Contract.
- 2.2.9 UTMB agrees to comply with Federal and State laws regarding Emergency Care. UTMB agrees to make reasonable efforts to refer County residents not requiring Emergency Care to the County's indigent health care office for referral in accordance with the provisions of this Contract.
- 2.2.10 UTMB provides professional liability insurance coverage for employed UTMB faculty, qualifying part-time contracted faculty, residents, and students through the University of Texas System Professional Medical Liability Benefit Plan (the "Plan") for claims arising from or related to acts and/or omissions occurring within the course and scope of their clinical, educational, and research duties and responsibilities. The plan provides coverage of \$500,000 per claim and \$1.5 million in annual aggregate and is an "incurred" plan and provides "tail" coverage. UTMB agrees to provide evidence of current coverage under such policies and to immediately inform County of any actual or proposed material modification, cancellation, or termination of such insurance. County acknowledges that, as an agency of the State of Texas, UTMB's liability for the tortuous conduct of UTMB employees or for injuries caused by conditions of tangible personal property is provided for by the provisions of the Texas Tort Claims Act (*Texas Civil Practice and Remedies Code, Chapters 101, 104, and 108*). Workers' Compensation Insurance coverage for employees of UTMB is provided by UTMB as mandated by the provisions of *Texas Labor Code, Chapter 503*.
- 2.2.11 UTMB agrees to allow County and/or its agent access to the medical and billing records of services provided under this Contract to County's Eligible Residents treated by UTMB for purposes of allowing County and/or its agent to conduct audits regarding medical necessity and/or billing accuracy. In such event, County shall provide notice not less than three (3) business days in advance of on-site visit and specify those records it desires to inspect and review. On-site visits will be conducted during normal business hours. County and/or its agent will adhere to all UTMB standard security requirements for premises access. All costs of such au-

mits shall be the responsibility of County. UTMB agrees to cooperate with County regarding such audit processes.

**2.3 Health care services not UTMB's responsibility:**

2.3.1 UTMB does not agree to provide Outpatient Pharmacy services.

2.3.2 UTMB does not agree to provide transportation to and from UTMB.

2.3.3 UTMB does not agree to provide take-home medical supplies.

**III. Warranties:**

3.1 UTMB warrants that (1) the health care services to be performed hereunder are necessary and authorized for activities that are properly within its statutory functions and programs; (2) it has the authority to contract for the services under authority granted in Chapter 65, *Texas Education Code*, and Chapter 791, *Texas Government Code*; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Contract, and (4) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

3.2 County warrants that (1) it has authority to perform the services under authority granted in Chapter 61, *Texas Health & Safety Code* and Chapter 791, *Texas Government Code*; (2) it has all necessary power and has received all necessary approvals to execute and deliver this Contract, and (3) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

**IV Miscellaneous:**

5.1 **Term and Termination.** This term of this Contract shall be from September 1, 2009 through August 31, 2010, regardless of the date of execution. This Contract may be terminated earlier by either party by giving thirty (30) days written notice to the other party. Execution of this Contract shall supersede and replace any previous agreement between County and UTMB for indigent health care services provided after September 1, 2009, or the effective date of this Contract, whichever date is earlier. Physician services will be designated by the last date of service of a Patient Encounter. Hospital services will be designated by admission date.

For continuation of care after the effective date of termination, the parties agree to cooperate to arrange for the prompt, medically appropriate transfer of Eligible Residents following termination of this Contract. In the case of inpatient services provided to Eligible Residents after the effective date of termination, except as may be required by the obligation of UTMB to continue care in the event of special circumstances, UTMB shall continue such care and be compensated by the County until the conclusion of the course of treatment. Such continued treatment shall be at the rates then in effect under this Contract. For outpatient



treatment, the County agrees to move the Eligible Resident to a contracted provider unless both parties agree in writing to a short term continuum of care plan. Services provided under this section, with accompanying requirements, survive the termination of Contract.

- 5.2 **Jurisdiction/Venue.** The parties agree that this Contract shall be construed in accordance with the laws of the State of Texas and that venue shall lie in a State District Court in Travis County, Texas.
- 5.3 **Dispute Resolution Procedure.** The parties agree to use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve all disputes arising under this Contract. Either party must give written notice to the other party of a claim for breach of this Contract not later than the 180<sup>th</sup> day after the date of the event giving rise to the claim. By their execution of this Contract, the parties acknowledge and knowingly and voluntarily agree that neither the execution of this Contract; nor the conduct, act or inaction by any person in the execution, administration, or performance of this Contract constitutes or is intended to constitute a waiver of the other party's immunity from suit with respect to claims of third parties.
- 5.4 **Entire Agreement/Amendment.** This Contract constitutes the entire agreement between the parties. This Contract may be amended only in writing and signed by both parties.
- 5.5 **HIPAA Obligation and Other Regulations Implementing the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320(d) ("HIPAA")).** To the extent either party comes into contact with information considered Individually Identifiable Health Information as defined by 42 U.S.C. §1320(d), Protected Health Information or Electronic Protected Health Information (collectively known as "Protected Information") as regulated by the Department of Health and Human Services (DHHS) through the adoption of standards, 45 CFR Parts 160 and 164 (Privacy Rule) and 45 CFR Parts 160, 162 and 164 (Security Rule), collectively referred to as "the HIPAA Rules," such party agrees to keep private and to secure any information considered Protected Information in accordance with federal law. Further, the parties will execute the Business Associate Agreement appended hereto as Exhibit E.
- 5.6 **Notices.** Except as otherwise provided in this section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Contract shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as set forth below or to such other person or address as may be given in writing by either party to the other in accordance with this Section:

UTMB: William R. Elger, CPA  
Executive Vice President and  
Chief Business and Finance Officer  
The University of Texas Medical Branch  
301 University Blvd.  
Galveston, TX 77555-0128

Cc to: Department of Legal Affairs  
The University of Texas Medical Branch  
301 University Blvd.  
Galveston, Texas 77555-0171  
Phone: (409) 747-8738  
Fax: (409) 747-8741

If to Williamson County:

The Honorable Judge Dan A. Gattis  
Address: 710 Main Street, Suite 101  
City: Georgetown  
Phone: 512-943-1550

- 5.7 **State Auditor's Office.** The parties understand that acceptance of funds under this Contract constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Texas Education Code. The contracting parties agree to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. The contracting parties will include this provision in all contracts with permitted subcontractors.
- 5.8 **Assignment.** This Contract is not transferable or assignable except upon written approval by receiving party and performing party.
- 5.9 **Severability.** If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained therein.
- 5.10 **Public Records.** It shall be the independent responsibility of UTMB and County to comply with the provisions of Chapter 552, *Texas Government Code* (the "*Public Information Act*"), as those provisions apply to the parties' respective information. Neither party is authorized to receive public information requests or take any action under the *Public Information Act* on behalf of the other party.
- 5.11 **Force Majeure.** Neither UTMB nor County shall be required to perform any term, condition, or covenant of this Contract so long as such performance is de-



layed or prevented by acts of God, material or labor restrictions by any governmental authority, civil riot, floods, hurricanes, or other natural disasters, and any other cause not reasonably within the control of UTMB or County and that by the exercise of due diligence UTMB or County is unable, wholly or in part, to prevent or overcome.

IN WITNESS WHEREOF, each of the parties agrees to the terms of this Contract and has caused this Contract to be executed on the following page by its duly authorized representative to be effective as of September 1, 2008.

**WILLIAMSON COUNTY**

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

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

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

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

Attest: \_\_\_\_\_

**THE UNIVERSITY OF TEXAS MEDICAL  
BRANCH AT GALVESTON**

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

William R. Elger, CPA  
Executive Vice President and  
Chief Business and Finance Officer

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

Content Reviewed \_\_\_\_\_

**Election by County as to Method of  
Invoicing (please initial one):**

\_\_\_\_\_ **Paper Monthly Statement**

\_\_\_\_\_ **Electronic**

**Exhibit A**  
**Eligible Resident Identification Card**

**Card**

<b>County Indigent Care Card No.</b> _____	
Effective Date: <u>10-01-10</u>	Expiration Date: <u>10-31-10</u>
County Identification No: <u>123456</u>	
Coverage:_____	
Name:	Mr/Mrs. County Resident
Address:	1313 Main Street
	Your City, Texas 00000
Telephone:	409-555-5555
Date of Birth:	<u>10-23-1949</u>
Primary Care Provider:	
_____	
<i>Signature</i>	
<b>County Indigent Care Coordinator</b>	
_____	
<i>Signature</i>	
<b>County Indigent Patient's Signature</b>	
Patient Must Present This Card at Time of Registration.	
This card is not an evidence of eligibility for benefits. Determination of eligibility will be established through the County Indigent Care Coordinator's Office.	

Cards are to be created by the County .

Each card should have a unique number assigned as a security precaution and tracking mechanism.

Each card should have an original signature by the appropriate representative of the county.

Each card should have an original signature by the resident

Each covered family member should have their own card issued. This would replace existing letters.



## Primer Legist

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

Select Appropriate Request / Approval for:

Procedure	[ ]	Referral	[ ]
Consultation	[ ]	More Visits	[ ]

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## Exhibit C Procedures Requiring Preauthorization

*The following services require pre-authorization:*

### INPATIENT SERVICES:

- Inpatient Admissions / Acute care hospitalization
- Skilled Nursing Facility

### OUTPATIENT SERVICES:

- Surgeries or procedures requiring conscious sedation or general anesthesia performed in a physician's office, free standing surgery center, ambulatory surgery center, or hospital based surgery center
- CT Scan
- Echocardiogram
- MRI/MRS
- Nuclear Studies/Imaging
- PET Scan
- Physical Therapy
- Speech Therapy
- Occupational Therapy
- Hyperbaric Treatments- *only in special circumstances*
- Initial Chemotherapy Treatment ONLY
- Initial Radiation Treatment ONLY
- Infusion Treatment
- Oral Surgery - *only in special circumstances*



**EXHIBIT D**  
**Compensation Schedule**

<b>Inpatient Services:</b>	County agrees to pay for authorized Inpatient Services in accordance with Texas Medicaid allowable In-Patient TEFRA rate calculated from UTMB's most recent cost report. Payments for services rendered will be in accordance with UTMB's facility specific TEFRA In-Patient Percentage of 54% of current billed charges.
<b>Outpatient Services:</b>	County agrees to pay authorized Outpatient Services based on billed charges at the TEFRA Out-Patient Percentage determined by TMHP based on UTMB's most recent Medicaid cost report settlement. UTMB's TEFRA Out-Patient Percentage is 43% of billed charges.
<b>Outpatient Surgery:</b>	County agrees to pay authorized Outpatient Surgeries in accordance with UTMB's TEFRA Out-Patient Percentage of 43% of billed charges.
<b>Outpatient Laboratory Services:</b>	County agrees to pay authorized Outpatient Laboratory Services in accordance with the UTMB's TEFRA Out-Patient Percentage of 43% of billed charges.
<b>Professional Services:</b>	County agrees to pay all authorized physician services, except Anesthesia services reimbursed per ASA unit, at 120% of the current Texas Medicaid Reimbursement Methodology. If the Center for Medicare and Medicaid, the state of Texas or any other governmental agency with governing authority reduces the Texas Medicaid Reimbursement Methodology during the term of this agreement, the parties hereto will increase the physician payment rates in equal proportion to offset the reduction.
<b>Mid-Level Providers:</b>	County agrees to pay all covered mid-level provider services at 95% of the physician payment rates listed above under Professional Services.
<b>Anesthesia:</b>	County agrees to pay \$41 per ASA unit, based on current ASA units and 15 minute time units.
<b>Any fees not otherwise defined:</b>	County agrees to pay 43% of billed charges.

## **Exhibit E**

### **UTMB Business Associate Agreement**

This Business Associate Agreement (the "Agreement"), is made by and between Business Associate and 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, ("the Security Rule") and any applicable state confidentiality laws.

### **RECITALS**

**WHEREAS**, Business Associate provides payment services to or on behalf of Covered Entity;

**WHEREAS**, in connection with these services, Covered Entity discloses to Business Associate certain PHI that is subject to protection under the HIPAA Rules; and

**WHEREAS**, the HIPAA Rules requires that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received 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 meaning ascribed by the Privacy Rule and the Security Rule.

1. **Business Associate.** "Business Associate" shall mean County.
2. **Covered Entity.** "Covered Entity" shall mean The University of Texas Medical Branch at Galveston (UTMB).
3. **HIPAA Rules.** The Privacy Rule and the Security Rule are referred to collectively herein as "HIPAA Rules."
4. **Individual.** "Individual" shall mean the person who is the subject of the protected health information.
5. **Protected Health Information ("PHI").** "Protected Health Information" or PHI shall mean individually identifiable health information that is transmitted or maintained in any form or medium.
6. **Required by Law.** "Required by Law" shall mean a mandate contained in law that compels a use or disclosure of PHI.



7. **Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her Designee.

**B. 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. In such cases, Business Associate shall:
  - a. Provide information and training to members of its workforce who use or disclose 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:
    1. 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
    2. the person or entity will notify Business Associate of any instances of which the person is aware the confidentiality of the PHI has been breached; and
  - c. agree to notify the Privacy Officer of Covered Entity of any instances of which it is aware PHI was 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, 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.** The Business Associate may use and disclose de-identified PHI if written approval from the Covered Entity is obtained, and the PHI is de-identified in compliance with the HIPAA Rules.
4. **Safeguards.** 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 electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.

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.
6. **Disclosure to Agents and Subcontractors.** If Business Associate discloses PHI received from 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 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. Business Associate agrees, if it maintains PHI in a Designated Record Set, it will permit an Individual to inspect or copy PHI at the request and direction of Covered Entity to meet the requirements of 45 C.F.R. § 164.524.
  - b. 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 to meet the requirements of 45 C.F.R. 164.526.
  - c. Business Associate agrees, if it maintains PHI in a Designated Record Set, to maintain the required documentation to provide an accounting of disclosures of PHI at the request and direction of Covered Entity to meet the requirements of 45 C.F.R. § 164.528.
8. **Internal Practices, Policies, and Procedures.** Business Associate agrees to make internal practices, books, and records, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary or its designee for purposes determining Covered Entity's compliance with the HIPAA Rules.



9. **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 HIPAA Rules expressly applies.
  10. **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.
  11. **Security Incident.** Business Associate agrees to immediately report to the Covered Entity any security incident of which Business Associate becomes aware.
- C. **Permitted Uses and Disclosures by Business Associates.** Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Business Associates 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.
- D. **Obligations of Covered Entity.** If deemed applicable by Covered Entity, Covered Entity shall:
1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
  2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
  3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI
  4. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

#### **E. Term and Termination.**

1. **Term.** This Agreement shall be effective as of the Effective Date and 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. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement, whether it is in the form of a stand alone agreement or an addendum to a Master Services Agreement, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  - b. Immediately terminate this Agreement whether it is in the form of a stand alone agreement or an addendum to a Master Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  - c. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
3. **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, 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.

#### **F. Miscellaneous.**

1. **Mitigation.** If Business Associate violates this Agreement or either of the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.
2. **Rights of Proprietary Information.** Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
3. **Survival.** The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.



4. **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's to comply with the requirements of the HIPAA Rules.
5. **Choice of Law.** This Agreement and the rights and the 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.
6. **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.
7. **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.
8. **No Third Party Beneficiaries.** Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
9. **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 anyway the meaning or interpretation of this Agreement.
10. **Entire Agreement.** This Agreement 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 in any provisions of the Exhibits, Riders, or amendments, the provisions of this Agreement shall control.
11. **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.
12. **Regulatory References.** A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

13. **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 Business Associate's or its agents' duties under this Agreement.

IN WITNESS WHEREOF, Business Associate and Covered Entity have executed this Agreement to be effective September 1, 2009.

**COVERED ENTITY**

By: \_\_\_\_\_  
Name: William R. Elger, CPA  
Title: Executive Vice President and  
Chief Business & Finance Officer

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

Content Reviewed  
\_\_\_\_\_

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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