

# BUSINESS ASSOCIATE AGREEMENT

**THIS BUSINESS ASSOCIATE AGREEMENT** (this "Agreement") is entered into and effective as of the date of the last party's execution below, between **Williamson County, Texas**, a political subdivision of the State of Texas, with its principal office at 710 Main Street, Suite 101, Georgetown, Texas 78626 ("County"), and **FirstWatch Solutions, Inc.**, having an office at 322 Encinitas Boulevard, Suite 100, Encinitas, CA 92024 ("Associate").

## WITNESSETH:

**WHEREAS**, Associate provides the following services to County (the "Services"): health related benefits consulting services, which are more thoroughly described in the one or more written Agreements between County and Associate as amended from time to time; and

**WHEREAS**, the Services may constitute, in whole or in part, services described in the definition of "business associate" set forth in Title 45, Section 164.103 of the Code of Federal Regulations ("CFR"); and

**WHEREAS**, in connection with the provision of Services, Associate might require access to certain information maintained by County in order to fulfill its obligations to County and/or to conduct its own business; and

**WHEREAS**, County and Associate desire to enter into this Agreement in order to ensure that Associate's access to and use or disclosure of any and all information relating to County's patients complies fully with the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations promulgated thereto by the Department of Health and Human Services ("HHS") and codified at 45 CFR Parts 160 and 164, as amended from time to time, including without limitation (i) the Privacy Standards for the Protection of Health Information set forth at 45 CFR Part 164, Subparts A and E, and (ii) the Security Standards for the Protection of Electronic Protected Health Information set forth at 45 CFR Part 164, Subpart C (the statute and regulations are hereinafter collectively referred to as "HIPAA").

**NOW, THEREFORE**, in consideration of the mutual covenants and promises more fully set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

### **1. Definitions.**

a. **"Protected health information"** shall be defined in accordance with 45 CFR § 160.103, as amended from time to time. At a minimum, protected health information shall include all individually identifiable health information pertaining to any current or former participant in The Prevention Plan or other prevention products offered by the County (each, a "Participant") that is transmitted or maintained in any electronic or other form or medium.

b. **"Individually identifiable health information"** shall be defined in accordance with 45 CFR § 160.103, as amended from time to time, and for purposes of this Agreement shall mean such information relating to a current or former Participant that is furnished by County to Associate or created by Associate for or on behalf of County (including without limitation demographic information collected from a current or former Participant), and (i) is created or received by County, Associate or another health care provider, health plan, employer, or healthcare clearinghouse; (ii) relates to the past, present or future physical or mental condition of a current or former Participant, the provision of prevention services or related health services to such Participant, or the past, present or future payment for the provision prevention services or related health services to such Participant, and (iii) that identifies the Participant, or for which there is reasonable basis to believe the information can be used to identify the Participant.

c. **"Privacy Standards"** shall mean the Privacy Standards for the Protection of Health Information set forth at 45 CFR Part 164, Subparts A and E, as amended from time to time.

d. **"Electronic protected health information"** shall be defined in accordance with 45 CFR § 160.103, as amended from time to time.

e. **"Security Standards"** shall mean the Security Standards for the Protection of Electronic Protected Health Information set forth at 45 CFR Part 164, Subpart C, as amended from time to time.

f. **"Breach"** shall mean the acquisition, access, use, or disclosure of PHI in a manner that: (i) is not permitted by the HIPAA Privacy Regulations; (ii) poses a significant risk of financial, reputational, or other harm to the individual; and (iii) is not excluded from the definition of Breach found at 45 C.F.R. §164.402. In the event of any inconsistency between the definition of Breach in this Amendment and the definition in the Privacy Regulations, the definition in the Privacy Regulations will control.

g. **"HITECH Act"** shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act, Pub. L. No. 111-5.

h. **"Unsecured Protected Health Information"** shall mean Protected Health Information in any form, including electronic, paper or verbal, that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary pursuant to the HITECH Act, as such guidance may be updated by the Secretary from time to time.

i. Except as otherwise specified in this Agreement, terms used in this Agreement shall be interpreted in a manner consistent with and necessary for County to comply with the Privacy Standards and the Security Standards.

2. **Disclosure to Associate.** Nothing in this Agreement shall be construed to require County to furnish or disclose to Associate any protected health information or other information relating to Participants. The parties acknowledge that County may be required to furnish to

Associate certain protected health information in order to permit Associate to meet its obligations to County. This Agreement is intended solely to require and ensure that Associate's use or disclosure of such protected health information complies fully with the Privacy Standards.

**3. Use of Protected Health Information.** Associate agrees to use protected health information received by Associate from County or created by Associate on behalf of County solely in its capacity as a business associate to the County, and only to the extent necessary: (i) to meet its obligations to County; (ii) for the proper management and administration of Associate; and (iii) to carry out Associate's legal responsibilities. Associate shall not use protected health information for any other purpose, or in any manner that would constitute a violation of the Privacy Standards or County's Notice of Privacy Practices, as the same may be amended from time to time (the "Privacy Notice"). Associate hereby acknowledges that it has received a copy of the Privacy Notice and will comply fully with its provisions.

**4. Disclosure of Protected Health Information.** Associate may disclose protected health information only in a manner permitted pursuant to this Agreement or as required by law. To the extent Associate discloses protected health information to any third party, the Associate shall, prior to making any such disclosure and in addition to the assurances required by Section 7 of this Agreement, obtain: (i) reasonable assurances from such third party that the protected health information will be held confidential as required by this Agreement and used or further disclosed only as required by law or for the specific purpose for which it was disclosed to such third party; and (ii) the written agreement of such third party to notify immediately Associate of any breach of the confidentiality of such protected health information, to the extent such third party obtains knowledge of such breach. Associate shall not disclose protected health information received from County for any other reason, or in any manner that would constitute a violation of the Privacy Standards.

**5. Safeguards.** Associate agrees to implement and utilize safeguards to prevent the use or disclosure of protected health information for any purpose other than as expressly provided for in this Agreement. Upon request therefore, Associate will provide County with information regarding the nature of such safeguards and the effectiveness of their implementation and maintenance.

**6. Reporting and Mitigation.** Associate agrees to (a) report immediately to County in writing any use or disclosure of protected health information not provided for in this Agreement of which Associate becomes aware; and (b) take such actions as may reasonably be requested by County or as may reasonably be required to mitigate the effects of any use or disclosure of protected health information by Associate or any of its contractors, employees or affiliates in violation of this Agreement. Associate agrees to notify the County as required by 45 CFR 164.410 following the discovery of a breach of unsecured PHI. Such notice shall be provided without unreasonable delay and within the timeframe prescribed in the Privacy Standards and shall include, to the extent possible, information that the County is required to include in notification to the individual under 45 CFR 164.404.

**7. Third Parties.** Associate shall require that any agent, subcontractor or other third party to whom it is permitted or required to provide protected health information pursuant to this Agreement agree in writing to the same restrictions and conditions that apply to Associate with

respect to such protected health information. Upon request therefore, Associate shall furnish County with documentation regarding such third party agreements.

**8. Access to Protected Health Information.**

a. If Associate maintains protected health information subject to this Agreement, it agrees to make available to any Participant access to his or her protected health information promptly following a request by County therefore in accordance with 45 CFR § 164.524, as amended from time to time. In the event that any Participant requests access to protected health information directly from Associate, the Associate shall immediately forward such request to County, and County shall notify Associate if there is any basis on which to deny such access to protected health information. In all cases, Associate shall abide by the determination of County regarding any full or partial denial of access to such protected health information to any Participant.

b. If Associate maintains protected health information subject to this Agreement, upon request by County for access to protected health information about a current or former Participant, Associate will make such protected health information available to County for the amendment of the Participant's protected health information or any record set which includes information regarding the Participant. Associate shall provide such information to the County for amendment and shall incorporate any such amendments in the protected health information used and disclosed by Associate in accordance with this Agreement, as required by 45 CFR § 164.526, as amended from time to time.

c. If Associate maintains protected health information subject to this Agreement, during the term of this Agreement, Associate shall maintain, and furnish to County upon request, such information as is required to assist County in making an accounting of disclosures of protected health information relating to current or former Participants and in Associate's possession pursuant to 45 CFR § 164.528, as amended from time to time. In the event that any such request for an accounting is made directly to Associate, Associate shall immediately notify County in writing of such request, and County shall be responsible for the preparation and delivery of any such accounting. In order to permit County to undertake such an accounting, Associate shall, upon request, furnish County with the following information: (i) the date of all disclosures of protected health information by Associate to any third party; (ii) the name of the third party receiving such protected health information, and the address of such third party, if known; (iii) a brief description of the protected health information disclosed; (iv) a brief statement of the basis and purpose of such disclosure; and (v) such other information as reasonably requested by County regarding such protected health information. Notwithstanding the foregoing to the contrary, however, under no circumstances shall Associate be required to maintain information regarding disclosures described in 45 CFR § 164.528(a)(1)(i) through (ix), as amended from time to time, for which the parties agree County is not required to furnish an accounting pursuant to 45 CFR § 164.528.

**9. Breach Notification.**

a. Effective September 23, 2009, the Business Associate shall immediately report to the Covered Entity any Breach of Unsecured Protected Health Information. Such report shall include at least the following information:

- (1) the identity of each Individual whose information was accessed, acquired or disclosed during the breach;
- (2) a brief description of what happened;
- (3) the date of discovery of the breach;
- (e) the nature of the Unsecured Protected Health Information that was involved (e.g., social security numbers, date of birth, etc.);
- (f) any steps Individuals should take to protect themselves from potential harm resulting from the breach; and
- (g) a brief description of what the Associate is doing to investigate the breach, to mitigate harm to Individuals, and to protect against any further breaches.

b. Accountings of Disclosures. Associate will provide to an Individual, upon the request of that Individual or the Covered Entity, an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528.

c. Compliance with HIPAA Privacy and Security Rules.

- (1) Associate acknowledges that it has a statutory duty under the HITECH Act to, among other duties:
  - (A) effective February 17, 2010, use and disclose Protected Health Information only in compliance with 45 C.F.R. §164.504(e) (the provisions of which have been incorporated into the Agreement); and
  - (B) effective February 17, 2010, comply with 45 C.F.R. §§164.308 ("Security Standards: General Rules"), 164.310 ("Administrative Safeguards"), 164.312 ("Technical Safeguards"), and 164.316 ("Policies and Procedures and Documentation Requirements"). In complying with 45 C.F.R. §164.312 ("Technical Safeguards"), Associate shall consider guidance issued by the Secretary pursuant to Section 13401(c) of the HITECH Act and, if a decision is made



to not follow such guidance, document the rationale for that decision.

- (2) Associate acknowledges that its failure to comply with these or any other statutory duties could result in civil and/or criminal penalties under 42 U.S.C. §§1320d-5 and 1320d-6.

d. Remuneration in Exchange for Protected Health Information.

As of the effective date of Section 13405(d) of the HITECH Act, Associate may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.

e. Identity Theft Regulations.

To the extent that Associate provides services in connection with an account maintained by the Covered Entity that permits patients to make multiple payments for services rendered by the Covered Entity (including, but not limited to, billing and collection services), Associate shall have and follow policies to detect and prevent identity theft in accordance with the identity theft regulations of the Federal Trade Commission, 16 C.F.R. §681.2. In addition, Associate shall: (1) report to Covered Entity any pattern, practice, or specific activity that indicates the possible existence of identity theft ("Red Flags") involving anyone associated with Covered Entity, including its patients, employees, and contractors, and (2) take appropriate steps to prevent or mitigate identity theft when a Red Flag is detected.

**10. Security Provisions.** Notwithstanding any other provision of this Agreement or the underlying agreement to the contrary,

a. Security Safeguards. Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of County, as required by the Security Standards.

b. Agents. Associate shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information that Associate creates, receives, maintains, or transmits on behalf of County agrees in writing to implement reasonable and appropriate safeguards to protect such information.

c. Security Incidents. Associate shall report to County any security incident of which it becomes aware. For purposes of this Agreement, the term "security incident" means the attempted or successful access, use, disclosure, modification or destruction of Electronic Protected Health Information to which this Agreement applies or interference with system operations in any information system of County, Associate or any subcontractor or agent of Associate. Inconsequential incidents that occur on a daily basis, such as scans, pings or unsuccessful attempts to penetrate Associate's networks or servers containing electronic PHI

shall not be considered a "security incident" subject to reporting, unless so required by the Security Standards.

**11. Disclosure of Books and Records.** Associate agrees to make its internal practices, books and records relating to the use and disclosure of protected health information received from, or created or received by Associate on behalf of, County available to the Secretary of HHS for purposes of determining County's compliance with the Privacy Standards and the Security Standards.

**12. Termination of this Agreement.** In the event that County reasonably determines that Associate has violated a material term of this Agreement, County may, upon written notice, terminate this Agreement and any underlying agreement(s) between the parties. Notwithstanding any termination of this Agreement as permitted hereunder, the obligation of Associate to comply with Privacy Standards with respect to any current or former Participant shall survive such termination.

**13. Responsibilities upon Termination.** Upon the termination of this Agreement and/or the underlying agreement(s) between the parties, Associate shall, if feasible, return or destroy all protected health information received from, or created or received by Associate on behalf of, County that Associate or any contractor, agent or associate of Associate still maintains in any form and retain (and permit any such contractor, agent or associate to retain) no copies of such information or, if such return or destruction is not feasible, extend (and cause any such contractor, agent or associate to extend) the protections of this Agreement to such protected health information and limit further uses and disclosures thereof to those purposes that make the return or destruction of the information infeasible.

**14. Extended Responsibilities of Associate.** In addition to meeting its obligations under this Agreement, Associate shall ensure that its directors, shareholders, members, employees, contractors, subsidiaries, affiliates, successors and assigns comply fully with the terms and requirements of this Agreement as if such parties were themselves directly a party to this Agreement.

**15. Modification of Agreement.** This Agreement shall remain in full force and effect throughout the term hereof, and may not be modified except in a writing executed by both parties hereto. Notwithstanding the foregoing, however, in the event of any amendment or modification of the Privacy Standards, this Agreement shall be deemed modified to the extent required to ensure continued compliance with such amended or modified Privacy Standards.

[Remainder of Page is Blank]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above by executing the Agreement in the space provided below.

**COUNTY:**


**Williamson County, Texas**

By: \_\_\_\_\_  
Dan A. Gattis, County Judge

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

**ASSOCIATE**

**FirstWatch Solutions, Inc.**

By:  \_\_\_\_\_ (Todd Stout)  
Its: President  
Date: May 9, 2014