

## Business Associate Agreement

**BUSINESS ASSOCIATE AGREEMENT (the "BAA") is entered into by and between Williamson County and Cities Health District (referred to collectively as "Covered Entity"), and Williamson County ("Business Associate").**

### DEFINITIONS

Except as otherwise provided herein, the terms used in this BAA shall have the same meaning as those terms in the Electronic Transaction, Security or Privacy Rule, as the case may be.

#### *Specific definitions:*

(a) *Agreement* means the Interlocal Cooperation Agreement between Williamson County and Cities Health District and Williamson County, Texas for Managed Technology Services and Support.

(b) *Electronic Transaction Rule* means the standards for processing Standard Transactions and Code Sets at 45 CFR Parts 160 and 162.

(c) *Individual* has the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(d) *Personal Information* means any data in whatever format that is subject to federal or state laws requiring the safeguarding of, and regulating and restricting access, collection, use, disclosure, processing, destruction, and free movement of individually identifiable personal information.

(e) *Privacy Rule* means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160-164.

(f) *Protected Health Information* has the same meaning as the term "protected health information" in 45 CFR §160.103, including electronic protected health information, but limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(g) *Secretary* means the Secretary of the Department of Health and Human Services or his designee.

(h) *Security Rule* means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160-164.

### OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

(a) Business Associate agrees to not Use or Disclose Protected Health Information other than as permitted or required by this BAA or as Required by Law.

(b) Business Associate agrees to use appropriate safeguards to prevent the Use or Disclosure of Protected Health Information other than as provided for by this BAA. In addition, Business Associate agrees to implement Administrative, Physical and Technical safeguards consistent with the requirements of the Security Rule that reasonably and appropriately protect the Confidentiality, Integrity and Availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity. Effective February 17, 2010,

and subject to regulatory or other guidance issued pursuant or in response to the American Recovery and Reinvestment Act of 2009 (ARRA), Business Associate will comply with the Privacy Rule and the Security Rule to the extent required under ARRA which are incorporated herein by reference, including but not limited to 45 CFR §§ 164.308, 164.310, 164.312, and 164.316.

(c) Business Associate agrees to report to Covered Entity and/or Plan Sponsor (i) any Use or Disclosure of Protected Health Information not provided for by this BAA, (ii) any Security Incident, (iii) any Breach of Unsecured Protected Health Information, or (iv) to the extent required under any state breach notification statute, any unauthorized acquisition or access to Personal Information, as soon as possible, but not later than 30 calendar days following the date it becomes aware of such Use or Disclosure, Security Incident, Breach or unauthorized acquisition or access; provided, however, that to avoid unnecessary burden on either party, Business Associate shall report to Covered Entity any Unsuccessful Security Incidents of which it becomes aware of only upon request of Covered Entity. The frequency, content and the format of the report of Unsuccessful Security Incidents shall be mutually agreed upon by the parties. If the definition of "Security Incident" under the Privacy and Security Laws is amended to remove the requirement for reporting "unsuccessful" attempts to use, disclose, modify or destroy electronic PHI, then this Section shall be amended so that the provisions relating to "Unsuccessful Security Incidents" no longer apply as of the effective date of such change to the law. For the purposes of this BAA, "Unsuccessful Security Incidents" mean Security Incidents that do not result in unauthorized access, use, disclosure, modification or destruction of electronic PHI.

(d) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, agrees to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information.

(e) Business Associate agrees to provide access, at the request of Covered Entity and in a reasonable time and manner, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to enable Covered Entity to meet the requirements under 45 CFR §164.524.

(f) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in a reasonable the time and manner as required under the Privacy Rule.

(g) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, 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 Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of determining Covered Entity's compliance with the Privacy Rule.

(h) Business Associate agrees to document such Disclosures of Protected Health Information and information related to such Disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(i) Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with the preceding paragraph (i), to permit Covered Entity to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(j) Business Associate agrees to mitigate to the extent practicable any harmful effect known to Business Associate of any Security Incident, or Breach of Unsecured Protected Health Information.

(k) If Business Associate conducts any Standard Transaction for or on behalf of Covered Entity, Business Associate shall comply with the requirements under the Electronic Transaction Rule.

(l) To the extent Business Associate creates or receives Personal Information from Covered Entity or Plan Sponsor, or on behalf Covered Entity or Plan Sponsor it shall collect, maintain, process, handle, use, disclose and destroy all Personal Information in compliance with all applicable data privacy and protection laws.

(m) Solely to the extent any Breach of Unsecured Protected Health Information or unauthorized acquisition or access to Personal Information is attributable to a breach of the obligations under this BAA by Business Associate, Business Associate shall bear the reasonable costs incurred by Covered Entity and Plan Sponsor to the extent it is necessary for Covered Entity and Plan Sponsor to comply with its legal obligations relating to such breach under the applicable breach notification statute or regulation, which shall be limited to the following costs reasonably incurred by Covered Entity and Plan Sponsor in responding to such breach: (1) the reasonable cost of preparing and distributing notifications to affected individuals, (2) the reasonable cost of providing notice to government agencies, credit bureaus, and/or other required entities, (3) to the extent required by the applicable statute, the reasonable cost of providing affected individuals with credit monitoring services for a specific period not to exceed twelve (12) months, and (4) the reasonable cost of any other measures required under applicable law.

(n) To the extent Business Associate receives, stores, processes or otherwise deals with any patient records from the Covered Entity or Plan Sponsor that are entitled to protection under the federal regulations issued at 42 CFR Part 2, Business Associate agrees to be bound by those regulations. In addition, if necessary, Business Associate will resist in judicial proceedings any efforts to obtain access to such patient records except as permitted by 42 CFR Part 2.

(o) Except for payments from Covered Entity for services performed pursuant to this BAA and the Agreement, Business Associate may not directly or indirectly receive remuneration in exchange for PHI.

(p) Business Associate may not use or disclose Protected Health Information for research or marketing purposes without first receiving prior written approval from the Covered Entity and obtaining the necessary authorization from the affected individuals.

### **PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

#### *General Use and Disclosure Provisions*

Except as otherwise limited in this BAA, 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 the Agreement, provided that such Use or Disclosure would not violate (i) the Privacy Rule if done by Covered Entity or (ii) the minimum necessary policies and procedures of the Covered Entity supplied to Business Associate.

#### *Specific Use and Disclosure Provisions*

(a) Except as otherwise limited in this BAA, Business Associate may Use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this BAA, Business Associate may Disclose Protected Health Information for the proper management and administration of the Business Associate, provided that (i) Disclosures are Required by Law, or (ii)(A) Business Associate obtains reasonable

assurances from the person to whom the information is Disclosed that it will remain confidential and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and (ii)(B) the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this BAA, Business Associate may Use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

(d) Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

### **OBLIGATIONS OF COVERED ENTITY**

#### *Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions*

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of Protected Health Information 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 Protected Health Information.

#### *Requests by Covered Entity*

(a) Except as otherwise provided in this BAA, Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

### **TERM AND TERMINATION**

(a) *Term.* The term of this BAA shall be effective as of the date set forth below, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information as determined by Business Associate, protections are extended to such information, in accordance with the termination provisions in this Section, subject to any record retention requirements under the BAA or required by law.

(b) *Termination for Cause.* Upon either party's knowledge of a breach by the other party, the non-breaching party shall either:

(1) Provide an opportunity for breaching party to cure the breach or end the violation and terminate this BAA and the Agreement, if any, if the breaching party does not cure the breach or end the violation within a reasonable time specified by the non-breaching party;

(2) Immediately terminate this BAA and the Agreement, if any, if the breaching party has breached a material term of this BAA and, in the non-breaching party's sole discretion, cure is not possible; or

(3) If, in the non-breaching party's sole discretion, neither termination nor cure is feasible, the non-breaching party will report the violation to the Secretary.

*(c) Effect of Termination.*

(1) Except as provided in paragraph (2) of this Section, upon termination of this BAA, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon such determination that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections and obligations of this BAA to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

**MISCELLANEOUS**

(a) *Regulatory References.* A reference in this BAA to a section in the Electronic Transaction, Privacy or Security Rule means the section as in effect or as amended.

(b) *Amendment.* In the event that additional standards are promulgated under the Administrative Simplification Section of the Health Insurance Portability and Accountability Act of 1996, or any existing standards are amended, including without limitation the Privacy Standards, Security Standards, and the Transactions and Code Sets Standards, such as under the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted under ARRA, the parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of the Electronic Transaction, Privacy or Security Rule, the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, or any applicable state law, as amended. Except as herein otherwise provided, no amendment or modification of, or supplement to, this BAA shall be binding unless duly executed in writing by each of the parties hereto.

(c) *Survival.* The respective rights and obligations of Business Associate under the Section of this BAA entitled "Effect of Termination" shall survive the termination of this BAA.

(d) *Interpretation.* Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with the Electronic Transaction, Privacy or Security Rule.

(e) *Counterparts.* This BAA may be signed in counterparts, which together will constitute one agreement.

(f) *Successors and Assigns.* This BAA and each party's obligations hereunder will be binding on the representatives, assigns, and successors of such party and will inure to the benefit of the assigns and successors of such party; provided, however, that any such assignment shall not be effective absent the consent of the non-assigning party which shall not unreasonably withheld or delayed.

(g) *No Third Party Beneficiaries.* Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than parties and their respective successors or assigns, any rights, remedies or obligations whatsoever.

(h) *Governing Law.* This BAA will be governed by and interpreted in accordance with the laws of the State of Texas, without regard to principles of conflicts of law. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this BAA must be brought solely and exclusively in state or federal courts located in the State of Texas, and each party irrevocably submits to the sole and exclusive jurisdiction of these courts in person am, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other party.

(k) *Entire Agreement.* This BAA sets forth the full and complete understanding of the parties hereto with regard to its subject matter.

(l) *Waiver.* The failure of the Covered Entity or Business Associate to object or to take affirmative action with respect to any conduct of the other which is in violation of this BAA shall not be construed as a waiver of that violation or any prior or future violations of this BAA.

(m) *Headings.* The sections and subsections headings used herein are for reference and convenience only, and shall not enter into the interpretation thereof.

(n) *Notices.* Any notice which is to be given by one party to the other under this BAA will be given in writing and delivered in accordance with the addresses specified in the Agreement.

IN WITNESS WHEREOF, the parties have caused this BAA to be signed by their duly authorized representatives or officers, effective as of April 3, 2018.

COVERED ENTITY:

BUSINESS ASSOCIATE:

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

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

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

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

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

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

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

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