

# **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 **Scott & White Clinic** having an office at 2401 South 31<sup>st</sup> Street Temple, Texas 76508 ("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 160.103 of the Code of Federal Regulations ("CFR"); and

**WHEREAS**, in connection with the provision of Services, Associate may have 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" or "PHI" shall be defined in accordance with 45 CFR § 160.103, as amended from time to time. For the avoidance of doubt, protected health information shall include all individually identifiable health information that is received, created, transmitted or maintained in any electronic or other form or medium by Associate from or on behalf of County .

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 any Individual that is furnished by County to Associate or created by Associate for or on behalf of County (including without limitation demographic information collected from Individual), 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 Individual, the provision of health services to such Individual, or the past, present or future payment for the provision of health services to such Individual, and (iii) that identifies the Individual, or for which there is reasonable basis to believe the information can be used to identify Individual. For the avoidance of doubt, individually identifiable health information shall be limited to such information created, received, maintained or transmitted by Associate from or on behalf of County.

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; and (ii) 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 Agreement 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 and Associate 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 Individuals. The parties acknowledge that County may furnish to Associate certain protected health information in order to permit Associate to meet its obligations to County and as

necessary to provide the Services. This Agreement is intended solely to require and ensure that Associate's use or disclosure of such protected health information complies fully with the HIPAA.

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 and as necessary to perform the Services; (ii) for the proper management and administration of Associate; and (iii) to carry out Associate's legal responsibilities as Required by Law. 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"). County will notify Business Associate of any limitation its Privacy Notice, to the extent that such limitation may affect Business Associate's use or disclosure of PHI. 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 (i) in a manner permitted pursuant to this Agreement; (ii) for the proper management and administration of Associate; or (iii) 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 promptly notify 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.

6. **Reporting and Mitigation.** Associate agrees to (a) promptly report to County 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 that creates, receives, maintains or transmits protected health information on behalf of the Associate agree in writing to the same restrictions and conditions that apply to Associate with respect to such protected health information.

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

a. If Associate maintains protected health information subject to this Agreement, it agrees to provide access or make the protected health information available in a Designated Record Set at reasonable times at the request of County, as necessary to satisfy County's obligations under 45 CFR § 164.524, as amended from time to time. In the event that any Individual requests access to protected health information directly from Associate, the Associate shall promptly forward such request to County along with any information necessary to comply with County's obligations under 45 CFR 164.524.

b. If Associate maintains protected health information subject to this Agreement, upon request by County for access to protected health information about any Individual, Associate will make such protected health information available to County for the amendment of the Individuals protected health information or any record set which includes information regarding the Individual. 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 Individuals 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 as necessary to satisfy County's obligations under 45 CFR 164.528. 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 promptly report to the County any Breach of Unsecured Protected Health Information. Such report shall include the following information, if available at the time of the report of such Breach or promptly thereafter as such information becomes available:

- (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 maintain and make available information required to provide an accounting of disclosures to County as necessary to satisfy County's obligations under, 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 ("Administrative Safeguards"), 164.310 ("Physical 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.

**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, that creates, receives, maintains, or transmits protected health information on behalf of Associate agree to the same restrictions and conditions that apply to the business associate with respect to 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 unauthorized access, use, disclosure, modification or destruction of protected health information to which this Agreement applies or interference with system operations in any information system of 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 or any of Associate's subcontractor's or agent'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 protected health information maintained after termination of this Agreement 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 (as determined by Associate), 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, as determined by Associate, 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.

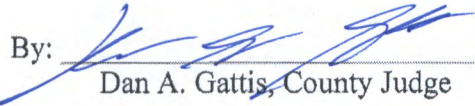
**15. Modification of Agreement.** This Agreement shall remain in full force and effect throughout the term hereof, and may not be modified except in a writing executed by both parties hereto. Notwithstanding the foregoing, however, in the event of any amendment or modification of the Privacy Standards,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

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date of the last parties' execution below.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE TO FOLLOW**

**COUNTY:**


**Williamson County, Texas**

By:   
Dan A. Gattis, County Judge

Date: 10-16-2015

**ASSOCIATE:**

**Scott & White Clinic**

By:   
**ROBERT PROBE, MD**

Its: Chairman of the Board of Directors

Date: 9/21/2015