

HIPAA BUSINESS ASSOCIATE AGREEMENT
(WCCHD and WILCO EMS CHP Collaboration for WilcoCare Recipients)

This HIPAA Business Associate Agreement (“Agreement”) is entered into between Williamson County & Cities Health District (“Covered Entity”) and Williamson County, Texas (“Business Associate”) (collectively, the “Parties”), effective as of the Effective Date.

1. Business Associate(s) Obligations. Business Associate may receive from Covered Entity, or create or receive on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, protected health information (“PHI”) and electronic protected health information (“EPHI”). All references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Privacy Standards, Security Standards or the HITECH Act, as applicable (collectively referred to hereinafter as the “Confidentiality Requirements”) if the PHI were used or disclosed by Covered Entity in the same manner.

2. Use of PHI. Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) for the purposes described in Section 2.1, (ii) for Data Aggregation Services (as hereinafter defined), and (iii) as necessary for the proper management and administration of Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Use, creation and disclosure of de-identified health information, as that term is defined in 45 CFR § 164.514, by Business Associate is permitted.

2.1 Covered Entity and Business Associate agree that the PHI contemplated under this Agreement will be utilized for the following purposes:

Evaluate, improve, and maintain health services for WilcoCare recipients.

2.2 Oral or written presentations containing or derived from PHI from Covered Entity and that are intended for release or disclosure to the public, including but not limited to compilations, intended publications, articles, or studies of the results of any analyses completed by Business Associate, or at the direction of Business Associate, will be submitted by Business Associate to Covered Entity for review and approval prior to release or publication of the same. This Section 2.2 does not apply to oral or written presentations containing only (i) aggregate data concerning health conditions required to be reported by applicable statutes or regulations, or (2) de-identified health information, as that term is defined in 45 CFR § 164.514.

3. Disclosure of PHI. Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third-party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law.

3.1 Business Associate shall not and shall provide that its directors, officers, employees, subcontractors, and agents, do not disclose PHI to any other person (other than members of their respective workforce as specified in subsection 3.1(ii) below), unless disclosure is required by law or authorized by the person whose PHI is to be disclosed. Any such disclosure

other than as specifically permitted in the immediately preceding sentences shall be made only if such disclosee has previously signed a written agreement that:

- (i) Binds the disclosee to the provisions of this Agreement pertaining to PHI, for the express benefit of Covered Entity, Business Associate and, if disclosee is other than Business Associate, the disclosee;
- (ii) Contains reasonable assurances from disclosee that the PHI will be held confidential as provided in this Agreement, and only disclosed as required by law for the purposes for which it was disclosed to disclosee; and
- (iii) Obligates disclosee to immediately notify Business Associate of any breaches of the confidentiality of the PHI, to the extent disclosee has obtained knowledge of such breach.

3.2 Business Associate shall not disclose PHI to any member of its workforce and shall provide that its subcontractors and agents do not disclose PHI to any member of their respective workforces, unless Business Associate or such subcontractor or agent has advised such person of Business Associate's obligations under this Agreement, and of the consequences for such person and for Business Associate or such subcontractor or agent of violating them. Business Associate shall take and shall provide that each of its subcontractors and agents take appropriate disciplinary action against any member of its respective workforce who uses or discloses PHI in contravention of this Agreement.

3.3 In addition to Business Associate's obligations under Section 9, Business Associate agrees to mitigate, to the extent commercially practical, harmful effects that are known to Business Associate and are the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.

4. Access to and Amendment of PHI. Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity; and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within seven (7) days of such request and shall make any amendment requested by Covered Entity within twenty (20) days of the later of (a) such request by Covered Entity or (b) the date as of which Covered Entity has provided Business Associate with all information necessary to make such amendment. Business Associate may charge a reasonable fee based upon Business Associate's labor costs in responding to a request for electronic information (or the fee approved by the Texas Medical Board for the production of non-electronic media copies). Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests and statements in response to denials of such requests to the Designated Record Set, as requested by Covered Entity.

5. Accounting of Disclosures. Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR § 164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision.

6. Records and Audit. Business Associate shall make available to the United States Department of Health and Human Services (HHS) or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or the requirements of any other health oversight agency, in a time and manner designated by the Secretary.

7. Implementation of Security Standards; Notice of Security Incidents. Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§164.308, 164.310, 164.312 and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act.

Furthermore, to the extent feasible, Business Associate will use commercially reasonable efforts to secure PHI through technology safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, Business Associate's response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known.

8. Data Breach Notification and Mitigation.

8.1 HIPAA Data Breach Notification and Mitigation. Business Associate agrees to implement reasonable systems for the discovery and prompt reporting to Covered Entity of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. § 164.402. Specifically, a breach is an unauthorized acquisition, access, use or disclosure of unsecured PHI, including EPHI, which compromises the security or privacy of the PHI/EPHI. A breach compromises the security or privacy of PHI/EPHI if it poses a significant risk of financial, reputational, or other harm to the individual whose PHI/EPHI was compromised (hereinafter a "HIPAA Breach"). The parties acknowledge and agree that 45 C.F.R. § 164.404, as described below in this Section 8.1, governs the determination of the date of discovery of a HIPAA Breach. In the event of any conflict

between this Section 8.1 and the Confidentiality Requirements, the more stringent requirements shall govern.

8.2 Discovery of Breach. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity immediately and in no event later than five (5) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of Business Associate.

8.3 Reporting a Breach. No later than seven (7) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. § 164.400 *et seq.* Specifically, if the following information is known to (or can be reasonably obtained by) Business Associate, Business Associate will provide Covered Entity with:

- (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address);
- (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery;
- (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, addressees), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information);
- (iv) a brief description of what Business Associate has done or are doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and
- (v) appoint a liaison and provide contact information for same so that Covered Entity may ask questions or learn additional information concerning the HIPAA Breach.

Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described in items (i) through (v), above.

9. Termination.

9.1 This Agreement shall commence on the Effective Date.

9.2 Upon the termination of the applicable Business Arrangement, either Party may terminate this Agreement by providing written notice to the other Party.

9.3 Upon termination of this Agreement for any reason, Business Associate agrees:

- (i) to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or the agents of Business Associate. Business Associate agrees that all paper, film, or other hard copy media shall be shredded or destroyed such that it may not be reconstructed, and EPHI shall be purged or destroyed concurrent with NIST Guidelines for media sanitization at <http://www.csrc.nist.gov/>; or
- (ii) in the case of PHI which is not feasible to “return or destroy,” to extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.

10. Miscellaneous.

10.1 Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery; or (iv) facsimile with return facsimile acknowledging receipt. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

Covered Entity:

Williamson County & Cities Health District
Attn: Executive Director
355 Texas Avenue
Round Rock, Texas 78664

Business Associate:

Williamson County
Attn: Williamson County Judge
710 Main St.
Georgetown, Texas 78626

10.2 Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

10.3 Assignment. Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

10.4 Severability. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

10.5 Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

10.6 Governing Law. Both Parties agree that Agreement shall be governed by and construed in accordance with the substantive laws of the State of Texas. Both Parties expressly consent to the jurisdiction of the state and federal courts located in Texas. The Parties further agree that the exclusive venue for the resolution of any dispute relating to the subject matter of this agreement shall be in the state courts located in Williamson County, Texas and in the federal courts in Travis County, Texas.

10.7 Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.

10.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

10.9 Definitions. For the purposes of this Agreement, the following definitions shall apply:

- (i) *"Business Associate(s)"* shall have the meaning given to the term "Associate" under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.
- (ii) *"Covered Entity"* shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.
- (iii) *"Data Aggregation Services"* shall mean the combining of PHI or EPHI by Business Associates with the PHI or EPHI received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of, payment to, and treatment of patients by the respective covered entities.
- (iv) *"Electronic Protected Health Information"* or *"EPHI"* shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 CFR Parts 160, 162, and 164, and under HITECH.
- (v) *"Privacy Rule"* shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160, 162 and 164.
- (vi) *"Security Rule"* shall mean the HIPAA regulation that is codified at 45 C.F.R. Part 164.
- (vii) *"Protected Health Information"* or *"PHI"* means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501. [45 CFR §§160.103 and 164.501].

- (viii) The Health Information Technology for Economic and Clinical Health (“HITECH”) Act shall mean Division A, Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5). The U.S. Department of Health and Human Services (“HHS”) interim final rule at 74 Fed. Reg. 42,740 implements the security breach notice provisions of HITECH.
- (ix) Any other capitalized term not otherwise defined in this Section 13.10 or this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable.

IN WITNESS THEREOF, the parties hereto have duly executed the Agreement as of the latest date set forth below (“Effective Date”).

FOR COVERED ENTITY:

WILLIAMSON COUNTY & CITIES HEALTH DISTRICT



By: _____
Caroline Hilbert, Interim Executive Director

Date 2-11-2022

FOR BUSINESS ASSOCIATE:

WILLIAMSON COUNTY

By: Valerie Covey
Bill Gravell, County Judge

Feb 22, 2022

Date