

**AGREEMENT FOR EMERGENCY MEDICAL GROUND TRANSPORTATION SERVICES
BETWEEN CITY OF AUSTIN AND THE TRAVIS COUNTY HEALTHCARE DISTRICT
D/B/A CENTRAL HEALTH**

This Agreement ("Agreement") is entered into between the City of Austin ("City"), a Texas home rule municipality, and the Travis County Healthcare District d/b/a Central Health, a hospital district created under Chapter 281 of the Texas Health and Safety Code ("Central Health"), (each a "Party," and collectively the "Parties"), effective as of October 1, 2022. The City's Emergency Medical Services Department ("EMS"), a department of the City of Austin, Texas, is licensed by the State of Texas to provide ground emergency medical services. These services are provided within the City's corporate limits and, through an interlocal agreement with Travis County, in the portions of Travis County that are outside the City's corporate limits. Central Health oversees the Medical Access Program ("MAP") which pays for certain health care services provided to eligible beneficiaries who live in Travis County.

1.0 DEFINITIONS

- 1.1 **Acquired Data** means data or information acquired or generated by Contractor pursuant to the provision of services funded under this Agreement.
- 1.2 **Agreement Term** means the Initial Term and any Renewal Term.
- 1.3 **Contract Manager means** the individual appointed by each Party who shall be responsible for monitoring performance of this Agreement and for managing this Agreement on behalf of his or her employer. Each party will notify the other regarding appointment of the Contract Manager within ten (10) days of making any changes.
- 1.4 **Dispute** means any and all disagreements, questions, claims, or controversies arising out of or relating to this Agreement, including the validity, construction, meaning, performance, effect, or breach of the Agreement.
- 1.5 **Effective Date** means October 1, 2022.
- 1.6 **Eligible MAP Patients** means MAP enrollees.
- 1.7 **Initial Term** means the same as defined in Section 5.1.
- 1.8 **Initial Term Cap** means the not-to-exceed amount Central Health shall pay Contractor during the Initial Term.
- 1.9 **Medical Access Program ("MAP")** means the local program of the Travis County Healthcare District d/b/a Central Health administered by Central Health pursuant to Chapter 281 of the Texas Health and Safety Code.
- 1.10 **Provider** means ground transportation services provided by EMS.
- 1.11 **Renewal Term** means an additional twelve (12) month extension of the Agreement.
- 1.12 **Renewal Term Cap** means the not-to-exceed amount Central Health shall pay Contractor during any subsequent Renewal Term.
- 1.13 **Services** means the ground transportation services City provides to Eligible MAP Patients.

- 1.14 **Termination Date** means the date the Agreement is terminated pursuant to Section 11 of this Agreement.
- 1.15 **Texas Public Information Act or ("PIA")** means a series of laws incorporated into Chapter 552 of the Texas Government Code that serve to ensure the public has access to information held by a governmental body.
- 2.0 Term.** The Initial Term of this Agreement shall be October 1, 2022 through September 30, 2023, unless terminated earlier in accordance with the terms of this Agreement. The Parties have an option to renew this Agreement for additional Renewal Terms, on the same terms or different terms, by written agreement signed by authorized representatives of each Party.
- 3.0 Amendments.**
- 3.1 **Written.** Any change to the terms of this Agreement or any attachments to it as well as any renewals beyond the Initial Term shall be made in writing and signed by both Parties.
- 3.2 **Authority to Amend.** Each Party acknowledges that no officer, agent, employee or representative of the other Party has any authority to change the terms of this agreement or any attachments to it unless expressly granted that authority by the Party's governing body.
- 4.0 Ground Emergency Medical Services.** City, through EMS, shall provide Services to Central Health's Eligible MAP Patients in accordance with the reimbursement described in this Agreement. EMS agrees to provide Services in accordance with all applicable federal, state and local laws and regulations, including but not limited to those set forth in Chapter 773 of the Texas Health and Safety Code and the Austin City Code.
- 5.0 Payment.**
- 5.1 City agrees to accept from Central Health, and Central Health agrees to pay City, compensation for Services provided to Eligible MAP Patients as described below. Central Health shall pay City the amount of \$696,822 (Six Hundred Ninety-Six Thousand Eight Hundred Twenty-Two Dollars) for City's provision of EMS Services as specified under Section 4.0 of this Agreement.
- The Parties acknowledge that the payment amount for EMS Services is based upon historical utilization data of Services provided by City to Central Health. No later than ninety (90) days prior to the expiration of the Initial Term, the Contract Managers shall meet to review utilization data and costs, as well as historical trends, related to Services provided to Eligible MAP Patients, including but not limited to the costs per response and per transport for MAP patients. Based on such data and any other available data, the Parties agree to negotiate in good faith the terms of any renewal. No amount above \$696,822 shall be payable by Central Health for Services provided during the Initial Term unless an amendment to this Agreement has been executed. City agrees not to bill Eligible MAP Patients for Services provided during the term of this Agreement.
- 5.2 **Timing of Disbursement.** Central Health will disburse to City quarterly payments in the amount of \$174,205.50 (One Hundred Seventy-Four Thousand Two Hundred Five Dollars and Fifty Cents) each within thirty (30) days of Central Health's receipt of an

invoice as specified in Section 8.0.

6.0 Verification of Eligibility. EMS shall verify an individual's eligibility for MAP benefits using Central Health's on-line MAP eligibility system. Central Health agrees to maintain on this system up-to-date, accurate information regarding individuals who are Eligible MAP Patients, and to provide EMS employees with uninterrupted access to this system. Central Health agrees that EMS can rely upon the eligibility information contained in Central Health's system. If EMS personnel have inquiries regarding the status of an individual's eligibility, Central Health agrees to respond to such inquiries within three (3) business days.

7.0 Claims. City shall submit to Central Health a separate and complete CMS 1500 form for each Eligible Patient to whom Services are provided. City shall use its best efforts to submit electronic claims through Central Health's claims clearinghouse. At a minimum, each CMS 1500 claim shall include the following information for each Eligible Patient:

- ID number;
- Name;
- Date of service;
- Procedures/services provided (CPT);
- Modifiers;
- Diagnoses (ICD-10); and
- Fee for each procedure/service provided.

8.0 Invoice.

8.1 City shall submit to Central Health quarterly invoices, each in the amount of \$174,205.50 (One Hundred Seventy-Four Thousand Two Hundred Five Dollars and Fifty Cents). Invoices for the current quarter in which services are provided may be submitted no sooner than one day after the current quarter ends. Central Health shall pay the invoiced amount within thirty calendar days of receipt of the invoice. Such invoice must contain the following information:

- Date sent to Central Health;
- City's name, department, address, and telephone number;
- Contract number;
- Remittance address;
- Date range of Services (example: October 1, 2019- December 31, 2019);
- Invoice number; and
- Invoice amount.

8.2 If this Agreement is terminated prior to the expiration of any Agreement Term, City must submit final claims for Services rendered during the abbreviated Agreement Term to Central Health within sixty (60) calendar days after the Termination Date. Central Health shall have no obligation to pay claims or bills received after sixty (60) calendar days after the Termination Date if this Agreement is terminated prior to the expiration of any Agreement Term. In the event Central Health requests additional information in order to process a claim, City shall provide such additional information within sixty (60) calendar days of Central Health's request.

9.0 Access to and Confidentiality of EMS Records.

- 9.1 **Right to Audit.** As payor, Central Health has the right to obtain copies of EMS records related to costs and expenses for Services to Eligible MAP Patients under this Agreement. EMS shall provide copies of such records to Central Health within seventy-two (72) hours of receipt of Central Health's written request. All records pertinent to the performance of this Agreement shall be maintained by City until an audit is completed and all questions arising there from are resolved or four (4) years after termination of this Agreement, whichever occurs first, unless a longer retention period is required by law; except that records will be retained beyond the fourth year if an audit is in progress and/or the findings of a completed audit have not been satisfactorily resolved, and/or litigation involving this Agreement or the Services provided hereunder is still pending.
- 9.2 **Records and Confidentiality.** The Parties each agree to comply with all applicable federal and state laws and regulations regarding the privacy and confidentiality of patient records, including but not limited to the federal Health Information Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations, as amended. Attachment A sets out the responsibilities of business associates under HIPAA.
- 9.3 **Quality.** Upon request, EMS shall provide Central Health with access to clinical records of Eligible MAP Patients for review of compliance with the quality assurance provisions of federal, state, or local law or regulation. Central Health may perform special quality and utilization reviews/audits upon three (3) business days' notice to the EMS Director. EMS shall provide suitable space for Central Health staff to perform on-site retrospective reviews in a confidential setting.
- 10.0 **Utilization.** Central Health and City agree in good faith, to evaluate, test and implement appropriate utilization management strategies for Eligible MAP Patients.
- 11.0 **Termination.**
- 11.1 **Immediate Termination.** Either Party may immediately terminate this Agreement if the Party determines that there is imminent danger of harm to an Eligible Patient's health, safety, or welfare or there has been fraud or malfeasance. Contractor or Central Health may immediately terminate this Agreement as it relates to a Provider if there is an action by a state or other medical licensing board, or another licensing board or government agency that effectively impairs the Provider's ability to practice medicine.
- 11.2 **Termination without Cause.** Either Party shall have the right to terminate this Agreement, in whole or in part, without cause, at any time upon sixty (60) days prior written notice to the other Party. Upon receipt of a notice of termination, the other Party shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. Central Health shall pay City for all services performed and obligations incurred prior to the date of termination if the terms of the Agreement have been met, and to the extent funds have been appropriated or otherwise legally available for such purposes.
- 11.3 **Termination for Cause.** If either Party defaults in the performance of its obligations (including compliance with any covenants) under this Agreement and such default is not cured within thirty (30) days of the receipt of written notice thereof, then the non-defaulting Party shall have the right to terminate the Agreement (in addition to any other rights that it may have) on any future date by further written notice that is not less than thirty (30) days

from the date of that further notice.

- 11.4 **Funding Out.** Despite anything to the contrary in this Agreement, if, during the budget planning and adoption process, the Central Health Board of Managers fails to provide funding for this Agreement for the following Central Health fiscal year, Central Health may terminate this Agreement after giving Contractor notice that this Agreement is terminated due to failure to fund it.
- 12.0 **Claims Notification.** If the City receives notice or becomes aware of any claim or other action, including proceedings before an administrative agency, which is made or brought by any person, firm, corporation, or other entity against the Contractor or its Subcontractors and which involves this Agreement or the Services provided hereunder, then the City shall give written notice to Central Health within three (3) working days after being notified of a claim or other action to Central Health of: (A) the claim or other action or the threat of it; (B) the name and address of the person, firm, corporation, or other entity that made or threatened to make a claim or that instituted or threatened to institute any type of action or proceeding; (C) the basis of the claim, action, or proceeding; (D) the court or administrative tribunal, if any, where the claim, action, or proceeding was instituted; and (E) the name or names of any person and/or entity(ies) against whom this claim is being made or threatened. This written notice shall be given in the manner provided in Section 6.6 of this Agreement. Except as otherwise directed, the Party receiving notice shall furnish the other Party copies of all pertinent documents received with respect to these claims or actions.
- 13.0 **Entire Agreement.** All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement, including the applicable terms of the Agreement, have been reduced to writing and are contained in this Agreement.
- 14.0 **Governing Law/Venue.** The Parties agree that this Agreement shall be governed by the laws of Texas, and venue for any dispute that arises under this Agreement shall be in Travis County, Texas.
- 15.0 **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to benefit or give any rights to any person or entity other than the Parties hereto including, but not limited to, any Eligible MAP Patient.
- 16.0 **No Waiver; Amendments.** No course of conduct or verbal waiver or consent shall be deemed a waiver by either Party of its rights hereunder. No amendment to or assignment of this Agreement shall be binding on the Parties unless set forth in writing, approved by the Parties' governing bodies, and signed by the Party sought to be bound.
- 17.0 **Notice.** Any notice required or permitted by this Agreement shall be sufficient for all purposes if delivered in writing to the applicable Party at its address set forth below or such other address as may be designated by such Party in writing.

City:

City Manager
P.O. Box 1088
Austin, Texas 78767-8804
(if by mail)

City Manager City Hall
301 West 2nd St., Fourth Floor
Austin, Texas 78701
(if by hand-delivery)

Chief of EMS Officer
City of Austin EMS Department
15 Waller St., Second Floor
Austin, Texas 78702

Central Health:

Chief Operating Officer
Central Health
8701 N. Mopac Expressway, Suite 200
Austin, Texas 78759
With a copy to: legalnotices@centralhelth.net

- 18.0 Holdover.** Upon expiration of the Initial Term or any Renewal Term, City agrees to hold over under the terms and conditions of this Agreement for such a period of time as is reasonably necessary to negotiate or award a new contract for the Services encompassed by this Agreement. Central Health agrees to compensate City for the Services performed during the holdover period according to terms mutually agreed upon by both Parties.
- 19.0 Attachments.** The attachments to this Agreement are hereby made a part of this Agreement as if set forth verbatim herein and constitute promised performances by the parties in accordance with all terms of this Agreement.
- 20.0 Assignment-Delegation.** The Agreement shall be binding upon and inure to the benefit of Central Health and City and their respective successors and assigns. City may not assign or transfer any of its rights or obligations under this Agreement without prior written consent of Central Health unless agreed upon as a strategy in Section 10.0 of this Agreement. Central Health may make such assignment or transfer upon providing not less than thirty (30) days written notice to City. The Agreement is not intended to confer rights or benefits on any person, firm, or entity not a party hereto, it being the intention of the Parties that there be no third-party beneficiaries to the Agreement.
- 21.0 Waiver of Breach.** The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.
- 22.0 Force Majeure.** Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while, and to the extent such default or delay is caused by acts of God, acts of domestic or foreign terrorism, fires, floods, riots, sabotage, strikes, or any other cause beyond the reasonable control of such party. Force majeure does not include economic or market conditions that affect a party's cost but not its ability to perform. The party invoking force majeure shall give prompt, timely, and adequate notice to the other party by facsimile transmission or by telephone confirmed promptly thereafter in writing and shall use due diligence to remedy the event of force majeure as soon as reasonably possible. In the event of default or delay in Agreement performance due to any of the foregoing causes, then the time for completion

of the service(s) will be extended by a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

- 23.0 Subcontracts.** City shall not enter into any subcontracts for any service or activity relating to the performance of this Agreement without the prior written approval or the prior written waiver of this right of approval from Central Health unless agreed upon as a strategy in Section 10.0 of this Agreement. To the extent that City has existing subcontracts as of the Effective Date of this Agreement, those subcontracts are hereby approved.
- 24.0 Rights, Copyrights, Patents, and Licenses.** City warrants and agrees that: (a) all applicable copyrights, patents, and licenses that may exist on materials used in this Agreement have been adhered to; (b) Central Health shall not be liable for any infringement of those rights; and (c) any rights granted to Central Health shall apply for the duration of this Agreement.
- 25.0 Authority to Obligate Central Health.** City acknowledges that no Central Health officer, agent, employee, or representative other than Central Health Board of Managers has any authority to sign any document obligating Central Health unless expressly granted that authority by Central Health Board of Managers under a specific provision of this Agreement or by separate action by Central Health Board of Managers.
- 26.0 Debarment, Suspension and Other Responsibility Matters.** City, by signing this Agreement, hereby certifies that, to the best of its knowledge and belief, it:
- (a) is not presently debarred suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) has not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b); and
 - (d) has not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

Where City is unable to certify to any of the statements in this section, City shall provide an explanation of such inability prior to the Effective Date of this Agreement for Central Health's consideration and evaluation, with the understanding that such inability may result in termination of this Agreement by Central Health.

- 27.0 Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice, or disturb the validity of the remainder of this Agreement, which shall be in

full force and effect and enforceable in accordance with its terms.

- 28.0 Public Information Act.** The parties acknowledge and agree that each Party is subject to the provisions of the Texas Public Information Act ("PIA"). If either Party receives a request for disclosure of any information related to the Services provided under this Agreement or for information provided to that Party under this Agreement that constitutes public information under the PIA, the information must qualify for an exception provided by the PIA to be withheld from public disclosure. Each Party authorizes the other Party to submit any information provided under the Agreement or otherwise requested to be disclosed, including information that a Party has labeled as confidential or proprietary, to the Office of the Attorney General for a determination as to whether any such information may be excepted from public disclosure under the PIA. If a Party does not have a good faith belief that information may be subject to an exception to disclosure under the PIA, that Party may, in its sole discretion, choose not to submit the information to the Attorney General for a determination. Neither Party shall have any obligation or duty to advocate the confidentiality of the other Party's material to the Attorney General or to any other person or entity. It is each Party's responsibility and obligation to make any legal argument to the Attorney General or court of competent jurisdiction regarding the exception of the information in question from disclosure. Each Party waives any claim it may have against the other Party, its directors, officers, board members, employees, agents, and attorneys for disclosing information related to the Services provided hereunder or for disclosing information provided to that Party by the other Party under this Agreement pursuant to the PIA. This section shall survive the termination of this Agreement.
- 29.0 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of such together shall constitute one and the same instrument. An electronic copy of the signatures to this Agreement, including without limitation a .pdf or other image of the original signature, shall be as binding as the original itself.
- 30.0 Verifications and Warranties.** Contractor warrants that:
- 30.1 HUB Subcontracting. Contractor will make a "good faith" effort to ensure that HUBs (Historically Underutilized Business, as defined in Texas Government Code, Section 2161.001), have an equal opportunity to be subcontractors under this Agreement.
- 30.2 Contingent Fees. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, Central Health shall have the right, in addition to any other right or rights, to cancel this Agreement without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective on the Effective date.

CITY OF AUSTIN

By: _____
Bruce Mills
Interim Assistant City Manager

TRAVIS COUNTY HEALTHCARE DISTRICT D/B/A CENTRAL HEALTH

By: _____
Mike Geeslin
President & CEO

ATTACHMENT A

Business Associate Agreement

For purposes of this Attachment, Central Health is hereby referred to as “Covered Entity” and City of Austin (“City”) is referred to as “Business Associate,” (collectively the “Parties”). For clarification in this Attachment, the term “BA Agreement” refers to the Business Associate Agreement and “Service Agreement” refers to the Agreement for Emergency Medical Ground Transportation Services between Central Health and City.

1. DEFINITIONS. For the purposes of this BA Agreement, the following capitalized terms shall have the meanings ascribed to them below:

1.1. “Capitalized Terms” shall mean any other capitalized term not otherwise defined in this Section 1 of this BA Agreement and shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable.

1.2. “Designated Record Set” or “DRS” shall have the meaning given to such term under the Privacy Rule, including but not limited to 45 C.F.R. Section 164.501.B.

1.3. “Electronic Protected Health Information” or “EPHI” shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, and 164, and under HITECH.

1.4. “HITECH” shall mean the Health Information Technology for Economic and Clinical Health Act, Division A, Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), 42 U.S.C. 83000 et seq., and implementation, regulations and guidance.

1.5. “Individual” shall have the meaning given to such term under the Privacy Rule, including but not limited to 45 C.F.R. Sections 164.501 and 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).

1.6. “Information” shall mean any “health information” as defined in 45 C.F.R. Section 160.103.

1.7. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

1.8. “Protected Health Information” or “PHI” shall have the meaning ascribed to this term in 45 C.F.R. Sections 164.501 and 160.103, and is the information created or received by Business Associate from or on behalf of Covered Entity.

1.9. “Required by Law” shall have the meaning ascribed to this term in 45 C.F.R. Sections 164.501 and 160.103.

1.10. “Secretary” shall have the meaning ascribed to this term in 45 C.F.R. Section 160.103.

1.11. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

1.12. “Security Rule” shall mean the HIPAA regulation that is codified at 45 C.F.R. Part 164.

1.13. “Subcontractor” shall mean a person (or entity) to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate. For purposes of this BA Agreement, the term “Subcontractor” shall include the downstream subcontractors of a Subcontractor.

2. CONFIDENTIALITY. The Parties shall comply with all federal and state laws governing the confidentiality and privacy of health information including, without limitation, the Privacy Standards and Security Standards promulgated pursuant to HIPAA, the HITECH Act, the final Omnibus Rule, and Texas

law, including without limitation the provisions of Texas Health and Safety Code Chapters 181 and 182 as amended by H.B. 300 (82nd Legislature), effective September 1, 2012, in each case including any implementing regulations as applicable.

2.1. Obligations of Business Associate and Business Associate Subcontractors

2.1.1 Use and Disclosure of Protected Health Information.

(i) Business Associate warrants that Business Associate, its directors, officers, Subcontractors, employees, affiliates, agents, and representatives shall: (a) use or disclose Protected Health Information only in connection with fulfilling its duties and obligations under this BA Agreement and the Service Agreement; (b) not use or disclose Protected Health Information other than as permitted or required by this BA Agreement or required by law; and (c) not use or disclose Protected Health Information in any manner that violates applicable federal and state laws or would violate such laws if used or disclosed in such manner by Central Health.

(ii) For avoidance of doubt, under no circumstances may Business Associate or Subcontractors sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, as amended by H.B. 300 (82nd Legislature), effective September 1, 2012, nor shall Business Associate use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

(iii) At no time shall Business Associate or its Subcontractors sell or use and/or disclose PHI for marketing purposes without first obtaining Covered Entity's prior written consent.

(iv) Business Associate and Subcontractors shall provide adequate training to its employees and Subcontractors to ensure compliance with this BA Agreement, the Privacy Rule, Security Rule, HITECH requirements, the final Omnibus Rule, and state law.

(v) Business Associate acknowledges that, as between Business Associate and Central Health, all Protected Health Information shall be and remain the sole property of Central Health, including any and all forms thereof developed by Business Associate or its Subcontractors in the course of fulfillment of its obligations pursuant to this Business Associate Agreement and the Service Agreement.

(vi) Business Associate further represents that it and its Subcontractors will make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request when using or disclosing PHI.

(vii) Business Associate and Subcontractors shall use appropriate safeguards and comply with applicable HIPAA requirements with respect to EPHI. Business Associate covenants that such safeguards shall include, without limitation, implementing written policies and procedures in compliance with HIPAA, HITECH, and the final Omnibus Rule, conducting a security risk assessment, and training Business Associate and Subcontractor employees who will have access to Protected Health Information with respect to the policies and procedures required by HIPAA, HITECH, the final Omnibus Rule, and implementing regulations.

(viii) To the extent the Business Associate or Subcontractor is to carry out a Central Health obligation under HIPAA, Business Associate and Subcontractor will comply with the requirements of HIPAA that apply to Central Health in the performance of such obligation.

(ix) Upon request, Business Associate shall provide Central Health with a written list of all Subcontractors and the written agreement pertaining to such relationship and shall permit Central Health to audit Business Associate and Subcontractors to determine compliance with this BA Agreement.

2.1.2 Provide Records and Compliance Reports. Business Associate and Subcontractor must keep such records and submit such compliance reports, in such time and manner and containing such information, as the Secretary may determine to be necessary to enable the Secretary to determine compliance with applicable HIPAA provisions.

2.1.3 Cooperate with Complaint Investigations and Compliance Reviews. Business Associate and Subcontractor must cooperate with the Secretary, if the Secretary undertakes any investigations or compliance review of the policies, procedures, or practices of Central Health, Business Associate, or Subcontractor to determine compliance with applicable HIPAA provisions.

2.1.4 Permit Access to Information. Business Associate and Subcontractor must permit access to the Secretary during normal business hours to its facilities, books, records, accounts and other sources of information, including PHI, for ascertaining compliance. If the Secretary determines that exigent circumstances exist, such as when documents may be hidden or destroyed, Business Associate and Subcontractor must permit access by the Secretary at any time and without notice. If any information required of the Business Associate or Subcontractor is under the exclusive possession of any other agency, institution, or person and the other agency, institution, or person fails to furnish the information, the Business Associate or Subcontractor must so certify and set forth what efforts it has made to obtain the information. Business and Subcontractor Associate shall provide Central Health copies of all documents provided to Secretary or other regulatory and accreditation authorities.

2.1.5 Access of Individuals to Information.

(i) In order to allow Central Health to respond to a request by an Individual for access pursuant to 45 C.F.R. Section 164.524, within three (3) business days of a written request by Central Health for access to Protected Health Information about an Individual contained in a Designated Record Set, Business Associate (or Subcontractor as applicable) shall make available to Central Health such Protected Health Information for as long as such information is maintained in the Designated Record Set. Business Associate shall contractually obligate Subcontractor to forward a request from an Individual to Business Associate on the same day that Subcontractor receives such requests in order to comply with the terms of this BA Agreement.

(ii) In the event any Individual requests access to Protected Health Information directly from Business Associate or a Subcontractor, Business Associate shall forward such request to Central Health within two (2) business days. Before forwarding any Protected Health Information to Central Health, Business Associate (or Subcontractor as applicable) shall indicate in the Designated Record Set, any material it deems unavailable to the Individual pursuant to 45 C.F.R. Section 164.524.

(iii) Business Associate or a Subcontractor must process PHI subject to access in the electronic form or format requested by Central Health, unless Central Health requests a readable hard copy form or such other format requested by Central Health.

(iv) Any denial of access to Protected Health Information determined by Central Health pursuant to 45 C.F.R. Section 164.524, and conveyed to Business Associate by Central Health, shall be the sole responsibility of Central Health, including resolution or reporting of all appeals and/or complaints arising from denials.

(v) Business Associate and Subcontractor shall support Covered Entity in a manner that enables Central Health to meet the obligations under 45 C.F.R. Section 164.524.

(vi) In order for Central Health to respond to a request by an Individual for an amendment of Protected Health Information pursuant to 45 C.F.R. Section 164.526, Business Associate (or Subcontractor as applicable) shall, within five (5) business days of a written request by Central Health amend Protected Health Information about an Individual contained in a Designated Record Set, make available to Central Health such Protected Health Information for as long as such information is maintained

in the Designated Record Set. Business Associate shall contractually obligate Subcontractor to forward a request from an Individual to Business Associate on the same day that Subcontractor receives such requests in order to comply with the terms of this BA Agreement.

(vii) In the event any Individual requests amendment of Protected Health Information directly from Business Associate or Subcontractor, Business Associate (or Subcontractor as applicable) shall forward such request to Central Health within two (2) business days. Before forwarding any Protected Health Information to Central Health, Business Associate (or Subcontractor as applicable) shall indicate in the Designated Record Set, any material it deems unavailable to the Individual pursuant to 45 C.F.R. Section 164.526.

(viii) Any denial of amendment of Protected Health Information determined by Central Health pursuant to 45 C.F.R. Section 164.526, and conveyed to Business Associate by Central Health, shall be the sole responsibility of Central Health, including resolution or reporting of all appeals and/or complaints arising from denials.

(ix) Business Associate (and Subcontractor as applicable) shall support Central Health in a manner that enables Central Health to meet his/her obligations under 45 C.F.R. Section 164.524.

(x) Within ten (10) business days of receipt of a request from Central Health to amend an Individual's Protected Health Information in the Designated Record Set, Business Associate shall make certain that Subcontractors incorporate the amendment, statements of disagreement, and/or Individual rebuttals into its Designated Record Set as required by 45 C.F.R. Section 164.526.

2.1.6 Accounting of Disclosures.

(i) In order to allow Central Health to respond to a request by an Individual for an accounting pursuant to 45 C.F.R. Section 164.528, Business Associate (or Subcontractor as applicable) shall, within five (5) business days of a written request by Central Health for an accounting of disclosures of Protected Health Information about an Individual, make available to Central Health such Protected Health Information in such format requested by Central Health. Business Associate shall contractually obligate Subcontractor to forward a request from an Individual to Business Associate on the same day that Subcontractor receives such requests in order to comply with the terms of this BA Agreement.

(ii) At a minimum, Business Associate (or Subcontractor as applicable) shall provide Central Health with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure.

(iii) In the event any Individual requests an accounting of disclosure of Protected Health Information directly from Business Associate or Subcontractor, Business Associate (or Subcontractor as applicable) shall forward such request to Central Health within two (2) business days.

(iv) Business Associate and Subcontractor shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Subsection 2.1.6.

(v) Business Associate and Subcontractor shall support Central Health in a manner that enables Central Health to meet the obligations under 45 C.F.R. Section 164.528.

2.1.7 Survival. The provisions of this Section 2.1 shall survive the termination of this BA Agreement.

3. DISCLOSURE TO THIRD PARTIES.

3.1. Subject to any limitations in this BA Agreement and the Service Agreement, Business Associate may disclose Protected Health Information to Subcontractors as necessary to perform its obligations under the Service Agreement and as permitted or required by applicable federal or state law.

3.1.1 Business Associate shall not [and shall provide that its directors, officers, employees, Subcontractors, and agents, do not] disclose Protected Health Information to any other person (other than members of their respective workforce as specified in Subsection 3.1.2 of this Section), unless disclosure is required by law or authorized by the person whose Protected Health Information is to be disclosed. Business Associate shall enter into a signed written agreement with its Subcontractor(s) (as applicable) that:

(i) Establishes the permitted and required uses and disclosures of PHI by the Subcontractor. The written agreement shall not authorize the Subcontractor to use or further disclosure PHI in a manner that would violate the Privacy Rule, if done by Central Health.

(ii) Binds the Subcontractor and Downstream Subcontractors to the same provisions, restrictions, and conditions of this BA Agreement pertaining to Protected Health Information, and Electronic Protected Health Information that apply to Business Associate for the express benefit of Central Health. Subcontractor and Downstream Subcontractors shall not use or further disclose PHI other than as permitted or required by this BA Agreement or as required by law.

(iii) Requires the Subcontractor and Downstream Subcontractors to comply with the applicable requirements of HIPAA (including but not limited to the Security and Privacy Rule as well as Texas Privacy provisions) and the contractual obligations set forth in this BA Agreement by entering into a written contract.

(iv) Contains reasonable assurances from Subcontractor that the PHI will be held confidential as provided in this BA Agreement, and only disclosed as required by law for the purposes for which it was disclosed to Subcontractor.

(v) Obligates Subcontractor to immediately notify Business Associate of any breaches (including breaches of unsecured PHI as required by 45 C.F.R. 164.410) of the confidentiality of the Protected Health Information and Security Incidents of which it becomes aware.

(vi) Obligates Business Associate and Subcontractor to comply with the principle of “minimum necessary use and disclosure,” i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed; provided further, Business Associate and disclosee shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure (if applicable) of Limited Data Sets.

(vii) Require that Subcontractor enter into a written agreement with its Downstream Subcontractors that requires Downstream Subcontractors to agree to the same restrictions and conditions that apply to the Subcontractor and Business Associate.

(viii) To the extent the Subcontractor is to carry out a Central Health obligation under HIPAA, the Subcontractor shall comply with the requirements of HIPAA that apply to Central Health in the performance of such obligation.

(ix) Business Associate is not in compliance with this BA Agreement if Business Associate knows of a pattern of activity or practice of a Subcontractor that constitutes a material breach or violation of the Subcontractor’s obligation under the contract or other arrangement, unless the Business Associate takes reasonable steps to cure the breaches or end the violation, as applicable, and if such steps are unsuccessful, terminate the arrangement or agreement.

(x) Business Associate is not in compliance with, and shall indemnify Central Health pursuant to Section 10 of this BA Agreement if Business Associate, Subcontractor, or Downstream Subcontractors:

(a) Impermissibly use or disclose PHI;

- (b) Fail to provide Central Health timely and accurate breach notification;
- (c) Fail to provide timely access to a copy of PHI either to Central Health, the individual, or the individual's designee;
- (d) Fail to provide a timely and accurate accounting;
- (e) Fail to timely disclose PHI where required by the Secretary;
- (f) Fail to fully comply with Texas law, the Security Rule, or the Privacy Rule; and
- (g) Fail to fully comply with this Business Associate Agreement.

3.1.2 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 BA 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 BA Agreement.

3.1.3 In addition to Business Associate's obligations under Section 5.1.3 below, Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Central Health in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of Protected Health Information by Business Associate or recipients in violation of this BA Agreement, including but not limiting the uses and disclosures of Subcontractors.

4. SAFEGUARDS.

4.1. Business Associate and Subcontractors shall employ appropriate administrative, technical and physical safeguards, consistent with the size and complexity of Business Associate's operations, to protect the confidentiality of Protected Health Information and to prevent the use or disclosure of Protected Health Information in any manner inconsistent with the terms of this BA Agreement.

4.2. Business Associate and Subcontractors shall provide Central Health with a copy of its written information security program upon request.

4.3. Upon reasonable notice and during normal business hours, Central Health shall have the right to audit Business Associate and Subcontractors compliance with its security program and the terms of this BA Agreement. Business Associate and Subcontractors shall cooperate in such audits and shall provide copies of any documents reasonably requested by Central Health at no charge.

4.4. Business Associate acknowledges (and Subcontractors shall acknowledge) that the HITECH Act and final Omnibus Rule require Business Associate and Subcontractors to comply with 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316 as if Business Associate (and its Subcontractors) were a Covered Entity, and Business Associate agrees that it and its Subcontractors through written contract shall comply with these provisions of the Security Standards and all additional security provisions of the Security Rule.

5. REPORTING OF BREACHES AND IMPROPER DISCLOSURES.

5.1. Breaches – A breach is the unauthorized acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted by HIPAA which compromises the security or privacy of such information.

5.1.1 In the event of a Breach of any "Unsecured Protected Health Information" (i.e., Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized

individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 1302(h)(2) of Pub.L. 111-5) that Business Associate (or a Business Associate or Subcontractor) accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses on behalf of Central Health, Business Associate shall provide notice of the Breach to Central Health immediately, but in no event more than two (2) days after discovering the Breach. Business Associate shall be liable and indemnify Central Health pursuant to Section 10 for Business Associate's and its Subcontractor's unreasonable delays in reporting Breaches to Central Health.

5.1.2 Notice of a Breach shall include, at a minimum: (i) the identification of each individual whose Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach; (ii) the date of the Breach, if known; (iii) the scope of the Breach; (iv) a description of the Business Associate's response to the Breach; and (v) any other reasonable information requested by Central Health.

5.1.3 In the event of a Breach, Business Associate shall, in consultation with Central Health and at Central Health's direction, assist Central Health in conducting a risk assessment of the Breach, provide notice as required by the final Omnibus Rule and upon approval of Central Health, mitigate, to the extent practicable, any harmful effect of such Breach known to Business Associate. For purposes of this BA Agreement, a Breach of Unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate (including any person, other than the individual committing the breach, who is an employee, officer, Subcontractor, or other agent of Business Associate, as determined in accordance with the federal common law of agency) or should reasonably have been known to Business Associate following the exercise of reasonable diligence. Business Associate shall solely incur all costs associated with mitigation and public or individual notice efforts (including the costs associated with a Subcontractor's breach).

5.1.4 In the event of any conflict between this Section 5.1 and Texas law, the more stringent requirements shall govern.

5.2. Improper Disclosures

5.2.1 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.

5.2.2 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.

5.2.3 Business Associate shall track all disclosures of Protected Health Information to third parties, including those made to Business Associate's directors, officers, subcontractors, employees, affiliates, agents, and representatives, other than those disclosures that meet the exception criteria of 45 C.F.R. Section 164.528.

5.2.4 Business Associate and Subcontractor shall report to Central Health any Security Incident, unauthorized, or improper use or disclosure of any Protected Health Information under the terms and conditions of this BA Agreement or applicable federal and state laws (including breaches of unsecured protected health information as required by HIPAA) as soon as practicable, but in no event later than two (2) days of the date on which Business Associate (or Business Associate disclosee, as applicable) becomes aware of such use or disclosure.

5.3. Breach of Security System For purposes of this Section 5.3, “Breach of System Security” means an unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data and includes any other definition promulgated by state law.

5.3.1 To the extent Business Associate owns or licenses computerized data that includes sensitive personal information, Business Associate shall disclose any breach of system security, after discovering or receiving notification of the breach, Business Associate shall provide notice of the Breach to Central Health immediately, but in no event more than two (2) days after discovery. Business Associate shall be liable for unreasonable delays in reporting to Central Health.

5.3.2 In the event of a Breach of Security System, Business Associate shall, in consultation with Central Health and at Central Health’s direction, assist Central Health in conducting a risk assessment of the Breach of Security System, provide notice as required by Texas law and upon approval of Central Health, mitigate, to the extent practicable, any harmful effect of such Breach of Security System known to Business Associate. For purposes of this BA Agreement, a Breach of Security System shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate (including any person, other than the individual committing the breach, who is an employee, officer, or other agent of Business Associate, as determined in accordance with the federal common law of agency) or should reasonably have been known to Business Associate following the exercise of reasonable diligence. Business Associate shall solely incur all costs associated with mitigation and public or individual notice efforts.

6. TERM AND TERMINATION.

6.1. General Term and Termination This BA Agreement shall become effective on the Effective Date of the Services Agreement and shall terminate upon the termination or expiration of the Service Agreement and when all Protected Health Information provided by either party to the other, or created or received by Business Associate on behalf of Central Health is, in accordance with Section 8 below, destroyed or returned to Central Health or, if it is not feasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the terms of this BA Agreement.

6.2. Material Breach

6.2.1 Where Central Health has knowledge of a material breach by Business Associate, Central Health may terminate this BA Agreement.

6.2.2 At the expense of Business Associate, Central Health shall have the right to cure any breach of Business Associate’s obligations under this BA Agreement. Central Health shall give Business Associate notice of its election to cure any such breach, and Business Associate shall cooperate fully in the efforts by Central Health to cure Business Associate’s breach. All requests for payment for such services of Central Health shall be paid within thirty (30) days. For purposes of clarification, Business Associate acknowledges it is responsible for Subcontractor and Downstream Subcontractor actions and omissions.

7. EQUITABLE REMEDIES.

7.1. Business Associate acknowledges and agrees that Central Health will suffer irreparable damage upon Business Associate’s breach of this BA Agreement, and that such damages shall be difficult to quantify.

7.2. Business Associate acknowledges and agrees that Central Health may file an action for an injunction to enforce the terms of this BA Agreement against Business Associate, in addition to any other remedy Central Health may have. Where Central Health has knowledge of any material breach by Business

Associate, Central Health may take proceedings against Business Associate before any Court having jurisdiction to obtain an injunction or any legal proceedings to cure or stop such material breach.

8. RETURN/DESTRUCTION OF PROTECTED HEALTH INFORMATION UPON TERMINATION. Upon termination of the BA or Service Agreement for any reason, Business Associate shall:

8.1. If feasible, return or destroy all Protected Health Information received from, or created or received by Business Associate on behalf of Central Health that Business Associate or any of its directors, officers, subcontractors, employees, affiliates, agents, and representatives still maintain in any form, and Business Associate shall retain no copies of such information; or

8.2. If Central Health determines that such return or destruction is not feasible, extend the protections of this BA Agreement to such information and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible, in which case Business Associate's obligations under this Section shall survive the termination of this BA Agreement.

8.3. 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/>.

9. AMENDMENT. If any of the rules or regulations promulgated under HIPAA or state law are amended or interpreted in a manner that renders this BA Agreement inconsistent therewith, Central Health may, on thirty (30) days' written notice to Business Associate, amend this BA Agreement to the extent necessary to comply with such amendments or interpretations. Business Associate agrees that it will fully comply with all such regulations promulgated under HIPAA or state law, and that it will agree to amend this BA Agreement and to amend applicable Subcontractor agreements.

10. CONFLICTING TERMS. In the event any terms of this BA Agreement conflict with any terms of the Service Agreement, the terms of this BA Agreement shall govern and control.