

EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is by and between _____ ("Covered Entity") and _____ ("Business Associate").

RECITALS

WHEREAS, Covered Entity has engaged Business Associate to perform certain services or provide goods, or both under the attached _____ Agreement (the "Underlying Agreement");

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA and the HIPAA Regulations, and is permitted to use or disclose such information only in accordance with HIPAA and the HIPAA Regulations;

WHEREAS, Business Associate may receive such information from Covered Entity, or create and receive such information on behalf of Covered Entity, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, the parties desire to comply with health information privacy and security protections subsequent to the enactment of the Health Information Technology for Clinical and Economic Health Act ("HITECH Act"), Subtitle D of the American Recovery and Reinvestment Act of 2009 which has established new requirements for compliance with HIPAA. In particular, the requirements provide that: (1) Covered Entity give affected individuals notice of security breaches affecting their PHI and Business Associate give notice to Covered Entity pursuant to the provisions below ("Breach Notification Requirements"); (2) Business Associate comply with the HIPAA security regulations ("BA Security Compliance"); and (3) additional and/or revised provisions be included in Business Associate Agreement; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Individual Identifiably Health Information;

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. **Definitions.** The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA and the HIPAA Regulations. All capitalized terms used in this Agreement but not defined below shall have the meaning assigned to them under the HIPAA Regulations.

a. **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

b. **"HIPAA Regulations"** means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164 subparts A and E ("The Privacy Rule") and the Security

Standards as they may be amended from time to time, 45 C.F.R. Parts 160, 162 and 164, Subpart C (“The Security Rule”).

c. **“HITECH Act”** means the provisions of Division A, Title XIII of the American Recovery and Reinvestment Act of 2009 (“ARRA”), known as The Health Information Technology for Economic and Clinical Health, Act 42 U.S.C. §3000 et. seq., and implementing regulations and guidance.

d. **“Business Associate”** means, with respect to a Covered Entity, a person who: on behalf of such Covered Entity or of an organized health care arrangement (as defined under the HIPAA Regulations) in which the Covered Entity participates, but other than in the capacity of a member of the workplace of such Covered Entity or arrangement, performs, or assists in the performance of:

1) a function or activity involving the use or disclosure of Individually Identifiable Health Information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or

2) any other function or activity regulated by the HIPAA Regulations; or provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, Data Aggregation, management, administrative, accreditation, or financial services to or for such Covered Entity, or to or for an organized health care arrangement in which the Covered Entity participates, where the provision of the service involves the disclosure of Individually Identifiable Health Information from such Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.

e. **“Individually Identifiable Health Information”** means information that is a subset of health information, including demographic information collected from an individual, and;

1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

2) relates to past, present, or future physical or mental health or 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

a) that identifies the individual; or

b) with respect to which there is a reasonable cause to believe the information can be used to identify the individual.

f. **“Protected Health Information”** or “PHI” means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term electronic media in the HIPAA Regulations; or transmitted or maintained in any other form or medium. Protected Health Information excludes Individually Identifiable

Health Information in educational records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g; records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and employment records held by a Covered Entity in its role as employer.

g. **“Data Aggregation”** means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by Business Associate with the PHI 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 the respective covered entities.

h. **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

i. **“Unsecured PHI”** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified in the guidance issued under Section 13402(h)(2) of the HITECH Act on the HHSWeb site.

j. **“Breach”** shall have the meaning given such term under 45 C.F.R. § 164.402 as such regulation is revised from time to time.

2. **Permitted Uses and Disclosures.**

a. **Performance of Services.** Except as otherwise permitted by this Agreement, Business Associate may use and disclose PHI received from, or created or received on behalf of, Covered Entity only in connection with the performance of the services contracted for in the Underlying Agreement.

b. **Proper Management and Administration.** Business Associate may use PHI received by Business Associate in its capacity as Covered Entity’s Business Associate, for the proper management and administration of Business Associate in connection with the performance of services in the Underlying Agreement, as permitted by this Agreement, and to carry out the legal responsibilities of Business Associate. Business Associate may disclose Covered Entity’s PHI for such proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate only with the prior consent of Covered Entity. Any such disclosure of PHI shall only be made if a Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that: (1) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (2) Business Associate will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

c. **Data Aggregation.** Business Associate may use and disclose PHI received by Business Associate in its capacity as Covered Entity’s Business Associate to provide Data Aggregation

services relating to Covered Entity's health care operations only with Covered Entity's permission.

3. **Nondisclosure.**

a. **As Provided in Agreement.** Business Associate shall not use or further disclose Covered Entity's PHI otherwise than as permitted or required by this Agreement or Required by Law as defined in this Agreement.

b. **Disclosures Required By Law.** Business Associate shall not, without prior written consent of Covered Entity, disclose any PHI on the chance that such disclosure is required by law without notifying, to the extent legally permitted, Covered Entity so that the Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such a disclosure, Business Associate, shall, to the extent permissible by law, refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 2b that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI when a disclosure is required by law.

c. **Additional Restrictions.** If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of Covered Entity's PHI pursuant to HIPAA or the HIPAA Regulations, Business Associate shall be bound by such additional restrictions and shall not disclose Covered Entity's PHI in violation of such additional restrictions to the extent possible consistent with Business Associate's obligations set forth in the Underlying Agreement. In addition, beginning six months after the effective date of final regulations implementing HITECH Act § 13405(d), Business Associate shall not directly or indirectly receive remuneration in exchange for disclosing PHI received from or on behalf of Covered Entity except as permitted by HITECH Act § 13405 and any implementing regulations that may be promulgated or revised from time to time.

4. **Limited Data Sets.** Covered Entity and Business Associate agree to limit, to the extent practical and except as permitted by 45 C.F.R. § 164.502(b)(2), its uses, disclosures and requests of PHI under this Agreement to a Limited Data Set (as defined in 45 C.F.R. § 164.514(e)(2)) or, if needed by Covered Entity or Business Associate, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request. This provision will cease to apply on the effective date of guidance issued by the Secretary of HHS in accordance with HITECH Act § 13405(b)(1)(C).

5. **Safeguards, Reporting, Mitigation and Enforcement.** Business Associate shall be required to comply with: (1) administrative safeguards contained in 45 C.F.R. 164.308, (2) the physical safeguards contained in 45 C.F.R. 164.310, (3) the technical safeguards contained in 45 C.F.R. 164.312, and (4) the policies, procedures and documentation requirements contained in 45 C.F.R. 164.316.

a. **Safeguards.** Business Associate shall maintain a comprehensive written information privacy and security program that includes and implements administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity. In addition to any safeguards specifically set forth in this Agreement, Business Associate shall use reasonable and

appropriate safeguards to prevent use or disclosure of Covered Entity's PHI otherwise than as provided by this Agreement.

b. **Business Associate's Agents.** Business Associate shall not disclose PHI to any agent or subcontractor of Business Associate except with the prior written consent of Covered Entity. Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI received from, or created or received by Business Associate or on behalf of, Business Associate agree in writing to be bound by the same restrictions and conditions that apply to Business Associate with respect to such PHI and implementation of reasonable and appropriate safeguards to protect it, provided, however that Business Associate shall not disclose or provide access to Covered Entity's PHI to any subcontractor or agent without the prior consent of Covered Entity. Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of the Agent in providing the services as if they were the Business Associate's own acts, failures or omissions, to the extent permitted by law.

c. **Reporting.** Business Associate shall, as soon as practical but not more than two (2) business days after becoming aware of any security incident or use or disclosure of Covered Entity's PHI in violation of this Agreement, report any such use or disclosure to Covered Entity.

d. **Breach of Unsecured PHI.** With the exception of law enforcement delays that satisfy the requirements under 45 C.F.R. § 164.412 or as otherwise required by applicable state law, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than sixty (60) calendar days upon discovery of a Breach of Unsecured PHI. Such notice must include, to the extent possible, the name of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. Business Associate shall also provide, to the extent possible, Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. For purposes of this 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, 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.

e. **Mitigation.** Business Associate shall have procedures in place to mitigate, to the maximum extent practical, any deleterious effect from any use or disclosure by or on behalf of Business Associate, or its agent on behalf of Business Associate, of Covered Entity's PHI in violation of this Agreement or applicable law.

f. **Sanctions.** Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses Covered Entity's PHI in violation of this Agreement or applicable law.

g. **Covered Entity's Rights of Access and Inspection.** From time to time upon reasonable notice, or upon a reasonable determination by Covered Entity that Business

Associate has breached this Agreement, Covered Entity may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Covered Entity's (1) failure to detect or (2) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this Agreement. This Section shall survive termination of the Agreement.

h. **United States Department of Health and Human Services.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health and Human Services for purposes of determining Covered Entity's compliance with HIPAA and the HIPAA regulations, provided that Business Associate shall promptly notify Covered Entity upon receipt by Business Associate of any such request for access by the Secretary of the United States Department of Health and Human Services, and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto, unless otherwise prohibited by law.

6. **Obligation to Provide Access, Amendment and Accounting of PHI.**

a. **Access to PHI.** Business Associate shall make available to Covered Entity, in the time and manner designated by the Covered Entity, such information as necessary to allow Covered Entity to meet its obligations under the HIPAA Regulations, PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, and copies of, PHI in accordance with HIPAA and the HIPAA Regulations. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall notify Covered Entity within two (2) business days that such request has been made.

b. **Amendment of PHI.** Business Associate shall make available to Covered Entity PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to amend PHI in accordance with HIPAA and the HIPAA Regulations. In addition, Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such information maintained by Business Associate. In the event that any Individual requests amendment of PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within two (2) business days.

c. **Accounting of Disclosures of PHI**

1) **Record of Disclosures.** Business Associate shall maintain a record of all disclosures of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, except for those disclosures identified in Section 6(c)(2) below, including the date of the disclosure, the name and, if known, the address of the

recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure which includes an explanation of the reason for such disclosure. Business Associate shall make this record available to Covered Entity upon Covered Entity's request. In the event that any Individual requests an accounting of disclosures of PHI directly from Business Associate, Business Associate shall notify Covered Entity within two (2) business days that such request has been made. Business Associate shall have the responsibility of responding to requests by Individuals within the period required by regulation and providing Covered Entity with a copy of such response at the same time. If Covered Entity notifies Business Associate that it requires information from Business Associate in order to respond to Individual, Business Associate shall make available to Covered Entity such information as Covered Entity may require within twenty (20) days from the time of request by Covered Entity.

2) **Certain Disclosures Need Not Be Recorded.** The following disclosures need not be recorded:

- a) disclosures to carry out Covered Entity's treatment, payment and health care operations as defined under the HIPAA Regulations. However, under HITECH Act, because Covered Entity had acquired an electronic health record system prior to January 1, 2009, any disclosures from these records to Business Associate for the purpose of carrying out Covered Entity's treatment, payment and health care operations, requires that Business Associate record any of its disclosures of that information effective January 1, 2014, or as otherwise required by regulations;
- b) disclosures to individuals of PHI about them as provided by the HIPAA Regulations;
- c) disclosures for Covered Entity's facility's directory, to persons involved in the individual's care, or for other notification purposes as provided by the HIPAA Regulations;
- d) disclosures for national security or intelligence purposes as provided by the HIPAA Regulations;
- e) disclosures to correctional institutions or law enforcement officials as provided by the HIPAA Regulations;
- f) disclosures that occurred prior to the later of (i) the effective date of this Agreement or (ii) the date that Covered Entity is required to comply with HIPAA and the HIPAA Regulations;
- g) disclosures pursuant to an individual's authorization in accordance with HIPAA and the HIPAA Regulations; and

h) any other disclosures excepted from the right to an accounting by the HIPAA Regulations.

d. **Responding to Requests From Individuals.**

If Covered Entity notifies Business Associate that it requires information from Business Associate in order to respond to an Individual, Business Associate shall make available to Covered Entity such information as Covered Entity may require within twenty (20) days from the time of request by Covered Entity.

7. **Material Breach, Enforcement and Termination.**

a. **Term.** This Agreement shall become effective on the effective date of the Underlying Agreement (the "Effective Date") and shall continue unless or until the Agreement is terminated in accordance with the provisions of this Agreement, the Underlying Agreement between the parties terminates or the Business Associate has completed performance of the services in the Underlying Agreement, whichever is earlier. .

b. **Termination.** Covered Entity may terminate this Agreement:

1) immediately if Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA or the HIPAA Regulations;

2) immediately if a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined; or completed performance of the services in the Underlying Agreement, whichever is earlier.

3) pursuant to Sections 7c or 8b of this Agreement.

c. **Remedies.** Upon one party's knowledge of a material breach by the other party, the non-breaching party shall either:

1) provide an opportunity for the breaching party to cure the breach and end the violation or terminate this Agreement and the Underlying Agreement if the breaching party does not cure the breach or end the violation within ten (10) business days; or

2) immediately terminate this Agreement and the Underlying Agreement if cure is not possible.

d. **Knowledge of Non-Compliance.** Any non-compliance by Business Associate with this Agreement will automatically be considered a breach or violation of a material term of this Agreement if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

e. **Reporting to United States Department of Health and Human Services.** If Covered Entity's efforts to cure any breach or end any violation are unsuccessful, and if termination of this Agreement is not feasible, Covered Entity shall report Business Associate's breach or violation to the Secretary of the United States Department of Health and Human Services, and in such case, Business Associate agrees that it shall not have or make any claim(s), whether at law, in equity, or under this Agreement, against Covered Entity with respect to such report(s).

f. **Injunctions.** Covered Entity and Business Associate agree that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law or in equity, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

g. **Indemnification.** Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties, and obligations of Business Associate under this Agreement.

8. **Miscellaneous Terms.**

a. **State Law.** Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI without written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

b. **Amendment.** Covered Entity and Business Associate agree to enter into good faith negotiations to amend this Agreement to come into compliance with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of PHI. Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations.

c. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

d. **Ambiguities.** The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, HIPAA, the HIPAA Regulations, and the HITECH Act.

e. **Primacy.** To the extent that any provision of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control.

f. **Destruction/Return of PHI.** Business Associate agrees that, pursuant to 45 C.F.R. § 164.504 (e) (2) (ii) (I), upon termination of this Agreement or the Underlying Agreement, for whatever reason,

1) it will return or destroy all PHI, if feasible, received from or created or received by it on behalf of Covered Entity which Business Associate maintains in any form, and retain no copies of such information which for purposes of this Agreement shall mean all backup tapes. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. An authorized representative of Business Associate shall certify in writing to Covered Entity, within five (5) days from the date of termination or other expiration of the Underlying Agreement, that all PHI has been returned or disposed of as provided above and that Business Associate or its subcontractors or agents no longer retain any such PHI in any form.

2) If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify the Covered Entity in writing. The notification shall include:

a) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination; and

b) Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

3) If it is infeasible for Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

g. **Minimum Necessary.** Business Associate will disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

h. **Integration.** This Agreement embodies and constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments and understandings pertaining to the subject matter hereof.

i. **Governing Law.** This Agreement is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Texas without regard to choice of law principles.

j. **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

To Covered Entity: _____

Attention: Privacy Officer
Fax: _____

With a copy to: Texas Health Resources
612 E. Lamar Blvd, Suite 900
Arlington, Texas 76011
Attention: General Counsel
Fax: 682/236-6150

To Business Associate: _____

Attention: _____
Fax: _____

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

k. **Privilege.** Notwithstanding any other provision in this Agreement, this Agreement shall not be deemed to be an agreement by Business Associate to disclose information that is privileged, protected or confidential under applicable law to the extent that such privilege, protection or confidentiality (a) has not been waived or (b) is not superseded by applicable law.