

December 1, 2014

Jonny F. Hipp, CEO
Nueces County Hospital District
555 N. Carancahua Street, Suite 950
Corpus Christi, TX 78401-0835

RE: FY2015 Interlocal Cooperation Act Contract between UTMB and Nueces County HD

Dear Mr. Hipp,

We would like to take a moment to thank you for your partnership with UTMB. In anticipation of continuing this partnership, we have enclosed the Fiscal Year 2015 Interlocal Cooperation Act Contract for the period through August 31, 2015.

There are minimum changes to the agreement from last year; however, we would like to bring to your attention two important changes with this year's agreement:

- 4.12 - A contract renewal provision (pg. 11)
Future contract agreements will be in the form of a 1-2 page contract renewal with any changes in the agreement listed and will include an updated Compensation Schedule.
- Exhibit D- Compensation Schedule (pg. 16)
Reimbursement rates will remain at 48% Inpatient and 40% Outpatient; however, reimbursement for Professional Services has been reduced from 156% to 120% of Texas Medicaid Rate.

We hope you will find value in both of these changes as we strive to improve our services to your Indigent Care Program.

You may contact us with any questions via email to sandavis@utmb.edu. Please return both signed original copies of the contract to the address listed above and we will return an original executed contract to you with all signatures. We appreciate your continued partnership with UTMB and look forward to another year of serving your county residents.

Best regards,
Sandra O. Davis, CHAM
Sr. Administrative Manager, Office of County Affairs

Enclosure

**INTERLOCAL COOPERATION ACT CONTRACT
TO PROVIDE HEALTH CARE SERVICES
BETWEEN THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON
AND THE NUECES COUNTY HOSPITAL DISTRICT**

This Interlocal Cooperation Act Contract (the "Contract") is entered into pursuant to the authority granted under *Chapter 791, Texas Government Code* by and between **The University of Texas Medical Branch at Galveston**, a component institution of The University of Texas System and an agency of the State of Texas, ("UTMB"), and **Nueces County Hospital District** ("Hospital District") for the provision of the health care services to the Hospital District's eligible residents described herein.

This Contract is subject to the provisions of the Texas Indigent Health Care and Treatment Act, *Chapter 61, Texas Health & Safety Code* (the "Act"). However, UTMB and Hospital District understand and acknowledge that Hospital District shall be liable to UTMB for the treatment and provision of health care services to any Eligible Resident under this Contract, as contemplated and authorized under Section 74.005 (d), Texas Education Code, up to the Cap Out amount.

I. Definitions:

- 1.1 **Cap Out:** The maximum annual Hospital District liability per Eligible Resident under this Contract, which UTMB and Hospital District agree shall be \$60,000 for services provided by UTMB.
- 1.2 **Eligible Resident:** An Eligible Resident is a Hospital District resident who:
 - 1.2.1 Presents a valid Hospital District identification card to UTMB; and either
 - 1.2.2 Presents a valid referral authorization from the Hospital District indigent health care office, an authorized Hospital District official, the Hospital District's authorized third party administrator or from a physician designated by the Hospital District indigent health care office as authorized to make referrals, in addition to a valid preauthorization from the Hospital District or Hospital District's designee; or
 - 1.2.3 Presents in a UTMB emergency room without a referral where Emergency Care will be provided.
- 1.3 **Emergency Care:** Care given to any person who presents in the UTMB emergency room to evaluate and stabilize a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the person's condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in: 1) placing the patient's health in serious jeopardy; (2) serious impairment to bodily functions; (3) serious dysfunction of a bodily organ or part; (4) serious disfigurement; or (5) in the case of woman, serious jeopardy to the health of the fetus.

- 1.4 **Invoice:** An invoice is the demand for payment for services provided by UTMB to Eligible Residents which may be submitted at the election of the Hospital District either electronically or in monthly statement form as set out in Section 2.2.2.
- 1.5 **Patient Encounter:** A patient encounter includes each preauthorized inpatient or outpatient visit to UTMB by an Eligible Resident and all medically appropriate procedures, treatments, and ancillary services associated with that visit.
- 1.6 **Primary Care:** General health care services provided by family practitioners, pediatricians, and internal medicine physicians.
- 1.7 **Secondary Care:** Specialty health care services provided by a specialist who is asked to provide more insight and treatment regarding the medical problem of a patient who has been referred to UTMB.
- 1.8 **Tertiary Care:** Health care services provided within a sophisticated specialty care setting that is serving as a referral and support alternative to primary and secondary care.
- 1.9 **Medical Screening Examination:** The process required to reach with reasonable clinical confidence the point at which it can be determined whether a medical emergency does or does not exist. Depending on patient's presenting symptoms, the exam could range from a simple process involving only a brief history and physical exam to a complex process that involves performing ancillary studies and procedures, including clinical lab tests, CT scans, and/or diagnostic tests and procedures. The exam is an ongoing process that must continue until the patient is stabilized or it can be determined whether a medical emergency does or does not exist.

II. Responsibilities:

2.1 Hospital District's Responsibilities:

- 2.1.1 The Hospital District agrees to pay UTMB the fees charged to the Hospital District by UTMB for health care services rendered pursuant to this Contract within sixty (60) days of date of the Invoice except for amounts specifically disputed in accordance with Section 2.1.2. The undisputed portions of any Invoice will not be withheld and will be paid in accordance with this section 2.1.1.
- 2.1.2 In the event the Hospital District disputes all or any portion of an amount included on an Invoice, the Hospital District will notify UTMB in writing of the specific reason for which the amount is being disputed. Valid reasons for dispute include (i) appointment not authorized; (ii) Cap Out and (iii) Medicaid patient. In the case of the first two, UTMB and Hospital District will consult their respective records to resolve the dispute. In the case of a Medicaid patient, the Hospital District will provide the Medicaid Number, the Add Date, Effective Date and Term Date and such other information as is reasonably requested by UTMB. Any other reason for disputing a charge (i.e., duplicate charge) must be accompanied by a full explanation of the

reason for non-payment and evidence that such charge is not valid and the Hospital District will provide to UTMB such additional information as is reasonably requested by UTMB. All notices of dispute shall be in writing, specific, in good faith, and promptly forwarded to the respective UTMB billing entity, but in no event later than forty-five (45) days from the date of the Invoice containing the disputed charge. Dispute notices received by UTMB later than forty-five (45) days from the date of the Invoice shall be null and void and the disputed amount shall be due and owing from the Hospital District to UTMB. Notices of dispute of a charge will be sent directly to the respective UTMB billing entity set forth in Section 2.1.4 and Section 2.1.5 with the appropriate documentation necessary for each such billing entity. UTMB shall respond to any notice of dispute within thirty (30) days of receipt of same. If UTMB's response indicates payment is expected for the amount(s) in dispute, the Hospital District shall have thirty (30) days from receipt of UTMB's response to either pay the disputed amount(s) or notify UTMB that the amount remains in dispute. If the amount remains in dispute, the dispute shall be resolved as set forth in section 4.3 below.

- 2.1.3 Payment of Invoices shall be made directly to the respective UTMB billing entities specified in Section 2.1.4 and Section 2.1.5.
- 2.1.4 Physician payments mailed to: UTMB Faculty Group Practice, P.O. Box 4797-710, Houston, TX 77210-4797.
- 2.1.5 Hospital payments mailed to: UTMB at Galveston, P.O. Box 4786-730, Houston, TX 77210-4786.
- 2.1.6 The Hospital District shall screen and register patients in accordance with the provisions of the Act and the Hospital District's internal procedures in advance of treatment.
- 2.1.7 The Hospital District shall provide each indigent patient with a card that identifies the patient as an Eligible Resident and contains the information in the form identified in Exhibit A.
- 2.1.8 The Hospital District agrees to refer Eligible Residents through its indigent health care office, by a physician designated by the Hospital District indigent health care office and/or by a designated third party administrator as authorized by the Hospital District to make referrals.
- 2.1.9 The Hospital District shall complete the UTMB referral form as identified in Exhibit B in advance in order to authorize treatment for all Eligible Residents.
- 2.1.10 The Hospital District shall identify to UTMB the specific indigent health care officials who can authorize referrals and confirm Eligible Resident status, including the name, address and phone numbers of Hospital District officials or designated third party administrators for telephone eligibility verification and patient referral.

- 2.1.11 The Hospital District shall be solely responsible for arranging for any follow-up medical care or health care services to be performed by UTMB including referral form completion for Eligible Residents referred to UTMB.
- 2.1.12 The Hospital District shall ensure that the information contained in the referral form is accurate and complete and that all referrals contain a valid and unique authorization identifier for each Patient Encounter. An authorization identifier is required to evidence the guarantee of benefits, eligibility for the referral and payment for health care services provided by UTMB under this Contract
- 2.1.13 Services provided by UTMB, excluding the Medical Screening Examination performed on an Eligible Resident upon presentation at a UTMB emergency room, require pre-authorization. Hospital District is only obligated to pay for services specifically authorized under each Patient Encounter as outlined in Section 1.5, except as allowed under Section 2.1.14.
- 2.1.14 Hospital District agrees to pay for Emergency Care received by any Eligible Resident at the UTMB Emergency Room, including the Medical Screening Examination, without regard to prior authorization, at rates specified under this Contract. Any services provided that do not constitute Emergency Care will be subject to preauthorization by the Hospital District or Hospital District's designee. Hospital District acknowledges and understands that the UTMB Emergency Room may not offer Medical Screening Exams at such times that staffing needs do not allow. During such times, Eligible Residents who present to the Emergency Room will be treated by a physician provider. Preauthorization shall not be required for any Emergency Care provided. UTMB will continue to make reasonable efforts to refer Eligible Residents not requiring Emergency Care to the Hospital District's indigent care office or primary care clinic in accordance with the provisions of this Contract. In addition, patients who receive a Medical Screening Examination and are deemed to be non-emergent will be directed to the financial screening process before further care may be provided. During the financial screening process, UTMB will inform the patient that medical services in the UTMB Emergency Room that are deemed non-emergent as a result of the Medical Screening Examination, will be the responsibility of the patient to cover payment in full.
- 2.1.15 Hospital District acknowledges that the physician services in UTMB's Emergency Care unit are contracted with a third-party provider. Hospital District understands and agrees that a separate agreement may be executed between Hospital District and such third-party for the provision of Emergency Care physician services under terms and at rates to be determined under such separate agreement.
- 2.1.16 Hospital District or its designee agrees to promptly respond to a request from UTMB to authorize additional health care services not previously authorized or included under the Medical Screening Examination that are medically necessary when delaying such health care services may be harmful to the Eligible Resident. Hospital District or its designee shall utilize its best faith effort to respond within three (3) hours of UTMB's request to authorize

additional health care services. If UTMB does not receive a response from Hospital District within three (3) hours of UTMB's initial attempt to request authorization for services, UTMB will presume that Hospital District has authorized the additional services and will provide the additional services to Eligible Resident.

2.1.17 Hospital District or its designee agrees to notify UTMB by fax at (409) 747-0850 or other mutually agreeable electronic means, including email, when it disenrolls an Eligible Resident from the Hospital District's indigent health care program. Such notice shall be delivered within 72 hours of the effective date of the disenrollment, and shall include the name, date of birth, and social security number of the affected individual.

2.1.18 Hospital District agrees that it will not require Eligible Residents receiving health care services from UTMB under this Contract to obtain health care services outside of UTMB, including but not limited to radiology, electronic imaging, laboratory and pathology services in those instances where: (1) the Eligible Resident has been admitted to a UTMB facility as an in-patient; or (2) if in the opinion of a UTMB physician, the provision of services by a third party provider would significantly disrupt or impair the continuity of care provided to the Eligible Resident by UTMB. The parties acknowledge and understand that procedures requiring preauthorization are determined by Hospital District and specified in Exhibit C, as provided in Section 2.1.13 of this Contract. Except that, in cases where an Eligible Resident is referred to UTMB for neurology, orthopedic or neurosurgery services, the Hospital District must provide concurrent pre-authorization for both medically necessary radiology services and neurology, orthopedic or neurosurgery services.

2.2 UTMB's responsibilities:

2.2.1 At the time of referral of an Eligible Resident, UTMB agrees to provide health care services within the then current limits of its capacities and capabilities to the Hospital District's Eligible Residents at the authorized and agreed upon fee schedule attached as Exhibit D to this Contract.

2.2.2 UTMB agrees to submit Invoices on a timely basis to the Hospital District from each billing entity.

2.2.2.1 Invoices may be submitted either (i) electronically for each Patient Encounter of an Eligible Resident; or (ii) in a paper statement prepared on a monthly basis reflecting the accumulated amounts due to UTMB from the Hospital District for the Patient Encounters of all Eligible Residents during the previous month regardless of the date of a Patient Encounter. The Hospital District has elected the method of invoicing indicated on the signature page of this Contract. The Hospital District may change such election only upon written notification to UTMB at least sixty (60) days prior to the date requested for such change to take effect.

- 2.2.2.2 Invoices that are sent in electronic form will be sent within ninety-five (95) days of the date of each Patient Encounter. If submitted in paper statement form, the Invoice will include the amounts due to UTMB from the Hospital District for the Patient Encounters of all Eligible Residents accumulated during the previous month regardless of the date of a Patient Encounter, although the Invoice will be sent within one-hundred twenty-five (125) days of the date of any Patient Encounter included on the Invoice. Separate Invoices will be submitted for hospital and physician services.
- 2.2.3 UTMB agrees that it will not "balance bill" for health care services provided to those Eligible Residents who have the appropriate consultation form identified in Exhibit B. UTMB agrees to accept Hospital District's payment as payment in full for health care services provided to Eligible Residents. In the event that Eligible Resident is entitled to payment for health care services from a third party payer, UTMB shall not demand from Hospital District any amount received by Hospital District for reimbursement from a third party payer. In the event that UTMB receives payment from both the Hospital District and a third party payer, UTMB agrees to refund the Hospital District for the amount received from the Hospital District. For purposes of accomplishing the intent of this section, the Hospital District assigns to UTMB its rights to collection for any third party claim for services rendered by UTMB to Eligible Residents. Refund should be submitted to the appropriate Hospital District within one hundred twenty (120) days of UTMB receipt of payment from third party payer.
- 2.2.4 UTMB agrees to make a best faith effort to provide discharge summaries and consultation reports, procedure and/or operative notes (and case notes, if requested by Hospital District) and consult notes for clinic services to the Hospital District's referring physician. UTMB shall furnish such information to the Hospital District's referring physician not later than ten (10) business days of the date of discharge of the patient. In addition, UTMB shall furnish the same information, as soon as practicable, upon request to the Hospital District's indigent healthcare office or its assignee. In the event UTMB fails to provide such information as is required by this section on a timely basis for more than ten percent (10%) of the Hospital District's patients treated at UTMB during any calendar month during the term of this Contract, then upon such failure of performance Hospital District may immediately institute the dispute resolution procedure set forth in section 4.3 below. UTMB agrees to provide copies of medical records under this section without charge. If additional copies of the same medical records are requested, whether in the same or subsequent request by Hospital District, Hospital District will pay for the additional copies at the rates then charged by UTMB for such copies under similar circumstances.
- 2.2.5 UTMB agrees to refer all Eligible Residents back to the Hospital District's indigent care office for follow-up treatment of the referred condition.
- 2.2.6 UTMB Invoices shall include a CMS UB-04 for inpatient/hospital services and a CMS 1500 for outpatient/physician services. UTMB shall provide all necessary documents in its possession to assist Hospital District in seeking

reimbursement from other sources, including assignments for Medicaid eligible services provided to SSI Appellant Eligible Residents. If a Hospital District eligible patient is subsequently determined to be Medicaid eligible and Hospital District has already paid UTMB for services rendered to Medicaid eligible, the Hospital District will request a refund from UTMB. Once UTMB has been paid by Medicaid, UTMB will refund the money to the Hospital District.

- 2.2.7 UTMB agrees to use reasonable efforts to inform the Hospital District of the cumulative amount of all Invoices.
- 2.2.8 UTMB agrees to provide names, addresses, and phone numbers for personnel responsible for arranging for health care services under this Contract.
- 2.2.9 UTMB agrees to comply with Federal and State laws regarding Emergency Care. UTMB agrees to make reasonable efforts to refer Hospital District residents not requiring Emergency Care to the Hospital District's indigent health care office for referral in accordance with the provisions of this Contract.
- 2.2.10 UTMB provides professional liability insurance coverage for employed UTMB faculty, qualifying part-time contracted faculty, residents, and students through the University of Texas System Professional Medical Liability Benefit Plan (the "Plan") for claims arising from or related to acts and/or omissions occurring within the course and scope of their clinical, educational, and research duties and responsibilities. The plan provides coverage of \$500,000 per claim and \$1.5 million in annual aggregate and is an "incurred" plan and provides "tail" coverage. UTMB agrees to provide evidence of current coverage under such policies and to immediately inform Hospital District of any actual or proposed material modification, cancellation, or termination of such insurance. Hospital District acknowledges that, as an agency of the State of Texas, UTMB's liability for the tortious conduct of UTMB employees or for injuries caused by conditions of tangible personal property is provided for by the provisions of the Texas Tort Claims Act (*Texas Civil Practice and Remedies Code, Chapters 101, 104, and 108*). Workers' Compensation Insurance coverage for employees of UTMB is provided by UTMB as mandated by the provisions of *Texas Labor Code, Chapter 503*.
- 2.2.11 UTMB agrees to allow Hospital District and/or its agent access to the medical and billing records of services provided under this Contract to Hospital District's Eligible Residents treated by UTMB for purposes of allowing Hospital District and/or its agent to conduct audits regarding medical necessity and/or billing accuracy. In such event, Hospital District shall provide notice not less than three (3) business days in advance of on-site visit and specify those records it desires to inspect and review. On-site visits will be conducted during normal business hours. Hospital District and/or its agent will adhere to all UTMB standard security requirements for premises access. All costs of such audits shall be the responsibility of Hospital District. UTMB agrees to cooperate with Hospital District regarding such audit processes.

2.2.12 UTMB has the right to terminate the physician-patient relationship or the provision of non-emergent services to an Eligible Resident if a UTMB Physician determines that continuing the relationship or providing the requested services are not in the best interest of the Eligible Resident.

2.3 Health care services not UTMB's responsibility:

2.3.1 UTMB does not agree to provide Outpatient Pharmacy services.

2.3.2 UTMB does not agree to provide transportation to and from UTMB.

2.3.3 UTMB does not agree to provide take-home medical supplies.

2.3.4 UTMB does not agree to provide health care services via telemedicine.

2.3.5 UTMB does not agree to provide routine eye care and exams.

2.4 Health care services carve out:

2.4.1 Oncology Services - Under this Contract, UTMB agrees to accept the referral of an Eligible Resident to its oncology service for consultation only, and to provide a diagnostic evaluation and treatment plan for the Eligible Resident.

2.4.2 Invasive Cardiology/Cardiovascular Services - Under this Contract, UTMB agrees to accept the referral of an Eligible Resident to its invasive cardiology/cardiovascular service for consultation only, and to provide a diagnostic evaluation and treatment plan for the Eligible Resident. If the Hospital District requests UTMB to provide invasive cardiology/cardiovascular services as outlined in the treatment plan for the Eligible Resident, the Hospital District agrees to pay UTMB for a complete episode of care, as set forth in the treatment plan, based on the compensation amounts detailed in Exhibit D, Compensation Schedule, up to \$75,000.

If the Hospital District requests UTMB to provide oncology services as outlined in the treatment plan for the Eligible Resident, the Hospital District will be required to sign a separate one-time agreement with UTMB and agree to pay for a complete episode of care, as set forth in the treatment plan, based on the compensation amounts detailed in Exhibit D, Compensation Schedule, regardless of the Cap Out amount.

III. Warranties:

- 3.1 UTMB warrants that (1) the health care services to be performed hereunder are necessary and authorized for activities that are properly within its statutory functions and programs; (2) it has the authority to contract for the services under authority granted in Chapters 65 and 74, *Texas Education Code*, and Chapter 791, *Texas Government Code*; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Contract, and (4) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.
- 3.2 Hospital District warrants that (1) it has authority to perform the services under authority granted in Chapter 61, *Texas Health & Safety Code* and Chapter 791, *Texas Government Code*; (2) it has all necessary power and has received all necessary approvals to execute and deliver this Contract, and (3) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.
- 3.3 UTMB, at all times during the existence of this Agreement, warrants that it will comply with and provide services in accordance with (i) all applicable federal, State, Hospital District and municipal laws, rules, ordinances and regulations as they relate to this Agreement; (ii) the standards of the Joint Commission; and (iii) all applicable UTMB policies, bylaws, rules and regulations, including UTMB's Compliance Program.

IV Miscellaneous:

- 4.1 **Term and Termination.** This term of this Contract shall be from September 1, 2014 through August 31, 2015, regardless of the date of execution. This Contract may be terminated earlier by either party by giving thirty (30) days written notice to the other party. Execution of this Contract shall supersede and replace any previous agreement between Hospital District and UTMB for indigent health care services provided on or after September 1, 2014. Physician services will be designated by the last date of service of a Patient Encounter. Hospital services will be designated by admission date.

For continuation of care after the effective date of termination, the parties agree to cooperate to arrange for the prompt, medically appropriate transfer of Eligible Residents following termination of this Contract. In the case of inpatient services provided to Eligible Residents after the effective date of termination, except as may be required by the obligation of UTMB to continue care in the event of special circumstances, UTMB shall continue such care and be compensated by the Hospital District until the conclusion of the course of treatment. Such continued treatment shall be at the rates then in effect under this Contract. For outpatient treatment, the Hospital District agrees to move the Eligible Resident to a contracted provider unless both parties agree in writing to a short term continuum of care plan. Services provided under this section, with accompanying requirements, survive the termination of Contract.

Hospital District may terminate this Agreement immediately upon any of the following occurrences: (i) loss of UTMB's JCAHO accreditation; or (ii) loss of UTMB's Medicare certification.

- 4.2 **Jurisdiction/Venue.** The parties agree that this Contract shall be construed in accordance with the laws of the State of Texas and that venue shall lie in a State District Court in Travis County, Texas.
- 4.3 **Dispute Resolution Procedure.** The parties agree to use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve all disputes arising under this Contract. Either party must give written notice to the other party of a claim for breach of this Contract not later than the 180th day after the date of the event giving rise to the claim. By their execution of this Contract, the parties acknowledge and knowingly and voluntarily agree that neither the execution of this Contract; nor the conduct, act or inaction by any person in the execution, administration, or performance of this Contract constitutes or is intended to constitute a waiver of the other party's immunity from suit with respect to claims of third parties.
- 4.4 **Entire Agreement/Amendment.** This Contract constitutes the entire agreement between the parties. This Contract may be amended only in writing and signed by both parties.
- 4.5 **HIPAA Obligation and Other Regulations Implementing the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320(d) ("HIPAA")).** To the extent either party comes into contact with information considered Individually Identifiable Health Information as defined by 42 U.S.C. §1320(d), Protected Health Information or Electronic Protected Health Information (collectively known as "Protected Information") as regulated by the Department of Health and Human Services (DHHS) through the adoption of standards, 45 CFR Parts 160 and 164 (Privacy Rule) and 45 CFR Parts 160, 162 and 164 (Security Rule), collectively referred to as "the HIPAA Rules," such party agrees to keep private and to secure any information considered Protected Information in accordance with federal law. Further, the parties will execute the Business Associate Agreement appended hereto as Exhibit E.
- 4.6 **Notices.** Except as otherwise provided in this section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Contract shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as set forth below or to such other person or address as may be given in writing by either party to the other in accordance with this Section:

UTMB: Carolee A. King, JD
Senior Vice President & General Counsel
Office of Legal and Regulatory Affairs
The University of Texas Medical Branch
301 University Blvd.
Galveston, TX 77555-0124

Cc to: Department of Legal Affairs
The University of Texas Medical Branch
301 University Blvd.
Galveston, Texas 77555-0171
Phone: (409) 747-8738
Fax: (409) 747-8741

If to Nueces County Hospital District: Jonny F. Hipp, CEO
555 N. Carancahua Street,
Suite 950
Corpus Christi, TX 78401-0835
(361) 808-3300

- 4.7 **State Auditor's Office.** The parties understand that acceptance of funds under this Contract constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Texas Education Code. The contracting parties agree to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. The contracting parties will include this provision in all contracts with permitted subcontractors.
- 4.8 **Assignment.** This Contract is not transferable or assignable except upon written approval by receiving party and performing party.
- 4.9 **Severability.** If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained therein.
- 4.10 **Public Records.** It shall be the independent responsibility of UTMB and Hospital District to comply with the provisions of Chapter 552, *Texas Government Code* (the "*Public Information Act*"), as those provisions apply to the parties' respective information. Neither party is authorized to receive public information requests or take any action under the *Public Information Act* on behalf of the other party.
- 4.11 **Force Majeure.** Neither UTMB nor Hospital District shall be required to perform any term, condition, or covenant of this Contract so long as such performance is delayed or prevented by acts of God, material or labor restrictions by any governmental authority, civil riot, floods, hurricanes, or other natural disasters, and any other cause not reasonably within the control of UTMB or Hospital District and that by the exercise of due diligence UTMB or Hospital District is unable, wholly or in part, to prevent or overcome.
- 4.12 This Agreement shall commence on the September 1, 2014 for an initial term of one (1) year and can be renewed under like terms for one (1) year periods thereafter, subject to approval in writing by both parties.

IN WITNESS WHEREOF, each of the parties agrees to the terms of this Contract and has caused this Contract to be executed on the following page by its duly authorized representative to be effective as of September 1, 2014.

NUECES COUNTY HOSPITAL DISTRICT

**THE UNIVERSITY OF TEXAS MEDICAL
BRANCH AT GALVESTON**

By: Jonny F. Hipp

By: _____

Name: Jonny F. Hipp

Carolee A. King, JD
Senior Vice President & General Counsel

Title: Administrator/CEO

Date: 01/12/2015

Date: _____

Attest: Carmen H. Rama

Content Reviewed _____

Election by Hospital District as to Method of Invoicing (please initial one):

Paper Monthly Statement

Electronic

Exhibit A
Eligible Resident Identification Card

Card

Hospital District Indigent Care Card	
No.	_____
Effective Date:	<u>10-01-14</u>
Expiration Date:	<u>09-31-15</u>
Hospital District Identification No:	<u>123456</u>
Coverage:	_____
Name:	Mr/Mrs. Hospital District Resident
Address:	1313 Main Street Your City, Texas 00000
Telephone:	409-555-5555
Date of Birth:	<u>10-23-1949</u>
Primary Care Provider:	_____
Signature	_____
Hospital District Indigent Care Coordinator	
Signature	_____
Hospital District Indigent Patient's Signature	
Patient Must Present This Card at Time of Registration.	
This card is not an evidence of eligibility for bene- fits. Determination of eligibility will be estab- lished through the Hospital District Indigent Care Coordinator's Office.	

Cards are to be created by the Hospital District.
Each card should have a unique number assigned as a security precaution and tracking mechanism.
Each card should have an original signature by the appropriate representative of the Hospital District.
Each card should have an original signature by the resident.
Each covered family member should have their own card issued. This would replace existing letters.

Exhibit C
Procedures Requiring Preauthorization

Services provided by UTMB require preauthorization, except the Medical Screening Examination performed on an Eligible Resident upon presentation at a UTMB emergency room. The following services require preauthorization:

INPATIENT SERVICES:

- Inpatient Admissions / Acute care hospitalization
- Skilled Nursing Facility

OUTPATIENT SERVICES:

- Surgeries or procedures requiring conscious sedation or general anesthesia performed in a physician's office, free standing surgery center, ambulatory surgery center, or hospital based surgery center
- CT Scan
- Echocardiogram
- MRI/MRA
- Nuclear Studies/Imaging
- PET Scan
- Physical Therapy
- Speech Therapy
- Occupational Therapy
- Hyperbaric Treatments- *only in special circumstances*
- Infusion Treatment
- Oral Surgery - *only in special circumstances*
- *Durable Medical Equipment limited to Home Oxygen Equipment*
- *Diabetic Supplies*
- *Home and Community Health Care*

EXHIBIT D
Compensation Schedule

- Inpatient Services:** Hospital District agrees to pay for authorized Inpatient Services in accordance with Texas Medicaid allowable In-Patient TEFRA rate calculated from UTMB's most recent cost report. Payments for services rendered will be in accordance with UTMB's facility specific TEFRA In-Patient Percentage of 48% of current billed charges.
- Outpatient Services:** Hospital District agrees to pay for authorized Outpatient Services in accordance with Texas Medicaid allowable Out-Patient TEFRA rate calculated from UTMB's most recent cost report. Payments for services rendered will be in accordance with UTMB's facility specific TEFRA Out-Patient Percentage of 40% of current billed charges.
- Outpatient Surgery:** Hospital District agrees to pay authorized Outpatient Surgeries in accordance with UTMB's TEFRA Out-Patient Percentage of 40% of billed charges.
- Implants:** Hospital District agrees to pay for authorized implants at 32% of eligible billed charges.
- Outpatient Laboratory Services:** Hospital District agrees to pay authorized Outpatient Laboratory Services in accordance with the UTMB's TEFRA Out-Patient Percentage of 40% of billed charges.
- Professional Services:** Hospital District agrees to pay all authorized physician services, except Anesthesia services reimbursed per ASA unit, at 120% of the current Texas Medicaid Reimbursement Methodology. If the Center for Medicare and Medicaid, the state of Texas or any other governmental agency with governing authority reduces the Texas Medicaid Reimbursement Methodology during the term of this agreement, the parties hereto will increase the physician payment rates in equal proportion to offset the reduction.
- Mid-Level Providers:** Hospital District agrees to pay all covered mid-level provider services at 95% of the physician payment rates listed above under Professional Services.
- Anesthesia:** Hospital District agrees to pay \$55 per ASA unit, based on current ASA units and 15 minute time units.
- Any fees not otherwise defined:** HOSPITAL DISTRICT agrees to pay 40% of billed charges.

Limit on Charge Master Increases. UTMB is limited to an aggregate increase during the one-year term of this Contract not to exceed eight percent (8%) for all charges submitted that are reimbursed on a percentage of billed charges, excluding medical supplies and pharmaceuticals. Medical supplies shall include but not be limited to: implants, prosthetics, orthotics and stents. If during the term of this Contract UTMB has an aggregate increase in its charge master greater than eight percent (8%), UTMB agrees to adjust the percentage rate of billed charges set forth in Exhibit D such that HOSPITAL DISTRICT does not pay an amount that exceeds the eight percent (8%) cap on the increase in UTMB's charge master.

Exhibit E

UTMB Business Associate Agreement

This Business Associate Agreement (the "Agreement"), is made by and between Business Associate and Covered Entity (collectively the "Parties") to comply with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 ("the Privacy Rule") and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, ("the Security Rule"), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated there under and any applicable state confidentiality laws.

RECITALS

WHEREAS, Business Associate provides payment services ("Services") to or on behalf of Covered Entity;

WHEREAS, in connection with these Services, Covered Entity discloses to Business Associate certain PHI that is subject to protection under the HIPAA Rules; and

WHEREAS, the HIPAA Rules requires that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received in the course of providing Services to or on behalf of Covered Entity.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- A. **Definitions.** Terms used herein, but not otherwise defined, shall have meaning ascribed by the Privacy Rule and the Security Rule.
1. **Breach.** "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.
 2. **Business Associate.** "Business Associate" shall mean Hospital District.
 3. **Covered Entity.** "Covered Entity" shall mean The University of Texas Medical Branch at Galveston (UTMB).
 4. **Designated Record Set.** "Designated Record Set" shall mean a group of records maintained by or for a covered entity, as defined by HIPAA, that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping

of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.

5. HIPAA Rules. The Privacy Rule and the Security Rule and amendments codified and promulgated by the HITECH Act are referred to collectively herein as "HIPAA Rules."
 6. Individual. "Individual" shall mean the person who is the subject of the protected health information.
 7. Protected Health Information ("PHI"). "Protected Health Information" or PHI shall mean individually identifiable health information that is transmitted or maintained in any form or medium.
 8. Required by Law. "Required by Law" shall mean a mandate contained in law that compels a use or disclosure of PHI.
 9. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her Designee.
 10. Sensitive Personal Information. "Sensitive Personal Information" shall mean an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: a) social security number; driver's license number or government-issued identification number; or account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or b) information that identifies an individual and relates to: the physical or mental health or condition of the individual; the provision of health care to the individual; or payment for the provision of health care to the individual.
 11. Unsecured PHI. "Unsecured PHI" shall mean PHI 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 13402(h)(2) of Public Law 111-5 on the HHS Web site.
- B. Obligations of Business Associate. Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the HIPAA Rules applicable to business associates, including:
1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use or disclose PHI except as necessary to provide Services described above to or on behalf of Covered Entity, and shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by Covered Entity. Provided, however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. In such cases, Business Associate shall:

- a. Provide information and training to members of its workforce who use or disclose PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement;
 - b. Obtain reasonable assurances from the person or entity to whom the PHI is disclosed that:
 1. the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and
 2. the person or entity will notify Business Associate of any instances of which the person is aware the confidentiality of the PHI has been breached; and
 - c. Agree to notify the Privacy Officer of Covered Entity of any instances of which it is aware PHI was used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules.
2. Data Aggregation. In the event that Business Associate works for more than one Covered Entity, Business Associate is permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Rules.
 3. De-identified Information. The Business Associate may use and disclose de-identified PHI if written approval from the Covered Entity is obtained, and the PHI is de-identified in compliance with the HIPAA Rules. Moreover, Business Associate shall review and comply with the requirements defined under Section C. of this Agreement.
 4. Safeguards.
 - a. Business Associate shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as Required by Law. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.
 - b. Business Associate shall assure that all PHI be secured when accessed by Business Associate's employees, agents or subcontractors. Any access to PHI by Business Associate's employees, agents or subcontractor shall be limited to legitimate business needs while working with PHI. Any personnel changes by Business Associate, eliminating the legitimate business needs for employees, agents or contractors access to PHI—either by revision of duties or termination--shall be immediately reported to

Covered Entity. Such reporting shall be made no later than the third business day after the personnel change becomes effective.

5. Minimum Necessary. Business Associate shall ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed.
6. Disclosure to Agents and Subcontractors. If Business Associate discloses PHI received from Covered Entity to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to Business Associate under this Agreement. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of the agent or subcontractor in providing the Services as if they were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.
7. Individual Rights Regarding Designated Record Sets. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees as follows:
 - a. Business Associate agrees, if it maintains PHI in a Designated Record Set, it will permit an Individual to inspect or copy PHI at the request and direction of Covered Entity to meet the requirements of 45 C.F.R. § 164.524. If the PHI is in electronic format, the Individual shall have a right to obtain a copy of such information in electronic format and, if the Individual chooses, to direct that an electronic copy be transmitted directly to an entity or person designated by the individual in accordance with HITECH Section 13405(c).
 - b. Business Associate agrees, if it maintains PHI in a Designated Record Set, to make amendments to PHI at the request and direction of Covered Entity to meet the requirements of 45 C.F.R. 164.526.
 - c. Business Associate agrees, if it maintains PHI in a Designated Record Set, to maintain the required documentation to provide an accounting of disclosures of PHI at the request and direction of Covered Entity to meet the requirements of 45 C.F.R. § 164.528 and HITECH Sub Title D Title IV Section 13405(c).
8. Internal Practices, Policies and Procedures. Business Associate agrees to make internal practices, books, and records, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary or its

designee for purposes determining Covered Entity's compliance with the HIPAA Rules.

9. Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the HIPAA Rules expressly applies.
10. Knowledge of HIPAA Rules. Business Associate agrees to review and understand the HIPAA Rules as it applies to Business Associate, and to comply with the applicable requirements of the HIPAA Rule, as well as any applicable amendments.
11. Information Breach Notification for PHI. Business Associate expressly recognizes that Covered Entity has certain reporting and disclosure obligations to the Secretary and the Individual in case of a security breach of unsecured PHI. Where Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHI, Business Associate without unreasonable delay and in no case later than five (5) calendar days following the discovery of a breach of such information, shall notify Covered Entity of such breach. Initial notification of the breach does not need to be in compliance with Sub Title D Title IV Section 13402 of the HITECH Act; however, Business Associate must provide Covered Entity will all information necessary for Covered Entity to comply with Sub Title D Title IV Section 13402 of the HITECH Act without reasonable delay, and in no case later than 45 days following the discovery of the breach. Business Associate shall be liable for the costs associated with such breach if caused by the Business Associate's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors. Business Associate's duty to notify Covered Entity of any breach does not permit Business Associate to notify those individuals whose PHI has been breached by Business Associate without the express written permission of Covered Entity to do so. Any and all notification to those individuals whose PHI has been breached shall be made under the direction, review and control of Covered Entity.
12. Information Breach Notification for Other Sensitive Personal Information. In addition to the reporting required under Section B.11, Business Associate shall notify Covered Entity of any breach of computerized sensitive personal information to assure Covered Entity's compliance with the notification requirements of Title 11, Subtitle B, Chapter 521, Subchapter A, Section 521.053, Texas Business & Commerce Code. Accordingly, Business Associate shall be liable for all costs associated with any breach caused by Business Associate's negligent or willful acts or omissions, or those negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.
13. Identity Theft Prevention Program. If in providing services to the Covered Entity patients, Business Associate regularly extends, renews or continues credit to

patients or regularly allows patients to defer payment for services including setting up payment plans in connection with covered accounts (as that term is defined at 16 C.F.R. 681.2(b)(3)), the Business Associate shall comply with the Federal Trade commission's "Red Flag" Rules by developing and implementing a written identity theft prevention program designed to identify, detect, mitigate and respond to suspicious activities (red flags) that could indicate identity theft has occurred.

14. Notice. Any notice required by Business Associate shall be submitted to Covered Entity as follows:

Immediate Notification:

Information Security Officer: iso@utmb.edu; 409-772-3838
Chief Privacy Officer: cpo@utmb.edu; 409-747-8700

Entire File Related to Notice:

Department of Compliance
UTMB
301 University Blvd.
Route 0198
Galveston, TX 77555-0198

C. Permitted Uses and Disclosures by Business Associates.

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Business Associates Agreement or in a Master Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Also, Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with the HIPAA Rules.

1. Use. Business Associate will not, and will ensure that its directors, officers, employees, contractors and other agents do not, use PHI other than as permitted or required by Business Associate to perform the Services or as required by law, but in no event in any manner that would constitute a violation of the Privacy Standards or Security Standards if used by Covered Entity.
2. Disclosure. Business Associate will not, and will ensure that its directors, officers, employees, contractors, and other agents do not, disclose PHI other than as permitted pursuant to this arrangement or as required by law, but in no event disclose PHI in any manner that would constitute a violation of the Privacy Standards or Security Standards if disclosed by Covered Entity.
3. Business Associate acknowledges and agrees that Covered Entity owns all right, title, and interest in and to all PHI, and that such right, title, and interest will be vested in Covered Entity. Neither Business Associate nor any of its employees,

agents, consultants or assigns will have any rights in any of the PHI, or right to use the PHI in any form including, but not limited to, stripped or aggregated information, or statistical information derived from or in connection with the PHI, except as expressly set forth above. Business Associate represents, warrants, and covenants that it will not compile and/or distribute analyses to third parties using any PHI without Covered Entity's express written consent.

D. Application of Security and Privacy Provisions to Business Associate.

1. **Security Measures.** Sections 164.308, 164.310, 164.312 and 164.316 of Title 45 of the Code of Regulations dealing with the administrative, physical and technical safeguards as well as policies, procedures and documentation requirements that apply to Covered Entity shall in the same manner apply to Business Associate. Any additional security requirements contained Sub Title D of Title IV of the HITECH Act that apply to Covered Entity shall also apply to Business Associate. Pursuant to the foregoing requirements in this section, the Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, has access to, or transmits. Business Associate will also ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect such information.
2. **Annual Guidance.** For the first year beginning after the date of the enactment of the HITECH Act and annually thereafter, the Secretary shall annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in subsection (a) and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations. Business Associate shall, at their own cost and effort, monitor the issuance of such guidance and comply accordingly.
3. **Privacy Provisions.** The enhanced HIPAA privacy requirements including but not necessarily limited to accounting for certain PHI disclosures for treatment, restrictions on the sale of PHI, restrictions on marketing communications, payment and health care operations contained Subtitle D of the HITECH Act that apply to the Covered entity shall equally apply to the Business Associate.
4. **Application of Civil and Criminal Penalties.** If Business Associate violates any security or privacy provision specified in subparagraphs (1) and (2) above, sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such provisions.

E. Obligations of Covered Entity. If deemed applicable by Covered Entity, Covered Entity shall:

1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI
4. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

F. Term and Termination.

1. **Term.** This Agreement shall be effective as of the Effective Date and shall be terminated when all PHI provided to Business Associate by Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.
2. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement, whether it is in the form of a stand alone agreement or an addendum to a Master Services Agreement, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - b. Immediately terminate this Agreement whether it is in the form of a stand alone agreement or an addendum to a Master Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - c. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
3. **Effect of Termination.** Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further uses and disclosures of the PHI to those

purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI.

G. Miscellaneous.

1. Mitigation. If Business Associate violates this Agreement or either of the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.
2. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
3. Survival. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.
4. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. However, the Parties agree to amend this Agreement from time to time as necessary, in order to allow Covered Entity's to comply with the requirements of the HIPAA Rules.
5. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of Texas, without regard to applicable conflict of laws principles.
6. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
7. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
8. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
9. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in anyway the meaning or interpretation of this Agreement.
10. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any

other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the Exhibits, Riders, or amendments, the provisions of this Agreement shall control.

11. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.
12. Regulatory References. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.
13. Indemnification. To the extent permitted by Texas law, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Business Associate or its agents in connection with the performance of Business Associate's or its agents' duties under this Agreement.

IN WITNESS WHEREOF, Business Associate and Covered Entity have executed this Agreement to be effective September 1, 2014.

COVERED ENTITY

BUSINESS ASSOCIATE

By: _____

Name: Carolee A. King, JD
Title: Senior Vice President &
General Counsel

Date: _____

By: Jonny F. Hipp

Name: Jonny F. Hipp
Title: Administrator/CEO

Date: 01/12/2015

Content Reviewed

UTMB BA AGREEMENT 2010-02-19