

ATTACHMENT C
BUSINESS ASSOCIATE AGREEMENT

This **Business Associate Agreement** (“BAA”) is entered into by and between Tomas Durán (hereinafter referred to as “CONTRACTOR”), and **Nueces County**, a political subdivision of the State of Texas (hereinafter referred to as “THE COUNTY”).

RECITALS

The purpose of this BAA is to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended (“HIPAA”); privacy and security regulations promulgated by the United States Department of Health and Human Services (“DHHS”); Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended (“HITECH Act”); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended; and TEX. HEALTH & SAFETY CODE ANN. §§ 81.046, as amended, 181.001 *et seq.*, as amended, 241.151 *et seq.*, as amended, and 611.001 *et seq.*, as amended (collectively referred to herein as the “Privacy and Security Requirements”).

TERMS

CONTRACTOR’S RESPONSIBILITIES REGARDING USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION (“PHI”) AND ELECTRONIC PROTECTED HEALTH INFORMATION (“E PHI”)

A. Definitions.

1. Confidential Information is information that has been deemed or designated confidential by law (*i.e.*, constitutional, statutory, regulatory, or by judicial decision).
2. Protected Health Information (“PHI”) is defined in 45 C.F.R. § 160.103 and is limited to information created or received by CONTRACTOR from or on behalf of THE COUNTY.
3. Electronic Protected Health Information (“E PHI”) shall mean individually identifiable health information that is transmitted by or maintained in electronic media.
4. Security Incident shall mean the unauthorized access, use, disclosure, modification, or destruction of Confidential Information, including, but not limited to, PHI and E PHI, or interference with the systems operations in an information system, including, but not limited to, information systems containing E PHI. This definition includes, but is not limited to, lost or stolen transportable media devices (*e.g.*, flash drives, CDs, PDAs, cell phones, and cameras), desktop and laptop computers, photographs, and paper files containing Confidential Information, including, but not limited to, PHI and E PHI.

B. General.

1. CONTRACTOR agrees to hold all PHI and EPHI confidential except to the extent that disclosure is required by Federal or State law, including the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended.
2. CONTRACTOR agrees to be bound by and comply with all applicable Federal and State of Texas licensing authorities' laws, rules, and regulations regarding records and governmental records, including the Privacy and Security Requirements. Compliance with this paragraph is at CONTRACTOR's own expense.
3. CONTRACTOR agrees to cooperate with state and federal agencies and to make appropriate personnel available for interviews, consultation, grand jury proceedings, pre-trial conferences, hearings, trials, and any other process, including investigations, required as a result of CONTRACTOR's services to THE COUNTY. Compliance with this paragraph is at CONTRACTOR's own expense.
4. The terms used in this BAA shall have the same meaning as those terms in the Privacy and Security Requirements.

C. Representation. CONTRACTOR represents that it is familiar with and is in compliance with the Privacy and Security Requirements, which include Federal and State of Texas requirements governing information relating to HIV/AIDS, mental health, and drugs or alcohol treatment or referral.

D. Business Associate. CONTRACTOR is a "Business Associate" of THE COUNTY as that term is defined under the Privacy and Security Requirements.

1. *Nondisclosure of PHI.* CONTRACTOR agrees not to use or disclose PHI received from or on behalf of THE COUNTY or created, compiled, or used by CONTRACTOR pursuant to the Personal Services Agreement to which this BAA is attached (hereinafter the "Agreement") other than as permitted or required by this BAA, or as otherwise required by law.
2. *Limitation on Further Use or Disclosure.* CONTRACTOR agrees not to further use or disclose PHI or EPHI received from or on behalf of THE COUNTY or created, compiled, or used by CONTRACTOR pursuant to this BAA in a manner that would be prohibited by the Privacy and Security Requirements if disclosure was made by THE COUNTY, or if either CONTRACTOR or THE COUNTY is otherwise prohibited from making such disclosure by any present or future State or Federal law, regulation, or rule.
3. *Safeguarding PHI.* CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BAA or as

required by State or Federal law, regulation, or rule.

4. *Safeguarding EPHI.* CONTRACTOR agrees to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of THE COUNTY and to comply with Subpart C of 45 C.F.R. Part 164. These safeguards shall include, but not be limited to, the following:
 - a) Encryption of EPHI that CONTRACTOR stores and transmits;
 - b) Implementation of strong access controls, including physical locks, firewalls, and strong passwords;
 - c) Use of updated antivirus software;
 - d) Adoption of contingency planning policies and procedures, including data backup and disaster recovery plans; and
 - e) Periodic security training.

5. *Reporting Security Incidents.* CONTRACTOR agrees to report to THE COUNTY any Security Incident **immediately** upon becoming aware of such. CONTRACTOR further agrees to provide THE COUNTY with the following information regarding the Security Incident as soon as possible, but no more than five (5) business days after becoming aware of the Security Incident: (1) a brief description of what happened, including the dates the Security Incident occurred and was discovered; (2) a reproduction of the PHI or EPHI involved in the Security Incident; and (3) a description of whether and how the PHI or EPHI involved in the Security Incident was rendered unusable, unreadable, or indecipherable to unauthorized individuals either by encryption or otherwise destroying the PHI or EPHI prior to disposal. If CONTRACTOR determines that it is infeasible to reproduce the PHI or EPHI involved in the Security Incident, CONTRACTOR agrees to notify THE COUNTY in writing of the conditions that make reproduction infeasible and any information CONTRACTOR has regarding the PHI or EPHI involved.

CONTRACTOR agrees to cooperate in a timely fashion with THE COUNTY regarding all Security Incidents reported to THE COUNTY.

CONTRACTOR agrees that THE COUNTY will review all Security Incidents reported by CONTRACTOR and THE COUNTY, in its sole discretion, will take steps in response, to the extent necessary or required by law including, but not limited to, (1) notifying the individual(s) whose PHI or EPHI was involved in the Security Incident, either in writing, via telephone, through the media, or by posting a notice on THE COUNTY's website, or through a combination of those methods, of the Security Incident; (2) providing the individual(s) whose PHI or

EPHI was involved in the Security Incident with credit monitoring and related services for a period of time to be determined by THE COUNTY, at no cost to the individual(s); and (3) providing notice of the Security Incident, as required by law, to the Secretary of the United States Department of Health and Human Services (“HHS”).

CONTRACTOR agrees to reimburse THE COUNTY for all expenses incurred as a result of CONTRACTOR’s Security Incidents, including, but not limited to, expenses related to the activities described above. CONTRACTOR agrees that THE COUNTY will select the contractors and negotiate the contracts related to said expenses.

6. *EPHI and Subcontractors.* CONTRACTOR shall require any agent to whom it provides PHI or EPHI, including a subcontractor, to agree to implement reasonable and appropriate safeguards to protect such PHI or EPHI and comply with Subpart C of 45 C.F.R. Part 164. Further, CONTRACTOR agrees to give THE COUNTY at least sixty (60) days advance notice of its intent to provide PHI or EPHI to an agent located outside of the United States. CONTRACTOR understands and agrees that it remains ultimately responsible for any breaches of PHI or EPHI and violations of the Privacy and Security Requirements by its agent(s) or subcontractor(s).
7. *Subcontractors and Agents.* CONTRACTOR shall require any subcontractor or agent that creates, receives, maintains, or transmits PHI or EPHI on behalf of CONTRACTOR pursuant to this BAA and the Agreement, to agree to the same restrictions and conditions that apply to CONTRACTOR with respect to such PHI and EPHI. CONTRACTOR agrees to terminate its agreement with its agent(s) or subcontractor(s), if (a) CONTRACTOR becomes aware of a pattern of activity or practice of its agent(s) or subcontractor(s) that constitute a material breach or violation of the agent or subcontractor’s obligation under the agreement or other arrangement with CONTRACTOR or (b) agent(s) or subcontractor(s) takes steps to cure the breach or end the violation and such steps are unsuccessful.
8. *Reciprocal Disclosures.* The Parties agree that the Parties may reciprocally disclose and use PHI or EPHI for initial and continuing eligibility and compliance determinations related to the provision of benefits, for auditing and legal compliance purposes, and for compliance with laws, regulations, and rules related to the provision of services under this Agreement.
9. *Mitigation.* CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of PHI or EPHI by CONTRACTOR, or by a subcontractor or agent of CONTRACTOR, resulting from a violation of this BAA, including violations of the Privacy and Security Requirements stated herein. CONTRACTOR also agrees to inform THE COUNTY in advance of its actual mitigation and of the details of its mitigation plan, unless doing so would cause additional harm.

10. *Notice – Access by Individual.* CONTRACTOR agrees to notify THE COUNTY in writing within three (3) business days of any request by an individual for access to the individual's PHI or EPHI and, upon receipt of such request, direct the individual to contact THE COUNTY to obtain access to the individual's PHI. Upon request by THE COUNTY and within three (3) business days of the request, CONTRACTOR agrees to make available PHI and EPHI to THE COUNTY in accordance with 45 C.F.R. § 164.524.
11. *Notice – Request for Amendment.* CONTRACTOR agrees to notify THE COUNTY in writing within three (3) business days of any request by an individual for an amendment to the individual's PHI or EPHI and, upon receipt of such request from the individual, direct the individual to THE COUNTY to request an amendment of the individual's PHI or EPHI. CONTRACTOR agrees to make available upon request PHI and EPHI for amendment and to incorporate any amendments to PHI and EPHI agreed to in accordance with 45 C.F.R. § 164.526 within three (3) business days of receipt of the notice to incorporate the amendment(s).
12. *Notice – Request for Accounting.* Upon receipt of any request from an individual for an accounting of disclosures made of the individual's PHI or EPHI, CONTRACTOR agrees to notify THE COUNTY in writing within three (3) business days of any such request, and upon receipt of such request from the individual, direct the individual to THE COUNTY for an accounting of the disclosures of the individual's PHI or EPHI. CONTRACTOR agrees to make available to THE COUNTY upon request, within three (3) business days of the request, the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528. Pursuant to 45 C.F.R. § 164.528(a), an individual has a right to receive an accounting of certain disclosures of PHI or EPHI in the six (6) years prior to the date on which the accounting is requested.
13. *HHS Inspection.* Upon written request, CONTRACTOR agrees to make available to HHS or its designee, CONTRACTOR's internal practices, books, and records relating to the use and disclosure of PHI and EPHI received from, or created or received on behalf of, THE COUNTY in a time or manner designated by HHS for purposes of HHS determining THE COUNTY's compliance with the Privacy and Security Requirements.
14. *THE COUNTY Inspection.* Upon written request, CONTRACTOR agrees to make available to THE COUNTY and its duly authorized representatives during normal business hours CONTRACTOR's internal practices, books, records and documents relating to the use and disclosure of confidential information, including, but not limited to, PHI and EPHI received from, or created or received on behalf of, THE COUNTY in a time and manner designated by THE COUNTY for the purposes of THE COUNTY determining compliance with the Privacy and Security Requirements. CONTRACTOR agrees to allow such access until the expiration of four (4) years after the services are furnished under the contract or subcontract or until the completion of any audit or audit period, whichever is

later. CONTRACTOR agrees to allow similar access to books, records, and documents related to contracts between CONTRACTOR and organizations related to or subcontracted by CONTRACTOR to whom CONTRACTOR provides confidential information, including, but not limited to, PHI and EPHI received from, or created or received on behalf of, THE COUNTY.

15. *PHI or EPHI Amendment.* Within three (3) business days of receipt of notification, CONTRACTOR agrees to incorporate any amendments, corrections, or additions to the PHI or EPHI received from or created, compiled, or used by THE COUNTY pursuant to this BAA when notified by THE COUNTY that the PHI or EPHI is inaccurate or incomplete, or that other documents are to be added as required or allowed by the Privacy and Security Requirements.
16. *Documentation of Disclosures.* CONTRACTOR agrees to document disclosure of PHI or EPHI and information related to such disclosures as is necessary for THE COUNTY to respond to a request by an individual for an accounting of disclosures of PHI or EPHI in accordance with 45 C.F.R. § 164.528, as amended.
17. *Termination Procedures.* Upon termination of this BAA for any reason, CONTRACTOR agrees to deliver all PHI or EPHI received from THE COUNTY or created, compiled, or used by CONTRACTOR pursuant to this BAA within thirty (30) days from the date of termination, or, if specially requested to do so by THE COUNTY in writing, to destroy all PHI or EPHI and retain no copies and certify to THE COUNTY in writing that all PHI and EPHI not returned has been destroyed, within the time frame determined by THE COUNTY, which will be no less than thirty (30) days from the date of the notice of termination. This provision applies when CONTRACTOR maintains PHI or EPHI from THE COUNTY in any form. If CONTRACTOR determines that transferring or destroying the PHI or EPHI is infeasible, CONTRACTOR agrees:
 - a) to notify THE COUNTY of the conditions that make transfer or destruction infeasible;
 - b) to extend the protections of this BAA to such PHI or EPHI;
 - c) to limit any further uses and disclosures of such PHI or EPHI to those purposes that make the return, or transfer to THE COUNTY, or destruction infeasible; and
 - d) to return or, if requested by THE COUNTY, to destroy the PHI or EPHI retained by CONTRACTOR when it becomes feasible.
18. *Notice-Termination.* Upon written notice to CONTRACTOR, THE COUNTY may terminate any portion of the Agreement under which CONTRACTOR maintains, compiles, or has access to PHI or EPHI. Additionally, upon written notice to CONTRACTOR, THE COUNTY may terminate the entire Agreement if THE COUNTY determines, at its sole discretion, that CONTRACTOR has

repeatedly violated a Privacy or Security Requirement.

19. *Obligations of THE COUNTY.* To the extent THE COUNTY requests in writing that CONTRACTOR carry out one or more of THE COUNTY's obligations under Subpart E of 45 C.F.R. Part 164, CONTRACTOR agrees to comply with the requirements of Subpart E that apply to THE COUNTY in the performance of such obligation.
- E. Survival of Privacy Provisions. CONTRACTOR's obligations with regard to PHI and EPHI shall survive termination of this BAA and the Agreement.
- F. Amendment Related to Privacy and Security Requirements. The Parties agree to take such action as is necessary to amend this BAA if THE COUNTY, in its reasonable discretion, determines that amendment is necessary for THE COUNTY to comply with the Privacy and Security Requirements or any other law or regulation affecting the use or disclosure of PHI or EPHI. Any ambiguity in this BAA shall be resolved to permit THE COUNTY to comply with the Privacy and Security Requirements.
- G. **INDEMNIFICATION. CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS, TO THE EXTENT ALLOWED BY LAW, THE COUNTY AND ITS BOARD OF MANAGERS, OFFICERS, EMPLOYEES, AND AGENTS (INDIVIDUALLY AND COLLECTIVELY "INDEMNITEES") AGAINST ANY AND ALL LOSSES, LIABILITIES, JUDGMENTS, GOVERNMENTAL FINES AND PENALTIES, AWARDS, AND COSTS (INCLUDING COSTS OF INVESTIGATIONS, LEGAL FEES, AND EXPENSES) ARISING OUT OF OR RELATED TO:**
1. **A BREACH OF THIS BAA RELATING TO THE PRIVACY AND SECURITY REQUIREMENTS BY CONTRACTOR; OR**
 2. **ANY NEGLIGENT OR WRONGFUL ACTS OR OMISSIONS OF CONTRACTOR OR ITS EMPLOYEES, DIRECTORS, OFFICERS, SUBCONTRACTORS, OR AGENTS, RELATING TO THE PRIVACY AND SECURITY REQUIREMENTS, INCLUDING FAILURE TO PERFORM THEIR OBLIGATIONS UNDER THE PRIVACY AND SECURITY REQUIREMENTS.**
- H. Electronic Mail Addresses. CONTRACTOR affirmatively consents to the disclosure of its e-mail addresses that are provided to THE COUNTY, including any agency or department of THE COUNTY. This consent is intended to comply with the requirements of the Texas Public Information Act, TEX. GOV'T CODE ANN. § 552.137 *et seq.*, as amended, and shall survive termination of this BAA. This consent shall apply to e-mail addresses provided by CONTRACTOR and agents acting on behalf of CONTRACTOR and shall apply to any e-mail address provided in any form for any reason whether related to this BAA or otherwise.

I. Notices. Any notice required to be given pursuant to the terms and provisions of this BAA will be in writing and deemed to be given: (a) upon delivery in person, (b) three (3) days after the date deposited with or sent by U.S. Mail (first class, postage paid, return receipt requested), or (c) upon receipt by commercial delivery service, and addressed as follows, or to such address as THE COUNTY may subsequently designate to CONTRACTOR in writing:

Nueces County
901 Leopard Rm 303
Corpus Christi, TX 78401-0835

J. Except as otherwise limited in this BAA, CONTRACTOR may use or disclose Protected Health Information it creates or receives from or on behalf of THE COUNTY to provide the services to or on behalf of THE COUNTY set out in the Agreement to which this BAA is attached.

K. This BAA is effective on the later date it is signed by the Parties and survives the termination of the Agreement.

Executed in multiple originals, each of equal force, by duly authorized representatives of the Nueces County and CONTRACTOR.

NUECES COUNTY

CONTRACTOR

By: _____
Name: _____
Title: _____
Date Signed: _____

By: _____
Name: _____
Title: _____
Date Signed: _____