# STATE OF TEXAS §

**COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_ §**

The University of Texas (Component) by and through the undersigned duly authorized official, hereinafter called "the University" and (Collection Agency), hereinafter called "Contractor", hereby agree as follows:

That the Contractor, for and in consideration of the covenants, conditions, contracts, and stipulations hereinafter expressed, does hereby agree to furnish to the University collection services as outlined in the provisions below entitled "General Provisions" and "Specifications for Collections", which are a part of this Contract, and that Contractor’s performance of the Services shall (1) conform to the specifications and requirements of that certain Request for Proposal related to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for The University of Texas (Component), RFP No. \_\_\_\_\_\_\_\_\_\_\_ (the “RFP”), which is incorporated by reference for all purposes, and (2) to the extent consistent with the RFP, conform with Contractor’s proposal dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor’s Proposal”) which was submitted by Contractor in response to the RFP and is incorporated by reference for all purposes.

**A. GENERAL PROVISIONS**

**\*** 1. Contractor agrees to indemnify, defend and hold harmless the State of Texas, The University of Texas System and their Regents, The University and their officers, agents and employees from any and all liability, loss, damage or expense including reasonable attorney's fees and investigative expenses they may incur which result from any claims against them, individually or severally, for any acts or omissions by the Contractor or its officers, agents or employees in the performance of this contract.

**\*** 2. The Contractor, its officers, agents or employees, in the performance of this Contract, shall act in an independent capacity and not as officers, agents or employees of The University of Texas System, the State of Texas or The University.

3. The University may terminate this Contract and be relieved of the payment of any further obligation to Contractor should Contractor fail to perform the covenants herein contained within the time or in the manner provided. In the event of such termination, the University may proceed with specific performance of the services provided for herein in any manner deemed proper by the University.

**\*** 4. Except as specifically provided in any HUB Subcontracting Plan (“HSP”) attached hereto, this Contract is not assignable by Contractor either in whole or in part without the prior written consent of the University.

**\*** 5. No amendment, alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties hereto. This Contract contains the entire Contract of the parties and no oral understanding or agreement not incorporated herein shall be binding on either of the parties hereto.

**\*** 6. The consideration to be paid Contractor, as provided herein, shall be in compensation for all services performed and expenses incurred, including travel and per diem, unless otherwise expressly provided.

**\*** 7. The laws of the State of Texas shall govern the interpretation and performance of this Contract. ANY ACTION BROUGHT TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL BE BROUGHT IN A COURT OF COMPETENT JURISDICTION OF THE STATE OF TEXAS IN TRAVIS COUNTY, TEXAS.

8. The term of this Contract shall be from \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,20\_\_\_ with the right resting in the University on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ to extend the term of the Contract, subject to the same terms and conditions, for an additional twelve (12) months.

9. The dispute resolution process provided for in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Chief Business Officer of the University shall examine Contractor’s claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the execution of this Contract by the University nor any other conduct, action or inaction of any representative of the University relating to this Contract constitutes or is intended to constitute a waiver of the University’s or the state's sovereign immunity to suit; and (ii) the University has not waived its right to seek redress in the courts.

10. By its signature below, Contractor certifies that it has the authority to do business in Texas and shall provide a Certificate evidencing same upon its execution of this Contract. Further, by its signature below, Contractor certifies that, to the best of its knowledge, it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, it is exempt from the payment of those taxes, or it is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. Contractor further certifies that there are no outstanding warrant holds in place against Contractor at the office of the Texas Comptroller of Public Accounts. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor further agrees that any payments owing to Contractor under this Contract may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

11. Pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

12. Pursuant to Sections 2155.004 and 2155.006, Government Code, Contractor certifies that Contractor has not received compensation for participation in the preparation of the Request for Proposal related to this Agreement and is not ineligible to receive the award of or payments under this Agreement; and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

13. Contractor covenants and agrees that as required by Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Contract, the Contractor shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

14. As used in this paragraph, the term “Information” means any data or information Contractor creates, obtains, accesses, receives, stores, or uses in performing this Contract; for example, social security numbers, credit card numbers, or data protected or made confidential or sensitive by any applicable federal or Texas law or regulation, including the Gramm-Leach-Bliley Act (“GLB”, Public Law No. 106-102), the Family Educational Rights and Privacy Act (“FERPA”, 20 U.S.C. Section 1232g) and the Health Insurance Portability and Accountability Act (“HIPAA”, Public Law No. 104-191).

If the activities of Contractor under this Contract require Contractor to create, obtain, access, receive, store, or use Information then Contractor represents, warrants and certifies it will: (1) hold all Information in the strictest confidence; (2) not release any Information unless Contractor obtains University’s prior written approval and performs such a release in full compliance with all applicable privacy laws, including GLB, FERPA and HIPAA; (3) not otherwise use or disclose Information except as (a) permitted or required by this Contract, (b) required by law, or (c) authorized by University in writing; (4) safeguard Information according to all commercially reasonable administrative, physical and technical standards (e.g., such standards established by the National Institute of Standards and Technology, the Center for Internet Security, or the Gramm-Leach Bliley Act - see Standards for Safeguarding Customer Information, 16 C.F.R. Part 314, keeping in mind the objectives of Section 314.3(b)); (5) continually monitor its operations and take any action necessary to assure the Information is safeguarded in accordance with the terms of this Contract and as required by applicable federal or Texas law or regulation; and (6) comply with the University’s rules, policies, and procedures regarding the Information, including the UT System Administration Policy 165. At University’s request, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard Information.

If an impermissible use or disclosure of any Information occurs, Contractor will provide (1) written notice to University within one (1) business day after Contractor’s discovery of such use or disclosure and (2) all information University requests concerning such impermissible use or disclosure.  If University determines that Contractor has breached the terms of this paragraph, then University may immediately terminate this Contract without notice or opportunity to cure.  Within 30 days after the expiration or earlier termination of this Contract for any reason, Contractor shall either return or destroy, at University’s direction, all information provided by University to Contractor under this Contract, including all University information provided to Contractor’s employees, subcontractors, agents, or other affiliated persons or entities (“Contractor Affiliates.”).  Contractor will notify University prior to destruction of any of the information. Contractor will require all Contractor Affiliates to agree in writing to comply with all of Contractor’s obligations and responsibilities under this paragraph as if such persons or entities were the Contractor, and Contractor will be responsible for ensuring such compliance by such Contractor Affiliates. Contractor’s obligations under this paragraph shall survive the expiration or earlier termination of this Contract for any reason.

Contractor acknowledges that it will be handling University’s covered accounts, as those accounts are defined under 16 C.F.R.  681.1. Contractor certifies that it has a compliant **Identity Theft Prevention, Detection and Mitigation Program** in place, as required under 16 C.F.R, 681.1, and will handle University’s covered accounts in accordance with this Program.

15. Notwithstanding anything to the contrary in this Agreement, if applicable to the Scope of Work to be provided by Contractor hereunder, Contractor agrees to comply with **Exhibit A** (“**HIPAA BUSINESS ASSOCIATES AGREEMENT**”) and to treat all individually identifiable health information in accordance with all applicable laws governing the confidentiality and privacy of individually identifiable health information, including without limitation, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any regulation and official guidelines promulgated thereunder.

16. This Contract is not effective for any amount over $1 million dollars until approved by the Board of Regents of The University of Texas System.

17. Performance by University under the Contract may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”) and/or allocation of funds by the Board of Regents of The University of Texas System (the “**Board**”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then the University shall issue written notice to Contractor and the University may terminate this Contract without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of the University.

18. Contractor is aware of, is fully informed about, and in full compliance with its obligations under existing applicable law and regulations, including but not limited to Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000(D)), Executive Order 11246, as amended (41 CFR 60-1 and 60-2), Vietnam Era Veterans Readjustment Act of 1974, as amended (41 CFR 60-250), Rehabilitation Act of 1973, as amended (41 CFR 60-741), Age Discrimination Act of 1975 (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), Omnibus Budget Reconciliation Provision, Section 952, Fair Labor Standards Act of 1938, Sections 6, 7, and 12, as amended, Immigration Reform and Control Act of 1986, and Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 96-507), the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.), the Civil Rights Act of 1991 and all laws and regulations and executive orders as are applicable.

Contractor certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in the Contract. The term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, entertainment areas, transportation, or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Contractor further agrees that, except where it has contracts prior to the award with subcontractors exceeding $10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Contractor will retain such certifications for each one of its subcontractors in Contractor’s’ files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding $10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Contractor understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

19. If a HSP is attached to this Contract, Contractor agrees to use good faith efforts to subcontract the services in accordance with the HSP. Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to the University in the format required by the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts (“TPSS”). Submission of compliance reports will be required as a condition for payment under the Contract. If the University determines that Contractor has failed to subcontract as set out in the HSP, the University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If the University determines that Contractor failed to implement the HSP in good faith, the University, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program. The University may also revoke this Contract for breach and make a claim against the Contractor.

**Changes to the HSP.** If at any time during the term of the Contract, Contractor desires to change the HSP, before the proposed changes become effective (1) Contractor must comply with 34 TAC Section 20.14; (2) the changes must be reviewed and approved by the University; and (3) if the University approves changes to the HSP, the Contract must be amended in accordance with Section 2.4.3 of the RFP to replace the HSP with the revised subcontracting plan.

**Expansion of the Services.** If the University expands the scope of the Services through a change order or any other amendment, the University will determine if the additional services contain probable subcontracting opportunities not identified in the initial solicitation for the services. If the University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (1) the Contract may be amended to include the additional services; or (2) Contractor may perform the additional services. If Contractor subcontracts any of the additional subcontracting opportunities identified by the University without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of the Contract and will be subject to any remedial actions provided by Texas law including Chapter 2161, Government Code, and 34 TAC Section 20.14. The University may report nonperformance under the Contract to the TPSS in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program.

20. Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (“U.S.”) federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs issued by the U.S. General Services Administration. “Principals” means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor shall provide immediate written notification to the University if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when the University executes the Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to the University, the University may terminate the Contract for default by Contractor.

21. Contractor acknowledges that the University is prohibited by federal regulations from allowing any employee, subcontractor, or agent of Contractor to work on site at the University’s premises or facilities if that individual is not eligible to work on federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Contractor shall not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("OIG") to work on site at the University’s premises or facilities. Contractor shall perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time such employees, subcontractors and agents are assigned to work on site at the University’s premises or facilities. Contractor acknowledges that the University will require immediate removal of any employee, subcontractor or agent of Contractor assigned to work at their premises or facilities if such employee, subcontractor or agent is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: <http://www.oig.hhs.gov/fraud/exclusions/exclusions_list.asp>.

22. Contractor agrees that a written copy of Contractor’s Civil Rights "Affirmative Action Compliance Program" will be provided simultaneously with the Contract and incorporated for all purposes, or if Contractor is not required to have such a written program, the reason Contractor is not subject to such requirement will be provided in writing.

23. Contractor represents and warrants that all articles and services furnished under the Contract meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-598) and its regulations in effect or proposed as of the date of the Contract.

24. If the Contract requires Contractor’s presence on the University’s premises or in the University’s facilities, Contractor agrees to cause its representatives, agents, employees and permitted subcontractors (if any) to become aware of, fully informed about, and in full compliance with all applicable University rules and policies, including, without limitation, those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

25. Except as otherwise provided in this paragraph, 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 follows:

If to **University**:  The University of Texas Health Science Center at Houston

Procurement Services

1851 Crosspoint, Suite OCB-1.160

Houston, Texas 77054

Email: [LaChandra.Wilson@uth.tmc.edu](mailto:LaChandra.Wilson@uth.tmc.edu)

**Attention: LaChandra Wilson**

with copy to:   The University of Texas Health Science Center at Houston

Harris County Psychiatric Center (HCPC)

2800 South MacGregor Way, Administrative Suite 3rd Floor

Houston, Texas 77021

If to **Contractor**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Street Address, City, ST and Zip: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

or such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

26. A**ccess by Individuals with Disabilities.** Contractor represents and warrants (the “EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that it provides to University under the Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, Rule §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code.) To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor fails or is unable to do so, then University may terminate the Agreement and Contractor will refund to University all amounts University has paid under the Agreement within thirty (30) days after the termination date.

27. University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act(“TPIA”), Chapter 552, Texas Government Code. In accordance with Section 552.002 of the TPIA and Section 2252.907, Texas Government Code, and **at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Contract (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.**

**B. SPECIFICATIONS FOR COLLECTIONS**

1. Contractor agrees to accept for collection, upon the terms and conditions prescribed in this Contract, all unpaid accounts that the University may choose to refer to the Contractor. The number and origin of these accounts and the means by which Contractor shall receive the accounts shall be determined solely by, and may be altered at the discretion of, the University. At least 3 different University departments may refer accounts to the Contractor.

2. Contractor shall acknowledge to the HCPC Financial Operations office and to any other office or entity designated in writing by the University, the receipt of all accounts referred to Contractor for collection. Contractor shall transmit this acknowledgment in a form acceptable to the University no later than seven (7) calendar days after accounts are referred to Contractor.

**\*** 3. Contractor shall promptly undertake, through proper and lawful means, the collection of every account referred by the University without regard to the amount. Contractor agrees and warrants that all collection activities will be in conformity to existing federal, state or local laws and regulations. Contractor agrees to indemnify the University for any costs of whatever kind and nature incurred by the University as a result of any legal action against the University from the collection practices or methods of Contractor's officers, agents or employees.

4. Contractor shall implement thorough collection procedures in its attempt to achieve a maximum recovery of debts. Such procedures shall include telephone calls, mail efforts and skip tracing procedures whenever necessary.

**\*** 5. Contractor acknowledges the privacy rights of debtors and shall not release information concerning the delinquent debtor to any credit bureau or other third parties without full compliance with all federal and state privacy laws and prior written approval from the University.

6. Contractor shall furnish to the HCPC Financial Operations office of the University the **Routine Reports** listed in **Exhibit B**.

These reports shall be in a form acceptable to the University, shall include information required by the University, and be furnished at times prescribed by the University. All reports must be kept separate by the particular department of the University that referred the account to the Contractor.

7. Payments received by Contractor shall be deposited in the University's Bank Account Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at (bank) once a week. The Contractor shall provide a copy of said weekly deposit to the University along with a statement of collections received on each debtor's account.

8. The following collection fees shall be the sole consideration paid to Contractor for its services under this Contract:

\_\_\_\_\_\_\_\_\_% collection fee on the delinquent balance of each account collected without the filing of suit. To the extent allowed by the Debtor's signed agreement or as otherwise authorized by law, this collection fee is to be collected in addition to the balance due. The percentage collection fee shall be based on the money actually collected which is past due and which is deposited in the University's bank account.

**\***The University shall not be liable to the Contractor for any costs, fees or expenses incurred by Contractor in the collection of accounts over and above the percentage commission allowed in Item B.8. above. THE CONTRACTOR WILL NOT BE AUTHORIZED TO FILE LAWSUITS ON BEHALF OF THE UNIVERSITY IN ORDER TO COLLECT ACCOUNTS. The University will be responsible only for the specified commission and no other expenses incurred by Contractor. Said commission fee shall be paid to Contractor on the \_\_\_\_\_ day of each month.

**\*** 9. Contractor shall be responsible for ensuring that the accounts are updated to reflect the amount actually past due. Contractor shall return an account to the University as soon as the delinquency has been paid. Contractor shall exercise special care to ensure that the entire principal with interest and penalties assessed and collection fees, as authorized by the Debtor's signed agreement or as otherwise authorized by law, have been paid before informing the borrower or debtor that the debt is paid in full.

**\*** 10. Contractor shall reimburse the University for any amount which becomes uncollectible or which is lost due to any act or omission of the Contractor or its officers, agents or employees. Such acts or omissions may include, but are not limited to, accepting a compromise settlement for less than the total amount due without authorization of the University, acknowledging that a payment constitutes payment in full when in fact the loan or account is not paid in full, and failing to immediately refer any Notice of Bankruptcy to the University.

**\*** 11. Contractor agrees to suspend action either temporarily or permanently on any account referred for collection upon notification to do so by the University and to return accounts to the University upon request. Accounts referred to Contractor by University shall be returned to the University if there is no payment activity for four (4) consecutive calendar months since date of last transaction.

**\*** 12. No collection fees shall be paid to Contractor on accounts which are referred for collection, but on which the University receives payment prior to any collection efforts being performed by Contractor.

**\*** 13. No collection fee shall be paid to Contractor on accounts which are deferred, postponed or canceled.

**\*** 14. Contractor shall not share in funds collected by the University as a result of exercise or enforcement by the University of any statutory rights (including but not limited to enforcement of hospital liens), its right to offset monies owed the debtor by the State of Texas or the University or its rights to hold the grades, degree or transcript or bar the readmission of the debtor. The University will notify Contractor of any monies received pursuant to exercise of these rights.

**\*** 15. Any amounts received by Contractor which are in excess of that which is due and payable are overpayments and shall be forwarded in full to the University with an explanation that the amount is an overpayment. Contractor shall not be entitled to a collection fee for overpayments and shall not retain any portion of an overpayment.

16. Contractor agrees to promptly cancel and return to the University all accounts on which collection activity has ceased or accounts which are requested to be returned by the University. Contractor agrees to return accounts with a record of any contacts made with the borrower including current address, telephone number, and any other information that will aid in the future collection of the account. The transmission of such information is part of the service to the University that Contractor agrees to perform.

**\*** 17. Contractor shall appoint at least one representative who will have primary responsibility and authority for the University's accounts.

**\*** 18. Contractor will maintain records as they pertain to said accounts in such a manner as to be auditable by the University during normal business hours, at any time during the term of this Contract and for a period of seven (7) years thereafter. Contractor will not destroy any of the records and documents relating to University accounts until it has received written permission to do so from the University. Contractor understands 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), *Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors. To the extent applicable to the Contract, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Contractor agrees to allow, during and for a period of not less than seven (7) years after the Contract term, access to this Contract and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

19. Contractor shall promptly respond to complaints or inquiries transmitted to Contractor by the University which arise out of Contractor's performance of this Contract.

**\*** 20. Contractor shall be responsible for and shall protect the University from loss of any funds collected while the funds are in the custody of the Contractor. Contractor shall promptly transmit to the University all funds collected regardless of any such loss. Contractor shall maintain in force for the period of this Contract, and following its termination, for so long as the Contractor is engaged in collecting the University's accounts, a blanket performance bond in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, payable to the University to protect the University against any loss or failure of Contractor or any of its officers, employees or agents to transmit to the University for any reason the monies collected as required by this Contract. The bond shall be in a form and issued by a surety satisfactory to the University and shall require at least sixty (60) working days' advance written notice of cancellation to the University. These limits are minimum limits and Contractor shall increase the amount of the bond upon request of the University.

In addition to the above, Contractor, consistent with its status as an independent contractor, will carry the following insurance coverages in the form, with the companies and in the amounts (unless otherwise specified) as the University may require:

Workers’ Compensation Insurance with statutory limits, and Employer’s Liability Insurance with limits of not less than $1,000,000.

Each Accident $1,000,000

Disease Each Employee $1,000,000

Disease Policy Limit $1,000,000

Commercial General Liability Insurance with limits of not less than:

General Aggregate $2,000,000

Products & Completed Operations Aggregate $2,000,000

Personal & Advertising Injury $1,000,000

Each Occurrence $1,000,000

Fire Damage (any one fire) $ 50,000

Medical Expenses (any one person) $ 10,000

Commercial Automobile Liability Insurance covering all owned, non‑owned or hired automobiles, with coverage for at least $1,000,000 Combined Single Limit Bodily Injury and Property Damage.

Director and Officer Liability Insurance with coverage of not less than One Million Dollars ($1,000,000) per claim.

[Note to University: You might consider requiring Errors & Omissions coverage, fidelity bond, Cyber Liability coverage or security breach coverage]

Policies must include a waiver of all rights of subrogation and other rights in favor of University**. Further, University reserves the right to require Contractor to maintain additional or different insurance coverage that will adequately compensate University for any damages resulting from the negligence; recklessness; or the intentional acts of the Contractor or its agents.**

Contractor will deliver to the University:

1. Evidence satisfactory to the University in its sole discretion, evidencing the existence of all the required insurance and bonding promptly after the execution and delivery hereof and prior to the performance or continued performance of any services to be performed by Contractor hereunder from or after the date of the Contract; and
2. Additional evidence, satisfactory to the University in its sole discretion, of the continued existence of all required insurance not less than thirty (30) days prior to the expiration of any required insurance. If, however, Contractor fails to pay any of the renewal premiums for the expiring policies or bond, the University will have the right to make the payments and set‑off the amount thereof against the next payment coming due to Contractor under the Contract.

Such insurance policies, with the exception of Workers’ Compensation and Employer’s Liability, will name and the evidence will reflect the University as Additional Insured and will provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to the University, giving the University the right to pay the premium to maintain coverage, in which event Section 20.B. will apply.

The insurance policies required in the Contract will be kept in force for the periods specified below:

B.1 Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Director and Officer Liability Insurance will be kept in force until receipt of Final Payment made by Contractor to University; and

B.2 Workers' Compensation Insurance and Employer’s Liability Insurance will be kept in force until the Services have been fully performed and accepted by the University in writing.

**\*** 21. Either party has the right to cancel this Contract upon thirty (30) days written notice to the other party. Upon notification of cancellation, Contractor must immediately cease all collection efforts on University accounts. Monies received by Contractor during the sixty (60) day period immediately following the cancellation date will be subject to the fee provisions of Paragraph B.8. All accounts shall be returned to the University within sixty (60) days of the cancellation of this Contract.

22. Upon the termination of the Contract, other than as provided in Paragraph B.21, Contractor shall return all accounts to the University and any collections received by the Contractor after such termination date shall be sent to the University without a fee charge.

23. All money received for an account after the date that the account was required to be returned to the University under any provision of this Contract shall be returned in full by Contractor to the University.

**\*** 24. Should Contractor either fail or refuse to return an account to the University as required by any provision of this Contract, Contractor shall cease any further collection effort on the account and shall consider the account under the control of the University. Contractor shall be responsible for all costs, fees, and expenses incurred by the University in its efforts either in or out of court to obtain the return of accounts. Contractor shall also be responsible for any claims or damages which may arise from its failure or refusal to return accounts in a timely fashion.

ENTERED INTO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

THE UNIVERSITY OF TEXAS COLLECTION AGENCY NAME

(COMPONENT)

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FORM APPROVED:

Office of General Counsel

The University of Texas System

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Traci L. Cotton, Sr. Associate General Counsel

Managing Attorney, Claims and Financial Litigation

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Ronald R. Del Vento

Assistant Attorney General

Chief, Bankruptcy & Collections Division

**Attachments:**

**Exhibit A - HIPAA Business Associates Agreement**

**Exhibit B - Routine Reports**

**EXHIBIT A**

**HIPAA BUSINESS ASSOCIATES AGREEMENT**

This HIPAA Business Associate Agreement (this “BA Agreement”) is made and entered into effective in accordance with the Effective Date of the Contract between The University of Texas Health Science Center at Houston on behalf of its Harris County Psychiatric Center (“Client”) and XXXXXXX (“Provider”).

A. Definitions. For purposes of this BA Agreement:

1. "Business Associate" shall mean Provider.

2. "Compliance Date" shall have the same meaning as the term "compliance date" in 45 CFR §145.501.

3. "Covered Entity" shall mean the portion of Client that has been designated as the health care component that includes the self-funded insurance plan administered by the Office of Employee Group Insurance that is required to comply with the Privacy Rule.

4. “Agreement” shall mean the “Contract” shall be effective and shall terminate in accordance with Section A, no. 8 of the Contract by Business Associate and The University of Texas Health Science Center at Houston.

5. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

6. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

7. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

8. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

9 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

10. All other capitalized terms used in this Section shall have the meanings set forth in the applicable definitions under the Privacy Rule.

B. Obligations and Activities of Provider as a Business Associate

1. Business Associate agrees to not use or disclose PHI other than as permitted or required by this BA Agreement or as Required By Law.

2. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this BA Agreement.

3. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BA Agreement.

4. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this BA Agreement of which it becomes aware.

5. Business Associate agrees to ensure that any agent or subcontractor to whom Business Associate provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, has entered into an agreement with Business Associate that requires such agent or subcontractor to use and disclose PHI in conformance with the Privacy Rule.

6. Business Associate agrees to provide access, at the request of Covered Entity, in a reasonable time and manner in conformance with Business Associate's HIPAA Privacy Services Program, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 CFR § 164.524.

7. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in a reasonable time and manner in conformance with Business Associate's HIPAA Privacy Services Program.

8. Business Associate agrees to make internal practices, books, and records including policies and procedures and PHI 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, in a reasonable time and manner pursuant to Business Associate's HIPAA Privacy Services Program, for the purpose of permitting the Secretary to determine Covered Entity's compliance with the Privacy Rule.

9. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

10. Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner in conformance with Business Associate's HIPAA Privacy Services Program, information collected in accordance with Section B.(9) of this BA Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

C. Permitted Uses and Disclosures of PHI by Business Associate

1. Business Associate may use or disclose PHI as permitted by the Privacy Rule. Business Associate may use or disclose PHI to perform, manage and administer the activities or services required under the Contract or other such arrangement between Covered Entity and Business Associate, including the de-identification of PHI, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. Business Associate may also use or disclose PHI in any other manner consistent with a legally sufficient authorization executed by an Eligible Person or other individual who is the subject of such information.

2. Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3. Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

4. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

D. Obligations of Covered Entity

1. Covered Entity shall notify Business Associate of any limitations in its notice(s) of privacy practices in accordance with 45 CFR § 164.520 to the extent that such limitations 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 such changes may affect Business Associate's use and 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 provided such change or revocation is consistent with Business Associate's capabilities to administer such request in conformance with Business Associate's HIPAA Privacy Services Program and does not otherwise conflict with or restrict the performance of services under the Contract.

E. Restriction on Covered Entity

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, except Business Associate may use or disclose PHI for data aggregation or management and administrative activities of Business Associate.

F. Term and Termination

1. Term. The Term of this BA Agreement and the obligations herein shall be deemed effective as of the Compliance Date or the date of execution of this BA Agreement, whichever date is later, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

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 material breach or end the violation and terminate this BA Agreement and Covered Entity’s participation in the Contract if Business Associate does not cure the material breach or end the violation within the reasonable time specified by Covered Entity; or

b. Immediately terminate this BA Agreement and Covered Entity’s participation in the Contract if Business Associate has breached a material term of this BA Agreement and a cure is not possible; or

c. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

3. Effect of Termination.

a. Except as provided in Section F (B), upon termination of this BA Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

b. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible, including the need to retain PHI for audit, justification of work product or compliance with pharmacy or other applicable law. Business Associate shall extend the protections of this BA Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI.

G. Miscellaneous

1. Regulatory References. A reference in this BA Agreement to a section in the Privacy Rule means the section as in effect, or as amended, and for which compliance is required.

2. Amendment. The Parties agree to take such action as is necessary to amend this BA Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. Law 104-191. This BA Agreement may be amended only in writing when signed by a duly authorized representative of each Party.

3. Survival. The respective rights and obligations of Business Associate under Section F.(3) of this BA Agreement shall survive the termination of this BA Agreement.

4. Interpretation. Any ambiguity in this BA Agreement or in the Contract shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

5. Conflicts. To the extent that this BA Agreement may conflict with the Contract, this BA Agreement shall govern.

**EXHIBIT B**

**ROUTINE REPORTS**

users/claims/contracts/collfrm01282016cln.docx

**revised 01282016**