

## MEDICAL DIRECTOR AGREEMENT

**THIS MEDICAL DIRECTOR AGREEMENT** (the “Agreement”) is made by and between the City of Farmers Branch, a Texas home rule municipality by and through its **Farmers Branch Fire Department** (collectively “Agency”) and **Beacon Emergency Services Team, P.A. d/b/a BEST EMS** (the “Company”), collectively referred to herein as “Parties” or individually as “Party”. This Agreement is effective as of **December 1, 2022** (“Effective Date”).

**WHEREAS**, the Company employs or contracts with physicians who are duly qualified and licensed to practice medicine in the State of Texas and has approved one of its physicians to act as a medical director for the Agency; and

**WHEREAS**, the Company’s physician has expertise in the field of medicine, emergency medical services, emergency medical services oversight and administration; and

**WHEREAS**, Agency provides emergency medical services, non-emergency medical services, mobile healthcare and other related services and desires to obtain the services of a medical director; and

**WHEREAS**, the Company is willing to provide the services of a medical director to Agency for its operations in emergency medical services, non-emergency medical services, mobile healthcare and other related services; and

**WHEREAS**, the Company is willing to provide emergency medical services continuing education for Agency’s personnel;

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties incorporate the above recitals and agree as follows:

1. **Company Services.** The Company shall provide a physician to serve as the Medical Director (“Medical Director”) for Agency. As of the Effective Date, the Medical Director will be Justin Norheim, D.O. (“Physician”). Company will have the right, however, to appoint any other physician as the Medical Director in place of Physician in the event Physician leaves the Company or otherwise ceases to serve as Medical Director. The physician at any time serving as the Medical Director must be reasonably acceptable to Agency and must meet the following requirements and provide the following services to Agency:
  - a Provide comprehensive medical oversight (direct and indirect) according to Medical Director requirements and all services required of a Medical Director by Chapter 197, State Board of Medical Examiner Rules for clinical services delivered by Agency’s personnel. Medical Director shall participate in the implementation of clinically sound, evidence-based expectations for the system;
  - b Provide medical oversight and guidance for Agency’s quality leadership activities through serving as a liaison between Agency and the local medical community, collaborating with local designated quality organizations and/or committees to define quality standards, identify metrics, review performance data, identify opportunities for improvement, test new processes, and ultimately to adopt best practices;
  - c Review quality improvement and performance reports, provided by Agency and identify opportunities for improvement in patient care or system design and collaborate with all appropriate entities to develop an improvement program;
  - d Review recorded medical oversight, control or direction conversations (if available) to assure appropriate clinical care and decision making by all entities;
  - e Review and respond to requests to review high priority clinical cases within twenty-four (24) hours of being notified;
  - f Make or direct the making of such reports and records relating to patient care as may be required by Agency and/or regulatory bodies, whether public or private;
  - g Develop criteria for establishment and maintenance of credentials for Agency’s emergency medical services personnel;
  - h Direct, coordinate, and/or participate in initial, ongoing and remedial education of emergency medical services personnel in accordance with Agency’s policies;

- i Participate in applicable peer review processes of the Agency, Agency management and governmental boards or agencies;
  - j Advise and assist in the organization in implementation of an effective utilization review program for Agency and perform utilization review services;
  - k Assist in the design and development of protocols, guidelines, patient information forms, medical record forms, and consent forms for use in the field or for Agency purposes;
  - l Undertake activities, as reasonably requested by Agency, including but not limited to professional contacts with physicians, healthcare systems, public health agencies, health plans paramedic associations, nursing associations, governmental agencies, and state and local medical societies in order to apprise such individuals and groups of the nature and availability of facilities and services of Agency and facilitate the exchange of information on patient care, administration, medical policy, and utilization review;
  - m Actively participate in the professional development of all staff in Agency and collaborate in communicating medical competency and expertise to the medical community and general public;
  - n Give technical advice and assistance as may be requested to facilitate the evaluation, acquisition, implementation and utilization of medical equipment, expansion of Agency services, as well as general strategic planning and collaborative efforts with other healthcare systems;
  - o Authorize, supervise and approve the purchase of necessary medications for pre-hospital use by Agency in accordance with the full scope of practice subject to the following:
    - (1) Company acknowledges and agrees that controlled medications are specifically included within the definition of medications covered by this Agreement and Medical Director will be responsible for approving all local implementation plans for the ordering, distribution and handling of controlled substances (to include oversight and sign-off on all controlled substance records and logs in a timely manner) consistent with local, state & federal requirements; and
    - (2) Medical Director shall maintain all appropriate state and federal permits, registrations or licenses necessary to prescribe controlled substances;
  - p Fulfill all Medical Director functions including protocol development, education and performance review associated with the operation of any Agency communications centers within the area;
  - q Fulfill all Medical Director functions associated with the operation of any Agency inter-facility, specialty, mobile integrated healthcare or critical care transport operations;
  - r Perform any other functions associated with the role of a medical director as may be requested by Agency;
  - s Participate in all required activities associated with local and/or national accreditation processes;
  - t Participate in appropriately sanctioned research activities; and
  - u Serve as the primary liaison between Farmers Branch Fire Department EMS system administration and the local medical community, ascertaining and being responsive to the needs of each.
2. **Time Commitment.** The Medical Director will be in the fire station a minimum of four (4) hours per month. The Medical Director shall be available to provide the duties described in Section 1, above. The Company shall establish appropriate contact information to assure 24/7 availability of physician consultation (including designation of specific hospital-based physicians or designated base-station contacts authorized to provide direct medical control).
3. **Continuing Education.** Agency will provide a distraction free classroom space conducive to learning, including audiovisual equipment as requested. Company will provide the following instructional services:
- a Two hundred and eighty-eight (288) contact hours per year, twenty-four (24) hours per month, of emergency medical services continuing education hours for Entity's personnel.
  - b Continuing education curriculum and training. Class dates and time will be jointly decided by both Parties;
  - c Assigned course materials for all enrolled students, if applicable;

- d Other classes may be scheduled or developed as agreed upon by both Parties;
  - e Record keeping and course administration;
  - f Qualified and experienced instructors for the classes;
  - g A record of each student's participation in these courses, which will be made available upon student's request; and
  - h Training equipment and supplies as needed to cover the required laboratory aspects of the courses.
4. **Compensation.** As payment for the services rendered by Company and Medical Director, Agency shall pay to Company the amount of **\$52,931.99** per calendar year. Agency will make twelve (12) equal payments in the amount of **\$4,411.00** each to Company for services provided under this Agreement. Each payment will be due within thirty (30) days from the date of receipt of the invoice by Agency. **The amount due for services will increase three percent (3%) upon each Renewal Term.** Payment should be made payable to Beacon Emergency Services Team, P.A. d/b/a BEST EMS and mailed to BEST EMS, Attn: Accounting Manager, 4835 LBJ Freeway, Suite 900, Dallas, TX 75244.
5. **Term.** The term of this Agreement shall commence on the Effective Date and shall be for one (1) year (the "Initial Term"). This Agreement shall automatically renew for two (2) subsequent one-year periods (each a "Renewal Term") thereafter, subject to the termination rights herein. The Initial Term and all Renewal Terms shall be cumulatively referred to as the "Term".
6. **Termination.** This Agreement may be terminated prior to the expiration of the Term as follows:
- a Immediately by Agency upon the suspension, revocation or restriction of Medical Director's license to practice medicine or dispense medications unless Company provides a replacement Medical Director, with Agency's approval;
  - b Immediately by Agency if it determines in its reasonable discretion that continued provision of services by the Company and/or Medical Director will jeopardize health or safety; or
  - c With or without cause by either Party by providing written notice of intent to terminate ("Termination Notice"). Such termination shall become effective and the Agreement shall be terminated in its entirety on the 30<sup>th</sup> calendar day following receipt of the Termination Notice by the non-terminating Party unless a later date of termination is set forth in the Termination Notice, in which case this Agreement will terminate on such later date.
7. **Relationship.** In the performance of services under this Agreement, Company, Medical Director and Agency shall at all times be acting and performing as independent contractors. Nothing contained herein shall be deemed or construed to create any agency, partnership, joint venture, or employer-employee relationship between Company, Medical Director and/or Agency. Agency shall not have direct supervision over the manner in which Medical Director performs medical direction services pursuant to this Agreement. Agency shall not be responsible for the payment of any applicable taxes or withholdings related to Company's or Medical Director's services. Agency and Company agree that all services provided hereunder shall be provided in accordance with the terms and conditions of standard medical protocols in the State of Texas.
8. **Right to Engage in Other Activities.** Except where a conflict of interest may exist (e.g., working for a competitor of Agency or working for a governmental agency involved in oversight of the designated Agency's emergency medical services), nothing contained herein shall be deemed to restrict or prevent Company or Medical Director from engaging in consultation services or in any other business at such times, places, and in such manner as Company shall determine in its discretion during the Term of this Agreement and thereafter so long as Company is able to perform its obligations under this Agreement.
9. **Standard of Care.** Medical Director shall render services in compliance with the accepted medical standard of care in the community and profession.
10. **Compliance with Laws.** The Parties will comply in all material respects with all applicable federal and state laws and regulations including, the federal Anti-kickback statute. It is not a purpose, nor is it a requirement, of this Agreement or of any other agreement between the Parties, to offer or receive any remuneration from any individual in exchange for referrals. Neither Party shall make or receive any payment that would be prohibited under state or federal law. Company and Medical Director shall also maintain all licenses, certifications or accreditations

necessary to provide Services hereunder.

11. **Maintenance of Records.** As applicable, each Party will retain books and records respecting services rendered to patients for the time periods required under all applicable laws and allow access to such books and records to the extent required by law. To the extent required by Section 1861(v)(1)(i) of the Social Security Act, the Parties shall, upon proper request, allow the United States Department of Health and Human Services, the Comptroller General of the United States, and their duly authorized representatives access to this Agreement and to all books, documents, and records necessary to verify the nature and extent of costs and services provided under this Agreement, at any time during the term of this Agreement and for an additional period of four (4) years after the last date services are furnished under this Agreement. If any Party carries out any of its duties under this Agreement through a permitted subcontract or similar permitted agreement between the Party and an individual or organization related to it, the Party shall require that a clause be included in such agreement to the effect that until the expiration of four (4) years after the furnishing of services pursuant to such agreement, and to the extent required by Section 1861(v)(1)(i) of the Social Security Act, the related organization will make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any other duly authorized representatives, all agreements, books, documents, and records of said related organization that are necessary to verify the nature and extent of the costs of services provided by that agreement. Run reports and patient care records shall be maintained in accordance with the requirements of Agency and Company and shall be treated as confidential so as to comply with all federal and state laws and regulations regarding the confidentiality of patient records. Each of the Parties shall have the right to obtain copies of relevant portions of patient records maintained by the other Party to the extent necessary to defend against legal actions taken against such Party or its physicians or employees involved in the care of a patient.
12. **Insurance.** During the Term of this Agreement, Company shall maintain in full force and effect the following insurance for Company and Medical Director:
  - a. Professional liability insurance covering Company and Medical Director for services that are provided under this Agreement with coverage limits of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate, which coverage shall extend for a period of two (2) years after the termination of this Agreement;
  - b. Commercial general liability (CGL) insurance with a limit of not less than \$1,000,000 per occurrence, which shall include coverages for bodily injury (including, without limitation, death) and property damage, and particularly for liability arising from premises operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability (including without limitation, the liability assumed under the indemnity provisions of this Agreement). If such CGL insurance contains a general aggregate limit, it shall apply separately to the work under this Agreement; and
  - c. Workers compensation insurance in the amounts required by law.

All policies of insurance shall be endorsed and contain the following provisions: (1) name Agency, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for at least thirty (30) days prior written notice to Agency for cancellation of the insurance or reduction in the coverage limits below the amount set forth above; (3) provide for a waiver of subrogation against Agency for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of services and upon request by Agency.

13. **Indemnity.** COMPANY SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS AGENCY, ITS OFFICERS, EMPLOYEES AND AGENTS AGAINST AND FROM ANY AND ALL LIABILITY, ACTIONS, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, CLAIMS, DAMAGES, COSTS OR FEES, INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE, FOR PERSONAL INJURY, PROPERTY DAMAGE OR DESTRUCTION (INCLUDING WITHOUT LIMITATION LOSS OF USE OF PROPERTY NOT OTHERWISE PHYSICALLY INJURED), BREACH OF CONTRACT, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES OR EQUITABLE RELIEF (INCLUDING, WITHOUT LIMITATION, INJUNCTION RELIEF) IS SOUGHT, SUFFERED BY ANY PERSON OR ORGANIZATION THAT MAY ARISE OUT OF ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF COMPANY, ITS OFFICERS, EMPLOYEES (INCLUDING, BUT NOT LIMITED TO, MEDICAL DIRECTOR) AND AGENTS UNDER OR IN CONNECTION WITH COMPANY'S AND MEDICAL DIRECTOR'S PERFORMANCE OF THE SERVICES PROVIDED OR ANY OTHER OBLIGATION PURSUANT TO THIS AGREEMENT. COMPANY WILL NOT BE OBLIGATED TO INDEMNIFY OR HOLD HARMLESS AGENCY OR ANY OF ITS OFFICERS, AGENTS, OR

**EMPLOYEES WHEN THE INJURY OR DAMAGE TO A PERSON OR PROPERTY IS CAUSED BY THE GROSS NEGLIGENCE OF AGENCY, ITS OFFICERS, AGENTS, OR EMPLOYEES.**

14. **HIPAA.** Each Party shall comply with the privacy provisions of the *Health Insurance Portability and Accountability Act of 1996* and the regulations thereunder (“HIPAA”), and with such other requirements of HIPAA that may become effective during the Term. All patient medical records shall be treated as confidential so as to comply with all state and federal laws. The Parties shall execute the Business Associate Agreement attached as Exhibit “A”.
15. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the following addresses:

If to Agency:

City of Farmers Branch  
Attn: City Manager  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

With Copy to:

Farmers Branch Fire Department  
Attn: Chief Daniel Latimer  
13333 Hutton Dr.  
Farmers Branch, Texas 75234

Peter G. Smith  
Nichols, Jackson Dillard, Hager & Smith, LLP  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

If to Company:

BEST EMS  
Attn: Elizabeth Fagan, M.D. 4835 LBJ Freeway, Suite 900  
Dallas, Texas 75244

With Mandatory Copy to:

Integrative Emergency Services  
Attn: Matt Innes, Legal Department  
4835 LBJ Freeway, Suite 900  
Dallas, Texas 75244

16. **Confidentiality.** All information with respect to the operations and business of a Party (including the rates charged hereunder) and any other information considered to be and treated as confidential by that Party gained during the negotiation or Term of this Agreement will be held in confidence by the other Party and will not be divulged to any unauthorized person without prior written consent of the other Party, except for access required by law, regulation and third-party reimbursement agreements. Company understands and acknowledges that this Agreement and information received by Agency from Company may constitute “public information” as that phrase is defined in the Texas Public Information Act (Texas Government Code §§552.001 et. seq., or “the Act”) which may be subject to disclosure upon receipt of a written request delivered to Agency pursuant to the Act. If Agency receives a request for public information pursuant to the Act which includes within its scope information from this Agreement or Company information which is considered to be confidential in accordance with this Section 16, Agency agrees to notify Company of such request in accordance with applicable provisions of the Act. Company shall, at Company’s cost, be solely responsible for asserting arguments to the Office of the Attorney General of the State of Texas pursuant to §552.305(b) of the Act regarding the reason(s) this Agreement and/or Company’s information is exempt from disclosure to the public under the provisions of the Act and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of Company’s information. Other than notifying Company of the request for this Agreement and Company’s confidential information as provided in §552.305(d) of the Act, Agency may, but shall be under no obligation to, submit arguments to the Texas Attorney General relating to reasons this Agreement and/or Company’s confidential information is exempt from required release to the public.

17. **Non-Exclusion.** Each Party represents and certifies that neither it nor any practitioner who orders or provides Services on its behalf hereunder has been convicted of any conduct that constitutes grounds for mandatory exclusion as identified in 42 U.S.C. § 1320a-7(a). Each Party further represents and certifies that it is not ineligible to participate in Federal health care programs or in any other state or federal government payment program. Each Party agrees that if DHHS/OIG excludes it, or any of its practitioners or employees who order or provide Services, from participation in Federal health care programs, the Party must notify the other Party within five (5) days of knowledge of such fact, and the other Party may immediately terminate this Agreement, unless the excluded Party is a practitioner or employee who immediately discontinues ordering or providing services hereunder.
18. **Prohibition on Boycotting Israel and Energy Companies; Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations.**
- a. Company verifies that it does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.
  - b. Company verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended.
  - c. Company verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

This section does not apply if Company is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Company has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

19. **Miscellaneous.** This Agreement (including any Schedules hereto):
- a. constitutes the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior oral or written agreements with respect thereto;
  - b. may be amended only by written instrument executed by both Parties;
  - c. may not be assigned by either Party without the written consent of the other Party, such consent not to be unreasonably withheld;
  - d. shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns;
  - e. shall be interpreted and enforced in accordance with the laws of the State of Texas without regard to the conflict of laws provisions thereof, and the federal laws of the United States applicable therein;
  - f. may be executed in several counterparts (including by facsimile), each of which shall constitute an original and all of which, when taken together, shall constitute one agreement; and
  - g. shall not be effective until signed by authorized representatives of both Parties.

In the event of a disagreement between this Agreement and any Schedule hereto, the terms of this Agreement shall govern. Venue for any disputes between the Parties arising from or related to this Agreement shall be in a state court of competent jurisdiction in Dallas County, Texas, the personal and subject matter jurisdiction to which the Parties hereby agree to submit.

(Signatures on Following Page)

**SIGNED AND AGREED** this \_\_day of November 2022.

**CITY OF FARMERS BRANCH, TEXAS**

By: \_\_\_\_\_  
John Land, Interim City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Daniel Latimer, Fire Chief  
Farmers Branch Fire Department

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

**SIGNED AND AGREED** this \_\_day of November 2022.

**BEACON EMERGENCY SERVICES TEAM, P.A. D/B/A  
BEST EMS**

By: \_\_\_\_\_  
Nestor Zenarosa, M.D., Chief Executive Officer

**EXHIBIT A**  
**BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (this “Agreement”) is made by and between **City of Farmers Branch, acting through its Farmers Branch Fire Department** (“Covered Entity”) and **Beacon Emergency Services Team, PA d/b/a BEST EMS** (the “Business Associate”). This Agreement is entered into effective **December 1, 2022**.

**BACKGROUND**

Covered Entity and Business Associate have entered into a medical director agreement (“Services Agreement”) dated **December 1, 2022** pursuant to which Business Associate arranges for the provision of services to Covered Entity. This Business Associate Agreement is intended as a supplement to the Services Agreement for the purpose of meeting the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the applicable provisions of the Health Information Technology for Economic and Clinical Health Act (Title XIII, Subtitle D) and its implementing regulations (“HITECH”), for the treatment of Protected Health Information, as defined herein, that may be disclosed by Covered Entity to Business Associate.

**1. Definitions**

Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as given those terms in 45 CFR Parts 160 and 164 (the “HIPAA Regulations”).

“Protected Health Information” (“PHI”) means information that is: (i) created or received by a Health Care Provider, Health Plan, employer, or Health Care Clearinghouse; (ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of Health Care to an individual; or the past, present, or future Payment for the provision of Health Care to an individual; (iii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. The term PHI includes PHI maintained in or transmitted by electronic media; provided, however, the term PHI is limited, when used in this Agreement, to the PHI created, received, maintained, or transmitted by Business Associate on or behalf of Covered Entity.

**2. Obligations and Activities of Business Associate**

(a) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement or as Required by Law. Further, Business Associate shall, to the extent Business Associate is to carry out Covered Entity’s obligations under the HIPAA Regulations, comply with the requirements of the HIPAA Regulations that apply to Covered Entity in the performance of such obligations.

(b) Business Associate agrees to use appropriate safeguards, and comply, where applicable, with 45 CFR Part 164, Subpart C with respect to electronic PHI, to prevent use or disclosure of the PHI other than as provided for by this Agreement.

(c) 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 Agreement.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 CFR 164.410.

(e) Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, within 10 (ten) days, to PHI maintained 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.

(g) Within ten (10) days of a request from Covered Entity, 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.

(h) 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 timely manner or as designated by the Secretary, for purposes of the Secretary determining Business Associate’s or Covered Entity’s compliance with the Privacy Rule.

(i) 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.

(j) Business Associate agrees to provide to Covered Entity or an Individual, within ten (10) days of a request, information collected in accordance with Section 2 (i) of this 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.

(k) Business Associate agrees to establish and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protected the confidentiality, integrity and availability of electronic PHI. Business Associate will follow generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information (“the Security Rule”, published at 45 CFR Parts 160 – 164), and be in compliance with all applicable requirements of HITECH.

(l) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides electronic PHI agrees, in writing, to implement reasonable and appropriate safeguards to protect that information.

(m) Business Associate agrees to report any Breach of Unsecured PHI or Successful Security Incident of which it becomes aware to Covered Entity without unreasonable delay, but no later than 30 days after discovery. To avoid unnecessary burden on either party, Business Associate shall report to Covered Entity any Unsuccessful Security Incident of which it becomes aware only upon request of Covered Entity. The frequency, content, and format of the report of Unsuccessful Security Incidents shall be mutually agreed upon by the parties. For purposes of this Agreement, a “Successful Security Incident” includes any Security Incident that results in an unauthorized access, use, disclosure, modification or destruction of electronic PHI or interference with system operations. For purposes of this Agreement, an “Unsuccessful Security Incident” includes Security Incidents that do not result in an unauthorized access, use, disclosure, modification or destruction of electronic PHI or interference with system operations.

### **3. Specific Use and Disclosure Provisions**

(a) Except as otherwise permitted herein or required by law, Business Associate shall use PHI only for the purpose of performing services for Covered Entity as such services are described in the Services Agreement. 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.

(b) Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party person or entity as necessary to perform its obligations under the Business Arrangements and as permitted or required by applicable federal or state law. 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.

(c) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

(d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities consistent with § 164.502(j) (1) and 164.504(e).

### **4. Obligations of Covered Entity**

(a) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of PHI.

(b) 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.

(c) 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.

### **5. Permissible Requests by 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 in connection with Data Aggregation or management and administrative activities of Business Associate otherwise permitted under this Agreement.

### **6. Term and Termination**

(a) *Term.* This Agreement shall be effective as of the date first written above and shall terminate only upon termination of the agreed upon Services Agreement.

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement and the Services Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity. If Business Associate has breached a material term of this Agreement and cure is not possible, Covered Entity may immediately terminate this Agreement and the Services Agreement.

**7. Effect of Termination**

(a) Except as provided in paragraph (b) of this section, upon termination of this 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. Business Associate shall retain no copies of the PHI.

(b) In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall notify Covered Entity and Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction, for so long as Business Associate maintains such PHI.

**8. Miscellaneous**

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

(b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Business Associate or Covered Entity to comply with the requirements of the HIPAA Regulations.

(c) *Survival.* The respective rights and obligations of Business Associate under Section 7 of this Agreement shall survive the termination of this Agreement.

(d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Business Associate and Covered Entity to comply with the HIPAA Regulations.

IN WITNESS WHEREOF, the Covered Entity and Business Associate have executed this Agreement effective as of the day and year first above written.

<p>“Covered Entity”</p> <p>CITY OF FARMERS BRANCH, TEXAS</p> <p>By: _____ John Land, Interim City Manager</p>	<p>“Business Associate”</p> <p>BEACON EMERGENCY SERVICES TEAM, PA D/B/A BEST EMS</p> <p>By: _____ Print Name: Nestor Zenarosa, M.D. Print Title: Chief Executive Officer</p>
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