

HIPAA ASSESSMENT SERVICES AGREEMENT

This HIPAA ASSESSMENT SERVICES AGREEMENT (hereinafter, “the Agreement”) is made by and between _____ (hereinafter, “Vendor”), with its world headquarters -located in _____, and the Tarrant County Hospital District (“TCHD”) d/b/a John Peter Smith Health Network (hereinafter referred to as “District”), a political subdivision of the State of Texas and a unit of local government, effective this the _____ day of _____.

RECITALS

WHEREAS, District is a hospital district duly established by authority of Article 9, Section 4 of the Texas Constitution and Chapter 281 of the Texas Health and Safety Code to provide medical and hospital services to the needy and indigent residents of Tarrant County, Texas; and

WHEREAS, District owns and/or operates John Peter Smith Hospital and a system of primary health care facilities located throughout Tarrant County, Texas to facilitate the provision of said hospital and medical services; and

WHEREAS, the government of the United States has passed the Health Insurance Portability and Accountability Act of which Title II, Subtitle F (Administrative Simplification), (hereinafter, “HIPAA Regulations”) imposes on the District and other health care entities and practitioners throughout the nation sweeping and complex requirements and duties pertaining to the handling of individually identifiable health information (hereinafter, “the Confidential Information”); and

WHEREAS, “Vendor” represents that it has developed the knowledge and resources to assess the ability of the District to handle the Confidential Information, to assess the impact of the HIPAA Regulations on the District, and to provide a diagnostic assessment, [as described in the Agreement’s Scope of Services provisions and related Exhibit](#), of the District’s current infrastructure and operations against the proposed and final HIPAA Regulations; and

WHEREAS, “Vendor” desires to provide the District with a diagnostic assessment of District’s current infrastructure and systems, policies, procedures and practices for the handling of the Confidential Information, an assessment of District’s compliance with the HIPAA Regulations for handling of said Information, and working in cooperation with the District to develop high-level action/implementation plans and recommendations for compliance therewith, as well as all other work as described herein.

NOW, THEREFORE, “VENDOR” AND DISTRICT AGREE AS FOLLOWS:

THE PROJECT: It is agreed that “Vendor” will conduct on behalf of the District’s HIPAA Steering Committee, a detailed assessment (hereinafter “the Assessment”) of the District’s current systems, policies, procedures, and practices for handling Confidential Information, an assessment of District’s compliance with the HIPAA Regulations, and assisting the District in developing high-level action/implementation plans and recommendations to assist the District in meeting the HIPAA compliance requirements as published upon the date of execution of this Agreement. The services (“Services”)

to be provided by “Vendor” consist of the following:

1. Project Objectives – “Vendor” will assist the District with its business processes, operational areas, system functionality and third party relationships in preparation for compliance with the HIPAA Regulations as they exist on the date of execution of this Agreement (the “Project”). The primary objectives of the Project are as follows:

A. Evaluate the District’s business practices, information systems and disclosure practices for Confidential Information against the requirements set forth in the final HIPAA privacy regulations, as published at 64 Fed. Reg. 59918 (Dec. 28, 2000) (the “Privacy Regulations”).

B. Evaluate the District’s relevant information systems, security parameters, and functionality against the requirements set forth in the proposed HIPAA security regulations, as published at 63 Fed. Reg. 4321 (Aug. 12, 1998) (the “Security Regulations”).

C. Evaluate the District’s use of appropriate transaction standards, code sets and unique identifiers against the requirements set forth in the final HIPAA electronic transaction standards, as published at 65 Fed. Reg. 50312 (Aug. 17, 2000) (the “Transaction Standards Regulations”).

2. Project Scope and Approach – (Insert project scope from consultant’s proposal)

3. “Vendor” Roles and Responsibilities

- A. Coordinate with the District’s HIPAA Project Manager in the planning and recommended development of the Project Management Office, as well as initiating procedures for conducting the risk assessment and gap analyses.
- B. Conduct interviews with key personnel and stakeholders for identified processes and procedures.
- C. Leverage the information gathered during interviews to understand the District’s operations in order to perform the following assessments from an operational perspective:
 - 1. Conduct Security/Electronic Signature Risk Assessment and Gap Analysis based upon information gathered during the Interviews and Analysis Phase.
 - 2. Conduct Privacy Risk Assessment and Gap Analysis based upon information gathered during the Interviews and Analysis Phase.
 - 3. Conduct Transaction Standards, Code Sets and Identifiers Assessment and Gap Analysis based upon information gathered during the Interviews and Analysis Phase.
- D. “Vendor” shall maintain and keep secure all information regarding the District’s patients and other third party data, as well as all intellectual property and other information of the District unless the same is by law public information;
- E. “Vendor” will specify in detail the information that participants (interviewees) and the District are responsible for gathering and making available to “Vendor”.

The District is responsible for any gaps in the assessment resulting from the failure of "Vendor" to adequately specify and request information that interviewees are responsible for Gathering, for which the District relies on the expertise of "Vendor". "Vendor" is not responsible for any gaps in the assessment resulting from information that has been requested by "Vendor, but not provided by the District or is known or reasonably should be known by the District that is likely to be material to this engagement that has not been communicated to "Vendor" by District personnel.

- F. Utilize the above information to create high-level action/implementation plans for projects to be budgeted for fiscal years 2001 and 2002.
- G. "Vendor's" assessment, recommendations and all other services provided hereunder shall be in accordance with standard industry practices and good and accepted national standards for the provision of like or similar services.
- H. _____ shall serve as the "Vendor" Account Executive and _____ shall serve as the Project Manager for this project

The "Vendor" Account Executive shall, among other duties, administer the activities of "Vendor" hereunder throughout the term of this Agreement and shall serve as a liaison between the District and "Vendor" and/or as the District's HIPAA Steering Committee deems necessary. The "Vendor" Account Executive shall have overall responsibility for ensuring "Vendor's" performance hereunder in all respects and the completion of "Vendor's" responsibilities and obligations hereunder. The "Vendor" Account Executive shall:

- 1. Serve as the primary point contact of "Vendor" to administer all aspects of

this Agreement.

2. Ensure that all applicable District policies and procedures provided to “Vendor” by the District are applied and followed by “Vendor” staff.
3. Have intimate knowledge of the terms of this Agreement and the work contemplated, the continuing status of the work throughout the term of the Agreement, and the standards of care applicable to the work “Vendor” has agreed to provide hereunder.
4. Communicate to the District any unique considerations that the District’s HIPAA Steering Committee or the District’s Board of Managers should take under advisement when reviewing “Vendor’s” recommendations.

The “Vendor” Project Manager shall be responsible for:

1. Conducting weekly Status Meetings with the HIPAA Project Director and HIPAA Steering Committee Chairperson; advising the HIPAA Steering Committee members of the work and expenses to date, total hours spent each week by “Vendor” consultants performing services under this Agreement, plans for completion, and other information requested by the HIPAA Steering Committee; giving monthly status reports to the HIPAA Steering Committee on items discussed with the Chair and Program Manager.
2. Upon request, attending meetings of District’s Board of Managers, its sub-committees, Administrative Staff committees, and the HIPAA

Steering Committee in addition to the above referenced weekly status meetings, and to present status reports on the work and other requested information.

- 3. Ensuring that the performance of “Vendor” employees is compliant with the terms of this Agreement.

- 4.4. Assuring the integrity and continuity of “Vendor’s” work by ensuring that “Vendor” key staff and senior consultants are not removed from the District’s project team transferred to other assignments without prior approval from the District’s HIPAA Steering Committee or the District’s HIPAA Project Manager. “Vendor” key staff members and senior consultants include “Vendor” employees _____ “Vendor” and District acknowledge that every “Vendor” key staff member or senior consultant assigned to perform duties under this Agreement will not be devoting full time efforts to this project and that some may be involved in other projects for other “Vendor” clients during the term of this Agreement. District and “Vendor” also acknowledge that some members of the “Vendor” key staff and senior consultants may leave the firm for medical reasons or termination of employment during the term of the engagement. Loss of an employee by “Vendor” for medical reasons or due to termination shall not be subject to the terms of this paragraph.

- 5. Ensuring that any special fee arrangements or charges will be

submitted to the HIPAA Steering Committee for presentation and approval by the Districts Board of Managers as may be necessary.

6. Ensuring that “Vendor’s” final work product shall be completed on or before _____.

4. District’s Roles and Responsibilities

- A. To the extent that “Vendor’s” Deliverables include surveys, analyses, reports, evaluations, recommendations or other management consulting services, the District is solely responsible for making final decisions regarding implementation and other actions with respect to the matters addressed in the project Deliverables.
- B. District will be responsible for its own legal representation related to the HIPAA Regulations. “Vendor” has involved appropriate legal resources to review and interpret the proposed HIPAA Regulations. Legal resources retained by “Vendor” for this review are retained solely for the benefit of “Vendor”, and not District, and District should consult its own legal resources before relying on any such advice. The scope of the work does not require, and the parties do hereby agree, that in connection with “Vendor’s” performance of the Services, neither “Vendor” nor “Vendor’s” internal or external legal counsel will be rendering legal advice or otherwise providing any legal services to District.
- C. The District will make available to “Vendor” appropriate District personnel and/or Project team members in order that “Vendor may review with them the status of the project to date and documentation provided, and to otherwise obtain or provide information and clarification on the process to date. The District

reserves the right to name an individual HIPAA Project Manager within a reasonable time after the approval of this Agreement by the District's Board of Managers. At a minimum, the District shall provide access to the following personnel during this project:

- The District will appoint a HIPAA Project Director who will have ultimate responsibility for the District's HIPAA program within the Project team. He/she will, with the advice and counsel of "Vendor's" Account Executive/Project Manager and other "Vendor" representatives, provide oversight to the combined Project team and make decisions regarding the Project. He/she shall serve as a liaison to the District's senior management and shall meet with and inform the District's Board of Managers and its sub-committees, the District's Administrative Staff committees and/or the HIPAA Steering Committee as necessary
- The District will appoint a HIPAA Steering Committee to be comprised of appropriate District representatives, as determined by District, and which shall be responsible for monitoring the ongoing progress of the Project. The Steering Committee representatives will attend status meetings and assist in resolving Project-related issues, including those which may require senior management attention.
- The District agrees to provide access to representative participants from the functional, Information Technology, and business unit areas. These personnel will be responsible for gathering and presenting, as directed by "Vendor", all required information supporting information systems, functional

processes and business areas to the HIPAA project team on a timely basis.

- The District will make available the reasonably requested resources of District including key employees, reports, information, office supplies, facility access and access to technical environments available to District, as reasonably requested by "Vendor" ~~and share responsibility with AA for the successful necessary for completion of the project~~

D. "Vendor" shall be permitted to reasonably rely on any content contributed to "Vendor" by District or to "Vendor" by a third party retained by District in connection with this Agreement.

E. ~~H. District shall determine the existence of, and compliance with, any and all of the following that are applicable to electronic transactions, commerce, processes, or activities conducted over the Internet or any electronic network (collectively, "Transactions"): import/export controls; requirements to obtain and maintain licenses or other permissions; requirements to assess, pay, or withhold taxes, customs duties, or other charges; and other laws or regulations in all applicable jurisdictions;~~

~~C.I. District shall be solely responsible for the security of its network and any related systems, including the security, privacy and confidentiality of any District or third party data, intellectual property, or other information;~~

~~C.J. District shall establish and determine the validity and enforceability of contract execution, performance and fulfillment processes, contracts, and any other documentation necessary for or used in conducting District Network transactions; and~~

~~C. District shall be solely responsible for any content contributed by District or a third~~

party in connection with this engagement.

- C. The District will provide office facilities with network computer, internet and telephone access for up to five (5) consultants and meeting space as needed for the “Vendor” project team while “Vendor” is in the field.
- I. District will provide the appropriate functional and technical documentation, to the extent such documentation exists, to support the planning and assessment phase of this Project including existing inventory lists and other diagrams and documents reflecting information systems planning and design.
- J. District management will participate on a timely basis for key decisions and will be responsible for the timely resolution of issues in its areas of responsibility. District management also will be ultimately responsible for making all final decisions regarding actions taken to meet the requirements of the HIPAA Regulations and for ongoing maintenance and compliance with these requirements.
- H. Key District management representatives will participate in regularly scheduled status meetings with the “Vendor” Account Executive/Project Manager. District project participants (interviewees) will be responsible for completely and accurately gathering and presenting, as directed by “Vendor”, all required information supporting core information systems, core functional processes and business areas to the core project team on a timely basis, as defined in the Scope section of this Agreement.

5. arrangement let AA is not responsible for any gaps in the assessment resulting from information that has not been presented or made available to AA by

District project participants.

K. ~~8.~~ **Fees & Expenses.**

~~L.~~

Total fees for the project shall not exceed the sum of
535,000 \$ _____ unless District has agreed in writing to
additional fees.

Fees for services performed in accordance with this Agreement shall be paid
based upon the following billing schedule:

- Fees of _____ shall be paid at the completion of Phase I of the
Project after receipt of “Vendor’s” documented Phase I deliverables by the District
HIPAA Steering Committee.
- Fees of \$ _____ shall be paid at the completion of Phase II of the Project
after receipt of “Vendor’s” documented Phase II deliverables by the District HIPAA
Steering Committee.
- Fees of \$ _____ shall be paid at the completion of the last Phase,
if any of the Project after receipt of “Vendor’s” documented Phase deliverables by
the District HIPAA Steering Committee.

{OTHER FEE INFORMATION TO BE INSERTED/MODIFIED BASED UPON NATURE
OF AGREEMENT AND TIMING OF COMPLETION OF WORK/PHASES OF WORK}

Payment for “Vendor’s” services shall be made via wire transfer to “Vendor’s” lockbox.

The Lockbox information is as follows:

Routing #: _____
Account #: _____
Qualifier: _____{to be provided upon approval of agreement}

“Vendor” shall be entitled to reimbursement of necessary expenses, provided such expenses are authorized in writing by the District and the invoices and other documentation required by the District are submitted with the request for reimbursement. TCHD will not reimburse “Vendor” for First Class Airline travel or any other expense that is not pre-approved by the District. In no event will recompensed expenses exceed 7% of the fees incurred by District in the performance of this Agreement.

6. Other Business Terms and Miscellaneous Provisions.

- A. Scope. The scope of this engagement focuses only on the federal HIPAA regulations as defined above (including transaction standards, code sets, identifiers, and security/electronic signature and privacy policies and procedures) as they exist on the date of execution of this Agreement. . Determination of Texas state preemption issues, if any, is outside “Vendor’s” scope of Services as outlined within this Agreement and shall remain the District’s responsibility. Further, any other State or local requirements are not within the scope of this Agreement or engagement and shall also remain the District’s responsibility.
- B. Changes in Regulations. In the event that any of the HIPAA Regulations within the scope of this assessment change prior to the completion of “Vendor's” Services hereunder, and “Vendor” becomes aware of such changes, “Vendor” will

bring such fact to the attention of District. If District determines that additional services are necessary, District will so notify "Vendor". "Vendor" will then provide a new Agreement/Statement of Work to cover such additional services. District will then determine whether it desires "Vendor" to provide such additional services.

- A. Deliverables. Upon final payment, District may, solely for District's business purposes, use, copy, distribute internally or, offer to any party in response to a valid Open Records request made pursuant to Texas law or provide to any court or governmental agency in response to inquiry or investigation as required by law, and modify the deliverable items specifically described in this Agreement under Sections 3, 4 and 5 (the "Deliverables"). "Vendor" acknowledges that District is a governmental agency subject to the Texas Open Records Act. In the event that information is sought related to the deliverables of this Agreement via any Open Records request, District agrees to notify "Vendor" of the request within one business day of receipt of the request by delivering a copy of such request to the "Vendor" representative named in the Notice paragraph of this Agreement; provided however that District shall incur no cost or other liability in the event it fails to provide said notice. "Vendor" shall retain all right, title, and interest in and to: (i) all patent, copyright, trademark and other intellectual property rights; (ii) all methodologies, processes, techniques, ideas, tools, concepts, trade, secrets and know-how if marked or otherwise identified by "Vendor" as "Proprietary" or that "Vendor" may develop or supply in connection with this Agreement (The "Vendor" Knowledge). Subject to the confidentiality restrictions contained in this Agreement, "Vendor" may use the "Vendor" Knowledge for any purpose.

~~D. District shall not, without AA's prior written consent, disclose to a third party, publicly quote or make reference to the Deliverables. AA shall retain all right, title and interest in and to: (i) the Deliverables, including by not limited to all patent, copyright, trademark and other intellectual property rights therein; and (ii) all methodologies, processes, techniques, ideas, tools, concepts, trade secrets and know-how embodied in the Deliverables or that AA may develop or supply in connection with this Agreement (the "AA Knowledge"). Subject to the confidentiality restrictions contained in this Agreement, AA may use the Deliverables and the AA Knowledge for any purpose. District agrees to indemnify AA for any liability, cost and expense incurred by AA as a result of any improper distribution or Misuse of the Deliverables. For purposes of this Agreement, Misuse shall be defined as any use by District of the Deliverables that is illegal, unlawful, or harassing, which infringes on another's intellectual property rights or which otherwise constitutes network abuse. Personnel. AA shall be solely responsible for assigning and re-assignment its personnel, as appropriate, to perform the Services During the term of this Statement of Work, and for a period of twelve (12) months following the expiration or termination thereof, neither party will actively solicit the employment of the personnel of the other party involved directly with providing Services hereunder.~~

D. Use of Name. "Vendor" shall obtain written permission from District to use the JPS Health Network and/or Tarrant County Hospital District name for any purpose, including for advertising and promotional materials, except that District shall not require consent for "Vendor's" acknowledgement that District is a client of "Vendor"

for the Services described herein or to list District as a reference in proposals prepared by “Vendor” for use with prospective clients. District shall obtain written consent from “Vendor to use “Vendor’s” name for any purpose from the individual listed as “Vendor’s” representative listed in the Notice paragraph of this Agreement except that AA shall not require written consent for District’s acknowledgement that District is a client of “Vendor” for the Services contained herein. Nothing in this paragraph is to be interpreted to restrict information that must be provided by District to any person pursuant to the Texas Public Information Act or other lawful request for information from District. The District consents to AA’s use of JPS Health Network’s name and a factual description of the services to be performed by AA under this agreement in AA’s advertising and promotional materials. Otherwise, Neither party to this Agreement shall use the other party’s name without the prior written consent of the named party.

- E. Term. The term of this Agreement shall be from the time the contract is executed by both parties until the work is completed but no later than ~~June 1, 2001~~ June 25, 2001.
- F. Termination. This Agreement may be terminated without cause by either party upon ten (10) days notice. In such an event, District shall compensate “Vendor” for the work completed to the effective date and time of such termination on a prorated weekly basis for the Phase in which termination is effected assuming that “Vendor” has performed in accordance with this Agreement. In such an event, “Vendor” shall tender within seven (7) calendar days of the termination date, the entirety of its work, without limitation, completed under the Agreement.

G. Notice. Any notice required or permitted to be sent under this Agreement shall be in writing and forwarded by facsimile transmission, hand delivery, or certified mail, return receipt requested to the individual and facsimile number or address specified for each party below:

For District: Kristin M. Jenkins, Esq.
District Compliance and Quality Officer
1500 South Main Street
Fort Worth, Texas 76104
Facsimile: (817) 920-6908

For Vendor: _____

H. Annual Fiscal Condition Precedent. The Parties acknowledge and agree that the District is a governmental entity subject to an annual budgetary process and restrictions on spending in conformity with that process and its approved budget. The parties further agree that, notwithstanding any other language or provision herein to the contrary, if for any reason funds are not budgeted expressly for this agreement for the District's fiscal years subsequent to that in which funds for this Agreement are first allocated, the District may immediately and without penalty terminate this Agreement; provided, however, that payment for all Services

provided by “Vendor” up to the date of such termination shall be due and payable to “Vendor” within thirty (30) days of the date of such termination.

- I. Alternative Dispute Resolution. The parties shall first attempt to resolve any dispute or alleged breach of this Agreement through the efforts of their respective representatives. Upon mutual agreement, the District and “Vendor” may submit a matter in dispute to a non-binding mediation.
- J. Assignment. Neither party may assign, transfer or otherwise vest in any other company, entity or individual, any of its rights or obligations under this Agreement without the prior written consent of the other party. Consent on behalf of the Tarrant County Hospital District shall require the formal approval of the District’s Board of Managers, unless waived by the District in writing.
- K. Waiver. No term or provision of this Agreement shall be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing signed by the party granting such waiver or consent. Waiver or consent on behalf of the Tarrant County Hospital District shall require the formal approval of the District’s Board of Managers, unless waived by District in writing. If any term or provision of this Agreement is determined to be illegal or unenforceable, such term or provision shall be deemed stricken, and all other terms and provisions shall remain in full force and effect.
- L. Independent Contractors. This Agreement does not make either party an agent or legal representative of the other party, and does not create a partnership or joint venture. Both parties are independent contractors and principals for their own accounts.

M. Entire Agreement. This Agreement and its attached exhibits constitute the entire agreement between the parties and may only be modified by written agreement of the parties. ~~AA's Proposal to Provide Professional Services to the JPS Health Network is incorporated herein for all purposes as Exhibit "A". All conflicts between this Agreement and AA's Proposal to Provide Professional Services to the District are superseded by the terms of this Agreement, unless otherwise mutually agreed.~~

N. Venue. This Agreement shall be interpreted under the laws of the State of Texas. The venue for any lawsuit or other judicial or administrative proceeding arising out of this Agreement will be the Northern District of Texas if the lawsuit or other proceeding arises in Federal Court or Tarrant County, Texas if the matter arises in State Court. The venue for any dispute resolution activities shall be in Tarrant County, Texas

O. Price Changes. "Vendor" will submit any proposed change in prices to the District for approval. TCHD may without penalty immediately terminate this Agreement at any time fees and/or prices are changed, notwithstanding any other language herein.

Q. =

V. Compliance. "Vendor" hereby agrees to comply with those portions of the District's Compliance Plan and Policy, as well as its Code of Conduct and Ethics which apply to vendors and contractors dealing with the District. A copy of the District's Compliance Plan and Policy, as well as its Code of Conduct and Ethics, is attached hereto as Exhibit "AA." "Vendor" warrants and represents that neither

it nor its officers, employees and representatives have been convicted of any crime involving violations of federal or state health care reimbursement laws, rules or regulations.

R. Confidential Information. "Vendor" its officers, employees and representatives shall comply with all laws rules and regulations, including District policies and rules, pertaining to patient confidentiality and the use and disclosure of patient identifying information.

Executed this the day of , 2001.

“Vendor” Executive Name

Authorized Representative of “Vendor”

Harold Samuels, Chairman, Board of Managers

Authorized Representative of Tarrant County Hospital District

~~District to provide EXHIBIT A~~