

STATE OF TEXAS §
 § **AGREEMENT FOR PROFESSIONAL SERVICES**
COUNTY OF XXXX §

This agreement ("Agreement") is made by and between the City of XXXX, Texas ("City") and PST Services, Inc., a McKesson Company, (the "Professional") acting by and through their authorized representatives.

Recitals:

WHEREAS, the City desires to engage the services of Professional as an independent contractor and not as an employee in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the Professional desires to render professional services for the City in accordance with the terms and conditions set forth in this Agreement;

WHEREAS, Professional hereby agrees to provide the City with professional services in accordance with this Agreement, the specifications contained in Exhibit "A" ("Supplemental Payment Recovery Assistance Services"), and in accordance with generally accepted accounting principles in the State of Texas.

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

Article I
Term

1.1 The term of this Agreement shall commence on this XX day of XXXX, 2014 and shall terminate on the XX day of XXXX, 20XX. Unless earlier terminated as provided for in this Agreement, the term of this Agreement shall automatically extend for an additional one (1) year term, unless either party delivers to the other party, written notice of that party's intent not to extend the term of this Agreement sixty (60) days prior to the end of the then current term of the Agreement.

1.2 Either party may terminate this Agreement by giving thirty (30) days prior written notice to the other party. In the event of such termination the Professional shall have thirty (30) days to complete any work then in progress; and shall deliver to the City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by the Professional in connection with this Agreement. In the event of such termination the Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

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Article II

Scope of Services

2.1 The Professional shall provide the services set out in this Agreement and the Specifications attached as Exhibit "A."

2.2 The parties acknowledge and agree that any and all opinions provided by the Professional represent the best judgment of the Professional.

2.3 All work papers prepared by the Professional in the performance of Services under this Agreement shall remain the property of PST Services, Inc. PST Services, Inc. shall provide copies of any and all such Work Papers requested by the City.

2.4 In case of conflict between this Agreement and other documents enumerated as forming a part of this Agreement, the provisions of this Agreement shall govern.

2.5 All written modifications to this Agreement signed by both parties and City issued addenda to Specifications shall take precedence over all sections referenced therein, the document with the latest date of issuance or execution controlling.

2.6 City appoints professional as its agent solely for the purpose of carrying out Professional's obligations set forth in this Agreement. Professional shall provide the Services in accordance with applicable legal and regulatory requirements throughout the term of this Agreement. City's EMS personnel shall execute all documents and take all actions necessary to allow Professional to perform its duties under this Agreement.

2.7 In compliance with their respective legal duties regarding the privacy and security of protected health information, Professional and City agree to the obligations set forth in Exhibit C (BAA) attached hereto.

Article III Compensation

3.1 The City shall compensate the Professional for the services by payment of a fee as set forth in Exhibit "B", attached hereto, for the services provided in accordance with this agreement.

3.2 Unless otherwise provided herein, the Professional shall be responsible for all of its own expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges, unless otherwise provided herein.

3.3 Professional recognizes that this Agreement shall commence upon the day first written above and continue in full force and effect until termination in accordance with its provisions. Professional and City herein recognize that the continuation of any agreement after the close of any given fiscal year of the City of XXXX, which fiscal year ends on XXXX XX of each year, shall be subject to XXXX City Council approval. In the event that the XXXX City Council does not approve the appropriation of funds for this Agreement, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

Article IV Devotion of Time; Personnel; and Equipment

4.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.

4.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by the Professional.

4.3 The Professional shall furnish the facilities, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

Article V
Miscellaneous

5.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

5.2 Assignment. The Professional may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

5.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

5.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the State District Court of XXXX County, Texas.

5.5 Amendments. This Agreement may be amended by the mutual written agreement of the parties.

5.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

5.7 Independent Contractor. It is understood and agreed by and between the parties that the Professional in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

5.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:
Attn: XXXXXX
City of XXXX
Address

With Copy to:
Name
Company
Address

If intended for Professional:

Attn: General Counsel
PST Services, Inc., a McKesson Company
5995 Winward Parkway
Alpharetta, Georgia 3005

5.9 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

5.10 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

5.11 Indemnification.

Professional will defend, indemnify, and hold City harmless from any action or other proceeding brought against City to the extent that it is based on a claim that (a) the use of any Professional's Services delivered under this Agreement infringes any U.S. copyright or U.S. patent or (b) the Professional's Services incorporate any misappropriated trade secrets. Professional will pay costs and damages finally awarded against City as a result thereof; provided, that City (i) notifies Professional of the claim within ten business days, (ii) provides Professional with all reasonably requested cooperation, information and assistance, and (iii) gives Professional sole authority to defend and settle the claim.

- a. Infringement Remedies. If a claim of infringement or misappropriation for which City is entitled to be indemnified under Section 5.11 arises, then Professional may, at its sole option and expense: (a) obtain for City the right to continue using such Professional Services, (b) replace or modify such Professional Products or Services to avoid such a claim, provided that the replaced or modified Professional Products or Services are substantially equivalent in function to the affected Professional Products or Services, or (c) take possession of the affected Professional Products or terminate the affected Professional Services, and terminate City's rights and Professional's obligations under this Agreement with respect to such Professional Products or Services. Upon any such termination, Professional will refund to City a pro-rated portion of any prepaid fees with respect to that Professional Products or Services.
- b. Exclusive Remedy. THE FOREGOING ARE PROFESSIONAL'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CITY'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT OR TRADE SECRET MISAPPROPRIATION.

5.12 Audits and Records. The Professional agrees that during the term hereof the City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Professional's records relating to the

services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by the City or date of termination if sooner.

5.13 Conflicts of Interests. The Professional represents that no official or employee of the City has any direct or indirect pecuniary interest in this Agreement.

5.14 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (1) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 per occurrence for injury to persons (including death), and for property damage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement; and (3) statutory Worker's Compensation Insurance covering all of Professional's employees involved in the provision of services under this Agreement.
- (b) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Worker's Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.
- (c) All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "B" by AM Best or other equivalent rating service, or approved by the City Risk Analyst.
- (d) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services.

5.15 Use and Disclosure of Confidential Information. Each party may disclose to the other party Confidential Information. Except as expressly permitted by this Agreement, neither party will: (a) disclose the other party's Confidential Information except (i) to its employees or contractors who have a need to know and are bound by confidentiality terms no less restrictive than those contained in this Section 5.15., or (ii) to the extent required by law following prompt notice of such obligation to the other party, or (b) use the other party's Confidential Information for any purpose other than performing its obligations under this Agreement. Each party will use all reasonable care in handling and securing the other party's Confidential Information and will employ all security measures used for its own proprietary information of similar nature. Following the termination of this Agreement, each party will, upon written request, return or destroy all of the other party's tangible Confidential Information in its possession and will promptly certify in writing to the other party that it has done so.

5.16 Period of Confidentiality. The restrictions on use, disclosure and reproduction of Confidential Information set forth in Section 5.15 will, with respect to Confidential Information that constitutes a “trade secret” (as that term is defined under applicable law), be perpetual, and will, with respect to other Confidential Information, remain in full force and effect during the term of this Agreement and for three years following the termination of this Agreement.

5.17 Injunctive Relief. The parties agree that the breach, or threatened breach, of any provision of Sections 5.15 may cause irreparable harm without adequate remedy at law. Upon any such breach or threatened breach, a party will be entitled to injunctive relief to prevent the other party from commencing or continuing any action constituting such breach, without having to post a bond or other security and without having to prove the inadequacy of other available remedies. Nothing in this Section 5.17 will limit any other remedy available to either party.

5.18 Limitation of liability. City agrees that professional shall not be liable for any claims or damages caused in whole or in part by factors not within the direct control of professional, including but not limited to the failure of third party service providers to adequately provide the services professional shall have no liability to City or any third party for special, indirect, consequential, exemplary, or incidental damages or for any damages whatsoever resulting from loss of use or profits, arising out of, relating to, or in connection with this agreement, even if it has been advised of the possibility of such damages. Notwithstanding anything to the contrary contained in this agreement, in no event shall professional be liable in the aggregate for any claims or damages in an amount exceeding the amounts paid by City for services hereunder during the one (1) year immediately preceding such claim or damages.

5.19 Covenant Not to Employ. During the term of the Agreement, and until the two year anniversary date of the effective date of termination of this Agreement, City covenants and agrees it will not, without the advance written consent of Professional, directly or indirectly, (i) induce or attempt to induce any Professional employee to terminate employment with Professional; (ii) hire or participate in the hiring or interviewing of any Professional employee; (iii) provide names or other information about any Professional employee for the purpose of assisting others to hire such employee; nor (iv) provide Confidential Information to a Professional employee about Professional or any entity affiliated with Professional for the purpose of assisting that Professional employee in finding employment with such entity for EMS billing services. For purposes of this paragraph, a Professional employee means any person who is a current Professional employee or was employed by Professional within one (1) year of the date of any action that alleges a violation of this Section 5.19.

5.20 Exclusivity. During the term of this Agreement Client shall not directly or indirectly contact an entity or person for the purpose of soliciting such entity or person to enter into a contract or arrange to receive any of the Services as set forth in this Agreement or any services substantially similar to the Services from any entity or person other than Professional unless agreed upon in writing by Professional, except that Client shall be entitled to solicit bids from other suppliers of Services within 180 days of expiration of any term of this Agreement.

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(Signature page to follow)

SAMPLE

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EXECUTED this _____ day of _____, 2014.

City of XXXX, Texas

By: _____
Name, Job Title

EXECUTED this _____ day of _____, 2014.

PST Services, Inc., a McKesson Company

By: _____
Name: _____
Title: _____

City's Acknowledgment

State of Texas §

§

County of XXXX §

This instrument was acknowledged before me on the _____ day of _____, 2014, by XXXX, XXXX of the City of XXXX, Texas, on behalf of said municipality.

Notary Public, State of Texas

My Commission Expires: _____

Professional's Acknowledgment

State of Texas §

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County of XXXX §

This instrument was acknowledged before me on the _____ day of _____, 2014, by _____, the _____ of _____, on behalf of said _____.

Notary Public, State of Texas

My Commission Expires: _____

EXHIBIT “A”
Supplemental Payment Recovery Assistance Services

1. Description of Services.

As part of the Professional’s Supplemental Payment Assistance Services, the Professional’s responsibilities under this Agreement will include:

- (a) Advising and assisting City with enrolling in the Texas Ambulance Supplemental Payment Program (“ASPP”);
- (b) Assisting City with enrolling in the ASPP;
- (c) Managing the program applications and required cost reports for City in accordance with the ASPP;
- (d) Managing the ASPP pre-cost report submittal process for City, which may also include:
 - Developing and submitting the Provider Approval materials to the Texas Health and Human Services Commission (HHSC) on behalf of City;
 - Receiving the Provider Approval from HHSC for City’s participation in the ASPP,
 - Developing and submitting the Cost Allocation Model and Report to HHSC on behalf of the City for review as part of the ASPP;
 - Changing and finalizing the Cost Allocation Model during HHSC’s review of the Cost Allocation Model and Report, to meet HHSC’s requirements to move forward with the cost report submittal.
- (e) Assisting City in developing cost models for EMS transports for submission to ASPP;
- (f) Assisting City with submitting other annual reports as my required by the ASPP.
- (g) Ensuring that cost report preparer(s) engaged on behalf of City by the professional are certified in accordance with all applicable rules, laws and regulations.
- (h) Ensuring that it utilizes separate staff for all billing and cost report preparation services provided to City.

2. City Responsibilities.

City acknowledges and understands that inaccurate or false data submissions, even advertent ones, can lead to a false claim charge or Medicaid program exclusion. Therefore, City agrees that it will use best efforts to:

- (a) Ensure the accuracy of all cost report data provided by City to the Professional and provide written certification of the accuracy of such data to the Professional and all applicable governmental agencies;
- (b) Make its internal practices, books and records relating to all cost report data provided to Professional by City available to the Professional to ensure the accuracy of all such data;
- (c) Comply with the Professional’s policies and procedures for the documentation of all cost report data as established and provided to the City by the Professional from time to time; and

(d) Provide Professional with the following as part of City's request for Supplemental Payment:

- An organizational chart of City's agency;
- An organizational chart of City's ambulance department;
- Identification of the specific geographic service area covered by City's ambulance department;
- Copies of job descriptions for all staff employed within City's ambulance department and an estimated percentage of time spent working for City's ambulance department and for other departments of City's agency;
- Primary contact person for City's agency; and
- A signed letter documenting the governmental provider's voluntary contribution of non-federal funds.

3. Indemnification.

City will indemnify and hold harmless Professional and its affiliates, employees and agents from and against, and at the option of Professional (or any of its affiliates, employees or agents) defend against, at City's sole expense, all claims, liabilities, damages, losses and expenses as they are accrued, including court costs and fees and expenses of attorneys, expert witnesses and other Professionals, arising out of, relating to or resulting from:

- (a) any breach or alleged breach of any representation, warranty, covenant or obligation of City pertaining to the Supplemental Payment Recovery Assistance Services; and

any alleged negligent act or omission or intentional misconduct of City or City's employees or agents or subcontractors related to any of City's obligations pertaining to the Supplemental Payment Recovery Assistance Services;

EXHIBIT “B”
Fees/Costs

1. For Supplemental Payment Recovery Assistance Services rendered under Exhibit “A”, City will pay Professional a service fee equal to 10% of the Supplemental Payments recovered by Professional on behalf of City (“Service Fee”). Supplemental Payments shall include any Texas Ambulance Supplemental Payment Program (“TASPP”) payments for ambulance services, including all emergency patient transports that are reimbursed by Texas Medicaid to City. In addition to the 10% service fee due by City to Professional under this Exhibit B, City will pay Professional a one-time, upfront fee of \$5,500.00 (“Fee”) for completion of the pre-cost report submittal requirements necessary for City’s participation in the Texas Ambulance Supplemental Payment Program. The Fee will be due upon the submittal of the Cost Allocation Report to HHSC. City acknowledges and agrees that Professional shall be entitled to receive Service Fees for Services provided by Professional under this Agreement even after expiration or earlier termination of this Agreement provided that Professional provided such services on or before the date of expiration or termination of the Agreement.
2. All service fees are exclusive of all federal, state and local taxes, including sales taxes, assessed on or due in respect of any Services performed by Professional under the Agreement, for which taxes City shall be solely responsible. City shall reimburse Professional for all those costs and expenses of City paid by Professional or any subsidiary or affiliate of Professional Group on behalf of City in connection with the provision of Services hereunder.
3. There will be a charge to the City for requests, including but not limited to, requests for special programming and non-standard reports. The cost for such requests will be determined on an individual basis and shall be reimbursed.

SAMPLE

EXHIBIT “C”
Business Associate Addendum (“BAA”)

SECTION 1: DEFINITIONS

“**Breach**” will have the same meaning given to such term in 45 C.F.R. § 164.402.

“**Designated Record Set**” will have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

“**Electronic Protected Health Information**” or “**Electronic PHI**” will have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Professional creates, receives, maintains or transmits from or on behalf of City.

“**Individual**” will have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

“**Privacy Rule**” will mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” will have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Professional from or on behalf of City.

“**Required by Law**” will have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

“**Secretary**” will mean the Secretary of the Department of Health and Human Services or his or her designee.

“**Security Incident**” will have the meaning given to such term in 45 C.F.R. § 164.304.

“**Security Rule**” will mean the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C.

“**Unsecured PHI**” will have the same meaning given to such term under 45 C.F.R. § 164.402, and guidance promulgated thereunder.

Capitalized Terms. Capitalized terms used in this Addendum and not otherwise defined herein will have the meanings set forth in the Privacy Rule, the Security Rule, and the HIPAA Final Rule, which definitions are incorporated in this Addendum by reference.

SECTION 2: PERMITTED USES AND DISCLOSURES OF PHI

2.1 Uses and Disclosures of PHI Pursuant to the Underlying Agreement. Except as otherwise limited in this Addendum, Professional may use or disclose PHI to perform functions, activities or services for, or on behalf of, City as specified in an existing written agreement (the “Underlying Agreement”), provided that such use or disclosure would not violate the Privacy Rule if done by City.

2.2 Permitted Uses of PHI by Professional. Except as otherwise limited in this Addendum, Professional may use PHI for the proper management and administration of Professional or to carry out the legal responsibilities of Professional.

2.3 Permitted Disclosures of PHI by Professional. Except as otherwise limited in this Addendum, Professional may disclose PHI for the proper management and administration of Professional, provided that the disclosures are Required by Law, or Professional obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person (which purpose must be consistent with the limitations imposed upon Professional pursuant to this Addendum), and that the person agrees to notify Professional of any instances of which it is aware in which the confidentiality of the information has been breached. Professional may disclose PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

2.4 Data Aggregation. Except as otherwise limited in this Addendum, Professional may use PHI to provide Data Aggregation services for the Health Care Operations of the City as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

2.5 De-identified Data. Professional may de-identify PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law.

SECTION 3: OBLIGATIONS OF PROFESSIONAL

3.1 Appropriate Safeguards. Professional will use appropriate safeguards and will, after the compliance date of the HIPAA Final Rule, comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such information other than as provided for by the Underlying Agreement and this Addendum. Except as expressly provided in the Underlying Agreement or this Addendum, Professional will not assume any obligations of City under the Privacy Rule. To the extent that Professional is to carry out any of City’s obligations under the Privacy Rule as expressly provided in the Underlying Agreement or this Addendum, Professional will comply with the requirements of the Privacy Rule that apply to City in the performance of such obligations.

3.2 Reporting of Improper Use or Disclosure, Security Incident or Breach. Professional will report to City any use or disclosure of PHI not permitted under this Addendum, Breach of Unsecured PHI or any Security Incident, without unreasonable delay, and in any event no more

than thirty (30) days following discovery; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Professional to City of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). “Unsuccessful Security Incidents” will include, but not be limited to, pings and other broadcast attacks on Professional’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Professional’s notification to City of a Breach will include: (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Professional to have been, accessed, acquired or disclosed during the Breach; and (ii) any particulars regarding the Breach that City would need to include in its notification, as such particulars are identified in 45 C.F.R. § 164.404.

3.3 Professional’s Agents. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), as applicable, Professional will enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of Professional for services provided to City, providing that the agent agrees to restrictions and conditions that are substantially similar to those that apply through this Addendum to Professional with respect to such PHI.

3.4 Access to PHI. The Parties do not intend for Professional to maintain any PHI in a Designated Record Set for City. To the extent Professional possesses PHI in a Designated Record Set, Professional agrees to make such information available to City pursuant to 45 C.F.R. § 164.524, within ten (10) business days of Professional’s receipt of a written request from City; provided, however, that Professional is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by City. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to Professional, or inquires about his or her right to access, Professional will either forward such request to City or direct the Individual to City.

3.5 Amendment of PHI. The Parties do not intend for Professional to maintain any PHI in a Designated Record Set for City. To the extent Professional possesses PHI in a Designated Record Set, Professional agrees to make such information available to City for amendment pursuant to 45 C.F.R. § 164.526 within twenty (20) business days of Professional’s receipt of a written request from City. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to Professional, or inquires about his or her right to amendment, Professional will either forward such request to City or direct the Individual to City.

3.6 Documentation of Disclosures. Professional agrees to document such disclosures of PHI and information related to such disclosures as would be required for City to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Professional will document, at a minimum, the following information (“Disclosure Information”): (a) the date of the disclosure; (b) the name and, if known, the address of the recipient of the PHI; (c) a brief description of the PHI disclosed; (d) the purpose of the disclosure that includes an explanation of the basis for such disclosure; and (e) any additional information required under the HITECH Act and any implementing regulations.

3.7 Accounting of Disclosures. Professional agrees to provide to City, within twenty (20) business days of Professional's receipt of a written request from City, information collected in accordance with Section 3.6 of this Addendum, to permit City to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. If an Individual submits a written request for an accounting of disclosures of PHI pursuant to 45 C.F.R. § 164.528 directly to Professional, or inquires about his or her right to an accounting, Professional will direct the Individual to City.

3.8 Governmental Access to Records. Professional will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Professional on behalf of, City available to the Secretary for purposes of the Secretary determining City's compliance with the Privacy Rule and the Security Rule.

3.9 Mitigation. To the extent practicable, Professional will cooperate with City's efforts to mitigate a harmful effect that is known to Professional of a use or disclosure of PHI by Professional that is not permitted by this Addendum.

3.10 Minimum Necessary. Professional will request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 45 C.F.R. § 164.514(d), and any amendments thereto.

3.11 HIPAA Final Rule Applicability. Professional acknowledges that enactment of the HITECH Act, as implemented by the HIPAA Final Rule, amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, Professional under the Privacy Rule and Security Rule. Professional agrees, as of the compliance date of the HIPAA Final Rule, to comply with applicable requirements imposed under the HIPAA Final Rule, including any amendments thereto.

SECTION 4: OBLIGATIONS OF CITY

4.1 Notice of Privacy Practices. City will notify Professional of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Professional's use or disclosure of PHI. City will provide such notice no later than fifteen (15) days prior to the effective date of the limitation.

4.2 Notification of Changes Regarding Individual Permission. City will obtain any consent or authorization that may be required by the Privacy Rule, or applicable state law, prior to furnishing Professional with PHI. City will notify Professional of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Professional's use or disclosure of PHI. City will provide such notice no later than fifteen (15) days prior to the effective date of the change.

4.3 Notification of Restrictions to Use or Disclosure of PHI. City will notify Professional of any restriction to the use or disclosure of PHI that City has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Professional's use or disclosure of PHI. City will provide such notice no later than fifteen (15) days prior to the effective date of the

restriction. If Professional reasonably believes that any restriction agreed to by City pursuant to this Section may materially impair Professional's ability to perform its obligations under the Underlying Agreement or this Addendum, the Parties will mutually agree upon any necessary modification of Professional's obligations under such agreements.

4.4 Permissible Requests by City. City will not request Professional to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the HITECH Act if done by City, except as permitted pursuant to the provisions of Sections 2.2, 2.3, 2.4 and 2.5 of this Addendum.

SECTION 5: TERM AND TERMINATION

5.1 Term. The term of this Addendum will commence as of the Effective Date, and will terminate when all of the PHI provided by City to Professional, or created or received by Professional on behalf of City, is destroyed or returned to City. If it is infeasible to return or destroy PHI, Professional will extend the protections to such information, in accordance with Section 5.3.

5.2 Termination for Cause. Upon either Party's knowledge of a material breach by the other Party of this Addendum, such Party may terminate this Addendum immediately if cure is not possible. Otherwise, the non-breaching party will provide written notice to the breaching Party detailing the nature of the breach and providing an opportunity to cure the breach within thirty (30) business days. Upon the expiration of such thirty (30) day cure period, the non-breaching Party may terminate this Addendum if the breaching party does not cure the breach or if cure is not possible. If termination is not feasible, the non-breaching party may report the breach or violation to the Secretary.

5.3 Effect of Termination.

5.3.1 Except as provided in Section 5.3.2, upon termination of the Underlying Agreement or this Addendum for any reason, Professional will return or destroy all PHI received from City, or created or received by Professional on behalf of City, at City's expense, and will retain no copies of the PHI. This provision will apply to PHI that is in the possession of subcontractors or agents of Professional.

5.3.2 If it is infeasible for Professional to return or destroy the PHI upon termination of the Underlying Agreement or this Addendum, Professional will: (a) extend the protections of this Addendum to such PHI and (b) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Professional maintains such PHI.

SECTION 6: COOPERATION IN INVESTIGATIONS

The Parties acknowledge that certain breaches or violations of this Addendum may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party will cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental

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authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

SECTION 7: SURVIVAL

The respective rights and obligations of Professional under Section 5.3 of this Addendum will survive the termination of this Addendum and the Underlying Agreement.

SECTION 8: AMENDMENT

This Addendum may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both Parties. In addition, if any relevant provision of the Privacy Rule, the Security Rule or the HIPAA Final Rule is amended in a manner that changes the obligations of Professional or City that are embodied in terms of this Addendum, then the Parties agree to negotiate in good faith appropriate non-financial terms or amendments to this Addendum to give effect to such revised obligations.

SECTION 9: EFFECT OF ADDENDUM

In the event of any inconsistency between the provisions of this Addendum and the Underlying Agreement, the provisions of this Addendum will control. In the event that a court or regulatory agency with authority over Professional or City interprets the mandatory provisions of the Privacy Rule, the Security Rule or the HIPAA Final Rule, in a way that is inconsistent with the provisions of this Addendum, such interpretation will control. Where provisions of this Addendum are different from those mandated in the Privacy Rule, the Security Rule, or the HIPAA Final Rule, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of this Addendum will control.