**PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (the “Agreement”) is made and entered into effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”), and Tarrant County Hospital District d/b/a JPS Health Network, a unit of local government and more specifically a county hospital district, created and operating under Chapter 281 of the Texas Health and Safety Code (“District”). The District and Contractor may be referred to individually as a “Party” to this Agreement and they may be referred to collectively as the “Parties” to this Agreement.

**RECITALS**

**Whereas**, the District, in furtherance of its statutory obligations to provide health care services to the indigent and needy residents of Tarrant County, Texas, owns and operates a fully accredited, integrated health delivery system that includes several hundred licensed in-patient beds at three facilities, as well as an extensive network of community-based facilities located throughout and serving the residents of Tarrant County, Texas;

**Whereas**, the District has requested proposals to provide the services described on **Schedule 1** (Scope of Services), which is attached hereto and incorporated herein for all purposes (“Services”);

**Whereas**, Contractor has presented a proposal to provide the Services to the District;

**Whereas**, Contractor has developed and maintains the expertise and resources necessary to perform and complete the Services;

**Whereas**, Contractor is a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ operated under the laws of the State of \_\_\_\_\_\_\_\_\_, is qualified to do business in the State of Texas, and is qualified and capable of performing and completing the Services; and,

**Whereas**, Contractor desires to provide the Services as so required by the District, and the District desires to contract with Contractor for the Services;

**Now, Therefore**, for and in consideration of the mutual covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the District and Contractor hereby agree as follows:

1. Services to be Performed; Applicable Standards. Contractor shall perform and complete the Services in a diligent, professional and workmanlike manner using industry best practices applicable to the performance of the Services. Furthermore, Contractor shall use only qualified personnel to perform and complete the Services. Contractor will supply at its own expense, necessary computers, software, supplies and other materials required to perform and deliver the Services to the District.
2. Fees for Services Performed. The District shall pay to Contractor fees for the Services performed and the reimbursable expenses incurred by Contractor under this Agreement as set forth in **Schedule 2** (Fees and Expenses), which is attached hereto and incorporated by reference herein. Except to the extent expressly included in reimbursable Expenses on **Schedule 2**, the District will not be required to reimburse Contractor for any salaries, consulting fees, commissions, general overhead at Contractor’s place or places of business, office rental expense, utility expenses or expenses related to computers, software, supplies and other materials required to perform and deliver the Services or used by Contractor in the performance and delivery of the Services.
3. Term and Termination.

(a) Term.  [Insert term language.]

(b) Termination for Cause. Either Party may terminate this Agreement for cause upon the occurrence of an Event of Default (as defined below) by delivery of written notice of termination to the other Party while such Event of Default continues to exist, whereupon all obligations of the District under this Agreement shall terminate, other than the payment by the District for all amounts due under this Agreement through the effective date of termination.

(c) Event of Default; Notice of Material Breach. Either Party shall be in material default under this Agreement upon the occurrence of any one or more of the following which continues to exist fifteen (15) days after a Notice of Material Breach (defined below) is given to the defaulting Party (each occurrence being a “Event of Default”): (i) a failure or refusal by a Party to timely make any payment that is required to be paid by such Party under this Agreement; (ii) a failure by a Party to perform or observe any other obligation under this Agreement; (iii) any warranty or representation of a Party in this Agreement is false or misleading in any material respect; (iv) the commencement of any insolvency, bankruptcy or similar proceedings by or against such Party (including any assignment by such Party for the benefit of creditors or the appointment of a receiver for the assets of such Party). A “Notice of Material Breach” means written notice that includes: (i) a description sufficient to identify the Event of Default to the defaulting Party; and, (ii) if not obvious from the nature of the Event of Default, the notifying Party’s specific recommendations of the actions to be (or if appropriate, not to be) taken by the defaulting Party in order for it to cure the Event of Default.

(d) Remedies for Default. Upon the occurrence of an Event of Default, the non-defaulting Party may, in addition to any and all other remedies available under law, elect to: (1) terminate this Agreement in accordance and upon compliance with the termination provisions in Section 3 of this Agreement, and/or (2) commence collection actions (including court actions) for all sums due under this Agreement, and/or (3) seek such other remedies for such Event of Default as are available at law or in equity. All rights and remedies available to a Party hereunder, by law or equity, shall be cumulative and there shall be no obligation for such Party to exercise a particular remedy.

(e) Early Termination.  The District shall have the right to terminate this Agreement without cause in its sole discretion at any time prior to such completion of the Services by giving Contractor at least thirty (30) days’ prior written notice of such termination (hereinafter referred to as “Early Termination”). In the event of Early Termination, the District will pay all fees due to Contractor under Section 2 hereof for all Services performed by Contractor in accordance with the requirements of this Agreement up to and including the date of termination. The District also shall reimburse Contractor for all expenses incurred by Contractor in the performance of Services hereunder and which are or would be due to Contractor under Section 2 hereof if Early Termination had not occurred. Contractor acknowledges and agrees that in the event of such Early Termination, Contractor will not perform any unnecessary part of the Services nor will it incur any unreasonable expenses after receiving notice of Early Termination, but Contractor will perform only those Services and incur only those expenses reasonably necessary to fulfill its obligations under Section 1 hereof and this Section 3. Nothing set forth in this Section 3 shall limit the District’s other rights or remedies.

1. Confidentiality and HIPAA.

(a) The District may disclose to Contractor in confidence or otherwise make available to Contractor certain material which is not generally known to the public (“District Confidential Information”), including, but not limited to, information pertaining to: research; pricing; procurement; distribution; personnel; compensation; financial statements or projections; business plans; contracts; systems development and implementation; scientific and mathematics techniques; infrastructure and technical configuration; security policies; methodologies and implementations; intellectual property; trade secrets; inventions; marketing plans; existing and potential clients, customers, patients, suppliers, vendors and other business relationships; and other information provided, delivered or made available by the District or otherwise accessible to Contractor.

(b) Contractor agrees to hold in confidence all District Confidential Information and to use such information only for the purpose of performing and completing the Services for the District. Furthermore, Contractor will protect the District Confidential Information received under this Agreement in the same manner and to the same extent to which it protects its own valuable proprietary information, but in all events using at least a reasonable standard of care. Contractor may not make any copies of the District Confidential Information except in the course and scope of performing and completing the Services and all District Confidential Information (including but not limited to all copies thereof) shall be promptly returned by Contractor to the District upon the termination or expiration of this Agreement, or sooner if demanded by the District.

(c) Subject to the requirements of the limitations stated in Section 12 (Texas Public Information Act) below, the District agrees to keep Contractor’s proprietary information, including all information relating to the Services, confidential and not to use such proprietary information except as contemplated under this Agreement.

(d) The confidentiality obligations in this Agreement shall not apply to information: (1) in a receiving party’s possession prior to disclosure under this Agreement unless disclosed to receiving party by the disclosing party under a prior agreement with the disclosing party for confidentiality or non-disclosure (“Prior NDA”), (2) which is or becomes publicly known through no fault on the part of receiving party, (3) received from a third party not under an obligation to the owner of such information not to disclose it, (4) independently developed by receiving party without the benefit of the information disclosed under either a Prior NDA or this Agreement (as to which receiving party has the burden of proof), (5) required to be disclosed by government regulation, statute, or judicial order, provided that prior to such disclosure and if reasonably possible, receiving party will inform the disclosing party of such requirements and permit the disclosing party to seek a protective order or other relief regarding such information, or (6) disclosed without confidentiality restrictions to any third party by or with the express permission of the disclosing party.

(e) The parties do not anticipate that Contractor will (i) create, maintain, transmit or receive protected health information for, on behalf of, or from the District in connection with this Agreement or (ii) otherwise be considered a Business Associate of the District, as that term is defined by federal regulation. Should the situation change, Contractor agrees that it will negotiate in good faith an amendment to this Agreement, including a business associate agreement, if appropriate, in each case if and to the extent required by the provisions of the Health Insurance Portability and Accountability Act, the Health Information Technology for Economic and Clinical Health Act of 2009, and/or the regulations promulgated thereunder.

(f) This Section 4 titled “Confidentiality and HIPAA” shall survive the termination or expiration of the Agreement.

1. Indemnity.

(a) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE DISTRICT, DISTRICT’S MANAGERS, OFFICERS, AGENTS, EMPLOYEES, STAFF, REPRESENTATIVES, AND DIRECTORS (COLLECTIVELY, THE “DISTRICT INDEMNITEES”) FROM ALL LOSSES (DEFINED BELOW) AND SHALL DEFEND THE DISTRICT AND DISTRICT INDEMNITEES AGAINST ALL CLAIMS AND CAUSES OF ACTION OF THIRD PARTIES ARISING OUT OF OR RELATED TO ANY OF THE FOLLOWING, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF THE DISTRICT OR DISTRICT INDEMNITEE: (i) A VIOLATION OF ANY FEDERAL, STATE, LOCAL OR FOREIGN LAW, RULE, REGULATION OR ORDER APPLICABLE TO CONTRACTOR AND/OR ITS AGENTS, EMPLOYEES OR REPRESENTATIVES; (ii) ANY VIOLATION OR BREACH BY CONTRACTOR OF ITS REPRESENTATIONS AND WARRANTIES TO THE DISTRICT IN THIS AGREEMENT; OR, THE FACT THAT ANY OF SUCH REPRESENTATIONS AND WARRANTIES CEASES TO BE TRUE AT ANY TIME PRIOR TO TERMINATION OR EXPIRATION OF THIS AGREEMENT; (iii) THE FAILURE OF CONTRACTOR TO OBTAIN, OR CAUSE TO BE OBTAINED, ANY REQUIRED LICENSES, PERMITS OR CONSENTS FOR THE DISTRICT TO RECEIVE AND USE THE SERVICES OR ANY COMPONENT THEREOF, TO THE FULL EXTENT PROVIDED IN THIS AGREEMENT, EXCLUDING ANY REQUIRED CONSENT THAT IS NOT OBTAINED DUE TO THE DISTRICT’S FAILURE TO PAY FOR SAME; AND (iv) PERSONAL INJURIES, DEATH OR DAMAGE TO TANGIBLE PERSONAL OR REAL PROPERTY TO THE EXTENT CAUSED BY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF CONTRACTOR OR ANY CONTRACTOR AGENT, EMPLOYEE OR REPRESENTATIVE. FOR PURPOSES OF THIS SECTION, THE TERM “LOSSES” MEANS ALL ASSESSMENTS, LOSSES, DAMAGES, COSTS, EXPENSES, LIABILITIES, JUDGMENTS, AWARDS, FINES, SANCTIONS, PENALTIES, CHARGES, AND AMOUNTS RESULTING FROM, OR AGREED TO BE PAID IN SETTLEMENT OF, ANY THIRD PARTY CLAIM OR ALLEGATION INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY AND OTHER LEGAL FEES AND COSTS AND EXPENSES OF INVESTIGATING OR DEFENDING AGAINST SUCH CLAIM OR ALLEGATION.

(b) CONTRACTOR AGREES TO, AND SHALL, INDEMNIFY AND HOLD THE DISTRICT HARMLESS AGAINST ANY CLAIMS, CAUSES OF ACTION, DAMAGES, AND EXPENSES TO THE EXTENT THE SAME ARISE OUT OF OR ARE ASSERTED AGAINST THE DISTRICT ALLEGING THAT ANY SERVICES PROVIDED HEREUNDER INFRINGES ANY UNITED STATES PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD-PARTY, PROVIDED THAT (1) THE DISTRICT GIVES CONTRACTOR WRITTEN NOTICE WITHIN TWENTY-ONE (21) DAYS AFTER THE DISTRICT’S ACTUAL KNOWLEDGE OF THE EXISTENCE THEREOF, OF ANY SUCH CLAIMS, DAMAGES, OR EXPENSES, AND/OR (2) THE DISTRICT AGREES TO COOPERATE REASONABLY WITH CONTRACTOR AS REASONABLY NECESSARY TO DEFEND, SETTLE, REIMBURSE, OR AVOID ANY SUCH CLAIMS, DAMAGES AND EXPENSES.

(c)  Upon timely receipt of the District’s written notice, Contractor will assume the defense of any claims against the District. The District agrees to cooperate with Contractor in the defense or settlement of all such claims.

(d)  Contractor shall not be bound by the terms of any compromise or settlement agreement negotiated or concluded by the District without the prior written consent of Contractor.

1. Exclusion and Ethics.

(a) Contractor agrees that it will immediately report in writing to the District in the event, if ever, Contractor, including any of its officers, directors, employees, contractors or agents, becomes a target of any criminal investigation or any investigation that could result in debarment or exclusion Contractor or such other person from federally or state funded healthcare programs.

(b) Contractor warrants and represents to the District that Contractor has never been:

1. convicted of a criminal offense;
2. listed by a federal agency as debarred, excluded or otherwise ineligible for federal plan participation;
3. sanctioned by any federal or state law enforcement, regulatory or licensing agency; or,
4. excluded from any state or federal healthcare program.

(c) Contractor further warrants and represents to the District that neither Contractor, nor any of Contractor’s officers, directors, members, partners, shareholders (excluding shareholders, members and limited partners that own less than 5% of the combined voting power of Contractor), employees, contractors or agents:

1. is currently under criminal investigation or any investigation that could result in debarment or exclusion from federally or state funded healthcare programs; or
2. has ever been:

(i) convicted of a criminal offense that is a felony or a misdemeanor of moral turpitude;

(ii) listed by a federal agency as debarred, excluded or otherwise ineligible for Federal plan participation;

(iii) sanctioned by any federal or state law enforcement, regulatory or licensing agency; or,

(iv) excluded from any state or federal healthcare program.

(d) In the event that any of the foregoing representations in this Section 6(b) or (c) ceases to be true, Contractor will immediately report same in writing to the District.

(e) Upon receipt of any report required by Contractor hereunder or in the event of a failure to report by Contractor, the District may without penalty terminate this Agreement and other than the payment of any amounts due and owing through the date of termination, the District shall have no further obligations or liabilities hereunder.

1. Availability of Records. To the extent required by 42 U.S.C. § 1395x(v)(1)(I), until the expiration of four (4) years after the furnishing of any services provided under this Agreement, Contractor shall make available, upon written request by the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) or by the U.S. Comptroller General (the “Comptroller General”), or by their respective duly authorized representatives, this Agreement, and all books, documents and records of Contractor that are necessary to certify the nature and extent of the costs of such services. If Contractor carries out the duties of this Agreement through a permitted subcontract worth $10,000 or more over a 12-month period with a related organization, to the extent required by 42 U.S.C. § 1395x(v)(1)(I), such subcontract also shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.
2. Work Product and Inventions.  All materials and/or other information developed, generated or produced, in whole or part, by Contractor (including the employees, independent contractors or agents of Contractor) in performing and completing the Services including, but not limited to, all documentation, flow charts, diagrams, specifications, descriptions, definitions, reports, and data (collectively, the “Work Product”) and any invention, product, computer program or specification, whether patentable or unpatentable, made, conceived or first actually or constructively reduced to practice, in whole or part, by Contractor (including the employees, independent contractors or agents of Contractor) in performing and completing Services (individually, an “Invention” and collectively, the “Inventions”), shall be the District’s sole and exclusive property. Contractor shall perform all acts that may be deemed reasonably necessary or desirable by the District to evidence that the Work Product and Inventions are ‘works made for hire’ and/or to more fully transfer ownership to the District of the Work Product and Inventions.
3. Contractual Relationship Only.  Neither Party is the legal representative or agent of the other, nor shall either Party have the right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied, against, or in the name of or on behalf of the other Party. No agency, partnership, joint venture, or employment is created as a result of this Agreement. Furthermore, the District shall not be responsible for paying or withholding any taxes, fees or other amounts, with respect to the amounts paid to Contractor or for paying any compensation or benefits to or providing insurance for any of Contractor’s employees or contractors. Contractor agrees to defend, indemnify and hold harmless the District, and its managers, directors, officers, employees, agents, and representatives, against any and all losses, liabilities, claims, allegations, demands, causes of action, judgments, awards and costs (including but not limited to legal fees and expenses) (collectively “Claims”) arising out of or related to the employment or contract relationship of any of Contractor’s employees and independent contractors including but not limited to Claims for salary/wages, vacation pay, sick leave, retirement benefits, social security, worker’s compensation, health or disability benefits, unemployment insurance benefits, or employee compensation or benefits of any kind.
4. Annual Budget.  The Parties acknowledge and agree that the District is a governmental entity that is subject to an annual budgetary process and restrictions on spending in conformity with that process, its approved budget and applicable law. The Parties further agree that, notwithstanding anything to the contrary in this Agreement, if for any reason funds are not expressly and specifically allocated for this Agreement in the District’s formally and finally approved budget in any fiscal year subsequent to that in which funds for this Agreement were first allocated, the District may immediately and without penalty terminate this Agreement; provided, however, that in no event shall such a termination be effective earlier than the last date for which funds have already been so allocated under an existing formally and finally approved budget. Should the Agreement terminate under the provisions of this section titled “Annual Budget”, the District will provide Contractor with written notice as soon as is reasonably possible of the pending termination under this section, the effective date of which shall be at the end of the District’s fiscal year in which funds had previously been allocated unless the District states a later effective date of termination and, other than the payment of any amounts due and owing through the date of termination, the District shall have no further obligations or liabilities hereunder.
5. Tax Exemption.  Contractor recognizes that the District qualifies as a tax-exempt governmental agency pursuant to Section 151.309 of the Texas Sales, Excise, and Use Tax Code, and is not responsible for payment of any amounts accountable or equal to any federal, state or local sales, use, excise, personal property, or other taxes levied on any transaction or article provided for by this Agreement.
6. Texas Public Information Act.  Contractor acknowledges that the District is a governmental body under Chapter 552 of the Texas Government Code and thereby acknowledges that certain information that is collected, assembled, or maintained in connection with the transaction of official business by a governmental body is considered public information potentially subject to disclosure pursuant to a valid Texas Public Information Act (“TPIA”) request and hereby assumes full responsibility for challenging any requests for information it considers confidential under Chapter 552. Contractor’s confidential information, which may include, but is not limited to, any trade secrets, financial information, and related proprietary information, (“Confidential Information”) that is provided by Contractor to the District under the terms of this Agreement may be subject to the exception to disclosure applicable to the District under Chapter 552 of the Texas Government Code, Subchapter C. If a TPIA request for public information is made on the District to disclose documents or information which contain what Contractor has identified to the District to be, or is otherwise believed by the District to be Confidential Information, the District agrees to (i) promptly notify Contractor of such request for disclosure, and (ii) decline any such request for disclosure of such Confidential Information and file a written request with the Texas Attorney General’s office seeking a determination as to whether such disclosure may be withheld; provided, however, failure to notify by the District shall not be deemed a material breach of the Agreement. The District is not required to take any further action with respect to any request made for determination by the Attorney General, and after any such request is made, all responsibility for briefing, supplementing and challenging the results of any requests to the Attorney General shall be Contractor’s sole responsibility.
7. Chapters 2271, 2252, and 2274 Texas Government Code Verification.  
   1. *Boycott of Israel Prohibited*. In compliance with Section [2271.001](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2271.htm) et seq. of the Texas Government Code, Contractor verifies that neither it nor any of its affiliates currently boycott Israel and neither it nor any of its affiliates will boycott Israel during the term of this Agreement. “Boycott Israel” is defined in Section [808.001(1)](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.808.htm) of the Texas Government Code.
   2. *Scrutinized Business Operations Prohibited*. In compliance with Section [2252.151](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm#2252.151) et seq. of the Texas Government Code, Contractor warrants and represents that: (1) neither Contractor nor any of its affiliates engages in scrutinized business operations in Sudan; (2) neither Contractor nor any of its affiliates engages in scrutinized business operations in Iran; and (3) neither Contractor nor any of its affiliates engages in scrutinized business operations with designated foreign terrorist organizations. “Scrutinized business operations in Sudan” is defined in Section [2270.0052](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2270.htm#2270.0052) of the Texas Government Code. “Scrutinized business operations in Iran” is defined in Section [2270.0102](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2270.htm#2270.0102) of the Texas Government Code.  “Scrutinized business operations with designated foreign terrorist organizations” is defined in Section [2270.0152](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2270.htm#2270.0152) of the Texas Government Code. Contractor further represents and warrants that neither Contractor nor any of its affiliates appears on any of the Texas Comptroller’s [Scrutinized Companies Lists](https://comptroller.texas.gov/purchasing/publications/divestment.php).
   3. *Boycott of Certain Energy Companies Prohibited*. In compliance with Section [2274.002](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2274.v2.htm) of the Texas Government Code (added by 87th Legislature, S.B. 13), Contractor verifies that neither it nor any of its affiliates currently boycott energy companies and neither it nor any of its affiliates will boycott energy companies during the term of this Agreement. “Boycott energy company” is defined in Section [809.001(1)](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.809.htm#809.001) (added by 87th Legislature, S.B. 13) and means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or  manufacturing of  fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by subsection (A).
   4. *Discrimination against Firearm Entities or Firearm Trade Associations Prohibited*. In compliance with Section [2274.002](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2274.v3.htm#2274.002) of the Texas Government Code (added by 87th Legislature, S.B. 19), Contractor verifies that neither it nor any of its affiliates have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and neither it nor any of its affiliates will discriminate during the term of the Agreement against a firearm entity or firearm trade association. “Discriminate against a firearm entity or firearm trade association” is defined in Section [2274.001(3)](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2274.v3.htm#2274.001) (added by 87th Legislature, S.B. 19) and means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; the term *does not include*: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association.
8. Applicable Law and Venue.  The Parties agree that this Agreement is subject to, and agree to comply with, applicable local, State of Texas, and federal statutes, rules and regulations.  THIS AGREEMENT BETWEEN THE PARTIES SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, USA, WITHOUT REFERENCE TO ITS LAWS RELATING TO CONFLICTS OF LAW.  Any legal action arising out of or relating to the Agreement shall be brought only in the state or federal courts located in Tarrant County, Texas, and the Parties irrevocably consent to the jurisdiction and venue of such courts.
9. Prohibition on Use of Name and Logo.  Contractor agrees that it will not, without the prior written consent of the District, use the names, logos, symbols, trademarks or service marks of the District, including but not limited to those associated with JPS Health Network, for any purposes or uses (expressly including but not limited to for Contractor’s advertising, promotion or other marketing) other than those reasonably related to performing and completing the Services. This section titled “Prohibition on Use of Name and Logo” shall survive the termination or expiration of this Agreement.
10. Insurance.  During the term of this Agreement Contractor will maintain commercial general liability and/or directors and officers insurance and professional liability insurance each in a coverage amount not less than One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) in the aggregate. Furthermore, upon the execution of this Agreement and upon request any time thereafter, Contractor will furnish a then current certificate(s) of insurance.
11. Assignment Prohibited.  Contractor may not, without the prior written consent of the District, assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, and any attempt to do so shall be void and deemed a material breach of this Agreement.
12. Non-Waiver.  No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. No delay in exercising, no course in dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof. No failure or refusal of any approval referenced in this Agreement shall excuse or relieve the performance or other responsibilities of the other Party.
13. Severability. Without limiting this section of the Agreement, if any provision of this Agreement, or the application thereof to any person or circumstance, is held to be illegal, invalid or unenforceable for any reason, and the basis of the bargain among the Parties is not thereby destroyed, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement that can be given effect in the absence of the illegal, invalid or unenforceable provision or application. To this end, all provisions of this Agreement are declared to be severable.
14. Termination Right.  In the event of a change-in-control (defined below), the District may without penalty terminate this Agreement and other than the payment of any amounts due and owing through the date of termination, the District shall have no further obligations or liabilities hereunder. A “change-in-control” means that (a) there occurs a reorganization, merger, consolidation or other corporate transaction involving Contractor (a “Corporate Transaction”), in each case with respect to which the owners of Contractor immediately prior to such Corporate Transaction do not, immediately after the Corporate Transaction, own more than 50% of the combined voting power of Contractor or any other entity resulting from such Corporate Transaction; or, (b) all or substantially all of the assets of Contractor are sold, liquidated or distributed.
15. Notices.  All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given (a) when received by the Party to whom directed; (b) when sent by fax transmission to the following fax numbers or by email to the following emails; or (c) when deposited in the United States mail when sent by certified or registered mail, return receipt requested, postage prepaid to the following addresses (or at such other addresses or fax numbers as shall be given in writing by either Party to the other):

If to the District: Tarrant County Hospital District

Attn: President and CEO

1500 S. Main St.

Fort Worth, TX 76104

Telephone: (817) 927-1234

Fax: (817) 924-1207

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: (\_\_\_) \_\_\_\_\_\_\_\_\_\_\_

Fax: (\_\_\_) \_\_\_\_\_\_\_\_\_\_\_\_

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

1. Entire Agreement; Amendment. This Agreement (i) represents the entire understanding and agreement of the Parties hereto with respect to the matters contained herein, and (ii) may be amended, modified or waived only by a separate writing executed by the Parties expressly so amending, modifying or waiving this Agreement.
2. Binding Agreement.  This Agreement binds and inures to the benefit of the Parties, and their respective successors and permitted assigns.
3. Headings and Captions.  The subject headings of the sections, paragraphs, and subparagraphs of this Agreement are included herein solely for the purposes of convenience and reference, and shall not be deemed to explain, modify, limit, amplify, or aid in the meaning, construction, or interpretation of any of the provisions of this Agreement.
4. Definition of Person.  For purposes of this Agreement, “Person” means any natural person, corporation, limited liability company, association, partnership, joint venture, proprietorship, governmental agency, trust, estate or other entity or corporation, whether acting in an individual, fiduciary or other capacity.
5. Taxes.  The fees payable by the District to Contractor hereunder are inclusive of any sales, use, gross receipts or value added, withholding, ad valorem or other taxes based on or measured by Contractor’s cost in acquiring equipment, materials, supplies or services used by Contractor in performing and completing the Services, plus all interest, penalties and other amounts levied thereon by a governmental agency for late payment or otherwise. Further, each Party shall bear sole responsibility for any real or personal property taxes on any property it owns or leases, for franchise or similar taxes on its business, for employment taxes on its employees, for intangible taxes on property it owns or licenses, and for taxes on its net income.
6. Compliance with Laws.  In providing the Services required by this Agreement, Contractor shall observe and comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations, including, without limitation, workers’ compensation laws, minimum and maximum salary and wage statutes and regulations, and non-discrimination laws and regulations. Contractor shall be responsible for ensuring its compliance with any laws and regulations applicable to its business, including maintaining any necessary licenses and permits.
7. Use of Words.  Whenever necessary in this Agreement and where the context requires, the gender of words shall include the masculine, feminine, and/or neuter, and the number of all words shall include the singular and the plural.
8. Counterparts.  This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original, and all of which shall, for all purposes constitute one and the same instrument.
9. Further Assurances and Cooperation.  During the term of this Agreement, each Party shall exercise commercially reasonable efforts to cooperate with the other Party in the performance by the other Party of its respective duties and obligations under this Agreement. Neither Party shall unreasonably withhold or delay any consent, approval or request by the other Party required under this Agreement. Further, the Parties shall deal and negotiate with each other in good faith in the execution and implementation of their respective duties and obligations under this Agreement.
10. Construction.  This Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.
11. No Third Party Beneficiary Status.  The terms and provisions of this Agreement are intended solely for the benefit of each Party hereto and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third party beneficiary rights upon any other Person.
12. Attorney’s Fees and Court Costs.  Each Party shall bear and pay for all attorneys’ fees, costs and expenses incurred in the negotiation and execution of this Agreement. If either Party brings an action against the other to enforce any condition or covenant of this Agreement, each Party shall be individually responsible for its own court costs and attorney’s fees.
13. Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT OR IN CONNECTION WITH THE USE OF THE SERVICES.
14. Electronic Signatures; Facsimile and Scanned Copies; Duplicate Originals; Counterparts; Admissibility of Copies. Each Party agrees that: (i) any electronic signature (if any), whether digital or encrypted, to this Agreement made by any Party is intended to authenticate this Agreement and shall have the same force and effect as an original manual signature; and (ii) any signature to this Agreement by any Party transmitted by facsimile or by electronic mail shall be valid and effective to bind that Party so signing with the same force and effect as an original manual signature. Delivery of a copy of this Agreement or any other document contemplated hereby bearing an original or electronic signature by facsimile or electronic transmission, will have the same effect as physical delivery of the paper document bearing an original or electronic signature. This Agreement may be executed in multiple duplicate originals and all such duplicate originals shall be deemed to constitute one and the same instrument. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall be deemed to constitute a single instrument. The Parties warrant and represent that a true and correct copy of the original of this Agreement shall be admissible in a court of law in lieu of the original Agreement for all purposes of enforcement hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, in duplicate originals with one original being delivered to each Party, to be effective on the Effective Date.

|  |  |
| --- | --- |
| **Contractor:**  [full legal name]  By:  Name:  Title:  Date: | **District:**    Tarrant County Hospital District  d/b/a JPS Health Network  By:  Name:  Title:    Date: |

Professional Services Agreement 120121.docx

**Schedule 1**

**Scope of Services**

(Insert a detailed description of the Scope of Services here.)



**Schedule 2**

**Fees and Expenses**

**1.         Caps on Fees and Expenses.** Contractor has agreed that the:

(a)        total Fees (defined below) payable by the District for the Services will not exceed \_\_\_\_\_\_\_\_\_\_\_\_\_ and 00/100 Dollars ($\_\_\_\_\_\_\_\_\_\_\_) (“Cap on Total Fees”); and,

(b)        total Expenses payable or reimbursable by the District will not exceed an amount equal to \_\_\_\_\_\_% of the total Fees billed to the District at any point in time and in no event will exceed an amount equal to \_\_\_\_\_\_% of the Cap on Total Fees (“Cap on Total Expenses”).

**2.         Monthly Invoices – Fees.** Contractor will invoice the District monthly for the amount of time actually expended during the applicable monthly period by its personnel providing the Services (that has not been previously invoiced) based on Contractor’s standard hourly rates as reflected on **Schedule “2-A”** attached to the Agreement and incorporated herein for all purposes (“Fees”); provided that in no event will Contractor invoice the District for any Fees in excess of the Cap on Total Fees.

**3.         Monthly Invoices – Expenses.** In addition to the Fees, Contractor will invoice the District monthly for the Reimbursable Expenses (defined below and collectively referred to as the “Expenses”) incurred during the applicable monthly period in performing the Services; provided that in no event will Contractor invoice the District for any Expenses in excess of the Cap on Total Expenses.

The “Reimbursable Expenses” means those reasonable and necessary out-of-pocket expenses for travel, hotel rooms, and meals, actually incurred by Contractor to perform and complete the Services, which, without the prior approval of the District, shall exceed neither (i) the set percentage of the total Fees billed to the District (up to the Cap on Total Expenses), nor (ii) the applicable per diem lodging rates and per diem meals and incidental expense rates established by the General Services Administration (“GSA”) for Tarrant County, Texas. Current GSA per diem lodging rates and per diem meals and incidental expense rates can be found at https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup.

**4.         Monthly Invoices – Payment Deadlines.** Amounts invoiced as set forth herein are payable by the District within thirty (30) business days of receipt; provided, however, that once the District has been invoiced and has paid \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_/100 Dollars ($\_\_\_\_\_\_\_\_\_) for Fees, no additional Fees are payable by the District regardless of when invoiced until twenty (20) business days of completion of the Services, as evidenced by Contractor’s delivery to the District of the final Report.



**Schedule 2-A**

**Contractor’s Standard Rates and Profiles**

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[List the persons or categories of persons performing the Services and their respective hourly rates or other basis of determining the Fees.]