



**MANAGEMENT AND OPERATIONS AGREEMENT**  
**BETWEEN**  
**TEXAS GENERAL LAND OFFICE AND VETERANS LAND BOARD**  
**AND TEXAS VSI, LLC**  
**FOR THE**  
**USSERY-ROAN TEXAS STATE VETERANS HOME**  
**AMARILLO, TEXAS**  
**GLO CONTRACT No. 25-004-000-E513**

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## MANAGEMENT AND OPERATIONS AGREEMENT

This Management and Operations Agreement (“Agreement”) is executed between the **TEXAS GENERAL LAND OFFICE AND VETERANS LAND BOARD** (collectively, “the Board”), and **TEXAS VSI, LLC**, Texas Identification Number (TIN) **14754931690** (“Operator”), each a “Party” and collectively “the Parties.”

### RECITALS

**WHEREAS**, the Board has selected Operator to engage in the operation of the Ussery-Roan Texas State Veterans Home, in Amarillo, Texas (the “Veterans Home”);

**WHEREAS**, the Board desires to engage Operator to manage and operate the Veterans Home on behalf of the Board; and

**WHEREAS**, subject to the terms and provisions set forth below, Operator desires to assume, for receipt of the consideration to be later provided for by an Amendment to this Agreement, and the Board is willing to grant Operator, responsibility for the management and operation of the Veterans Home;

**NOW, THEREFORE**, in consideration of the foregoing promises and mutual covenants of the Parties set forth in this Agreement, the receipt and sufficiency of which are expressly acknowledged by each of the Parties, it is hereby agreed as follows:

### ARTICLE I. GENERAL PROVISIONS

#### 1.01 DEFINITIONS

Unless the context clearly requires otherwise, the capitalized terms defined below shall have the following meanings:

“[Administrator](#)” means a nursing facility administrator licensed by the State of Texas and employed by Operator.

“[Administrative and Audit Regulations](#)” means all applicable statutes, regulations, and other laws governing administration or audit of this Contract, which may include Title 2, Part 200, Title 38, Part 51, and Title 45, Parts 161 and 164 of the Code of Federal Regulations and Chapter 321 and Title 10, Subtitles D and F of the Texas Government Code.

“[Affiliate](#)” means any individual or entity that, directly or indirectly, is in control of, is controlled by, or is under common control with, Operator or the Board. Operator or the Board shall be deemed to control another entity if either possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other entity, whether through the ownership of voting securities, membership interests, by contract, or otherwise.

“[Agreement](#)” means this Management and Operations Agreement.

“[Applicable Law](#)” means any law, statute, ordinance, rule, regulation, order or determination of Regulatory Agencies, or any recorded covenant or deed restriction applicable to the Veterans Home.

“[Average Daily Census](#)” means for a period the number obtained by adding the number of Residents in the Veterans Home for each day of a defined period and dividing this sum by the number of days in the period.

“[Bankruptcy Code](#)” means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. §101, et seq.).

“[Board](#)” means the Texas General Land Office and the Veterans Land Board.

“[Capital Equipment](#)” means Equipment, the cost of which for a single unit equals or exceeds \$2,500.00 before taxes, if applicable.

“[Capital Expenditures](#)” means expenditures for Capital Equipment and/or Capital Improvements.

“[Capital Improvement](#)” means (i) any Improvement, the cost of which is equal to or exceeds \$2,500.00 before taxes, if applicable, and/or (ii) any Improvement, the cost of which for a single addition or alteration is less than \$2,500.00, and is required by a Regulatory Agency in multiples, the aggregate cost of which exceeds \$2,500.00, before taxes, if applicable.

“[C.F.R.](#)” means Code of Federal Regulations.

“[Committee](#)” means the peer review and quality assurance committee as provided for under Section 151.002 of the Texas Medical Practice Act (Chapter 151 of the Texas Occupations Code) and Section 161.031 of the Texas Health and Safety Code.

“[Consumables](#)” means goods such as medical supplies and other items including, without limitation, food, non-prescription medications, dressings, printed forms, soap, and disposable diapers, which are routinely used and replenished as required to operate the Veterans Home.

“[Date of Separation](#)” means Operator’s last physical day of operation under this Agreement.

“[Director of Nursing](#)” means the individual responsible for nursing care who is a registered nurse, licensed by the State of Texas and employed by Operator.

“[Equipment](#)” means all items necessary for the functioning of all services of the Veterans Home, including information technology equipment required for accounting and record keeping, and items necessary for the maintenance of buildings and grounds. “Equipment” does not include Consumables.

“[Equivalent Insurance](#)” means an insurance plan that provides substantially the same benefits for skilled nursing facility care, ancillary services, and therapy services as Medicare Part A or Medicare Part B, as applicable, but does not include the enhanced per diem for SCD residents.

“[Event of Default](#)” means those events enumerated in **ARTICLE IX**.

“[Filed Cost Report](#)” means a cost report settlement for a defined period filed with Medicare and Medicaid consistent with the terms of this Agreement and the regulations contained in the Medicare Provider Reimbursement Manual (CMS Pub. 15-2).

“[Fixed Fee Component](#)” means the monthly fee component shown on **Schedule 8.02**.

“[Force Majeure](#)” means the occurrence of any of the following for the period of time, if any, that the performance of Operator or the Board’s material obligations under this Agreement are actually, materially, and reasonably delayed or prevented thereby:

- (i) acts of God; the enactment, imposition, or modification of any Applicable Law which occurs after the effective date of this Agreement and that prohibits or materially impedes the performance of a Party’s material obligations under this Agreement;
- (ii) the confiscation, seizure, or condemnation of the Veterans Home by any governmental agency;
- (iii) arrests or other restraints of government (civil or military, but excluding restraints on the performance of a Party’s material obligations under this Agreement occurring as a result of any violations by the Party claiming the right to delay performance of the terms and provisions of this Agreement);
- (iv) blockades, insurrections, riots, or civil disturbances; epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, wash-outs, explosions, nuclear reaction, radiation, or radioactive contamination; acts or the failure to act of any governmental agency (exclusive of the Board’s actions pursuant to this Agreement); or
- (v) any other causes, whether of the kind herein enumerated or otherwise, which are not reasonably within the control of the Party (or any Affiliate actually controlled by such Party) claiming the right to delay performance on account of such occurrence and which, in any event, are not foreseeable or a result of the negligence or willful misconduct of, or in the control of, the Party (or its Affiliates) claiming the right to delay performance on account of such occurrence.

**Force Majeure shall not include:**

- (i) increases in costs of materials for operations of the Veterans Home or other costs required to be paid by a Party in the performance of its obligations under this Agreement;
- (ii) a Party’s financial inability to perform (including when caused by failure of government authority to act); or
- (iii) the impact of weather conditions to the extent normally encountered in the Amarillo, Texas, area.

“[GAAP](#)” means “Generally Accepted Accounting Principles” as set forth from time-to-time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

“[GASB](#)” means the Governmental Accounting Standards Board.

“[General Affirmations](#)” means the statements in **Attachment D**, attached hereto and incorporated herein for all purposes, which Operator affirms by executing this Agreement.

“[HHSC](#)” means the Texas Health and Human Services Commission.

“[HIPAA](#)” means the Health Insurance Portability and Accountability Act of 1996, and associated regulations located at 45 C.F.R. Parts 160 and 164.

“[HSP](#)” means HUB Subcontracting Plan, as outlined by Chapter 2161 of the Texas Government Code.

“[HUB](#)” means Historically Underutilized Business, as defined by Section 2161.001 of the Texas Government Code and 34 TAC §20.282.

“[Improvement](#)” means any addition or alteration of the buildings or grounds of the Veterans Home.

“[Information Systems](#)” means an integrated set of components for collecting, storing, and processing for providing information concerning administrative functions of Veterans Homes.

“[Information Technology Equipment](#)” means all hardware, computers, computer components (monitors, mice, keyboards, memory, storage drive(s), media, etc.) routers, network equipment, transmission equipment, cabling, wiring, software, and related items.

“[Insolvency Proceeding](#)” means with respect to Operator:

- (i) any case, action, or proceeding with respect to Operator before any court or other governmental authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up, or relief of debtors; or
- (ii) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other similar arrangement with respect to its creditors generally, or any substantial portion of its creditors; undertaken under Federal, state, or foreign law, including the Bankruptcy Code.

“[Maintenance](#)” means performing all scheduled, routine, and preventive maintenance on all Equipment, Improvements, and appurtenances thereto, and maintaining them in at least as good a condition as that in which they were delivered, allowing for reasonable wear and tear, but excluding Repairs.

“[Material Compliance](#)” means to comply with any essential element(s) proscribed or directed by any statute, regulation, procedure, and/or standard pertaining to this Agreement.

“[Medicaid Pending Resident](#)” means a Resident with a Medicaid application pending approval by HHSC.

“[Medical Director](#)” means a director of medicine licensed by the State of Texas and credentialed by the USDVA.

“[Monthly Census Report](#)” means the report accurately detailing the total number of Residents in the Veterans Home for each day of the month.

“[Non-Capital Equipment](#)” means any Equipment that is not Capital Equipment.

“[Non-Capital Improvements](#)” means any Improvement that is not a Capital Improvement.

“[Nursing Home Information Privacy and Security Appendix](#)” means the requirements involving the protection of residents’ health-related information as specified in **Attachment E**.

“[O&M Manual](#)” means the Veterans Home’s Equipment Operating and Maintenance Manual.

“[On-Site Representative](#)” or “[OSR](#)” means the designated Board employee who will maintain an office in the Veterans Home to oversee the operations of the Veterans Home on the Board’s behalf.

“[Operating Expenses](#)” means all expenses associated with the operation and management of the Veterans Home except Capital Expenditures and depreciation.

“[Operations Fee](#)” means the monthly operation and management fee payable by the Board to Operator.

“[Operator](#)” means Texas VSI, LLC, the entity contracted to manage and provide all the services at the Veterans Home, as set forth in this Agreement.

“[Operator Action Request](#)” or “[OAR](#)” means the form Operators must complete to request prior approval from the Director of the Texas State Veterans Homes Program for any purchases, changes, repairs or renovations to equipment or the Veterans Home.

“[Operator Request for Reimbursement](#)” or “[ORR](#)” means the form Operators must complete to request reimbursement from the Veterans Homes Program Deputy Director for an approved purchase, change, repair or renovation to equipment or the Veterans Home.

“[Pharmacy](#)” means the entity under contract with the Board to supply prescription medications, over-the-counter medications, and medical supplies as specified in **Attachment A**.

“[Protected Health Information](#)” has the same meaning as “protected health information” such term is defined in HIPAA, 45 C.F.R. §160.103.

“[Regulatory Agency/Agencies](#)” means the Center for Medicare and Medicaid services (“CMS”), the United States Department of Health and Human Services (“HHS”), the Texas Health and Human Services Commission (“HHSC”), the United States Department of Veterans Affairs (“USDVA”), and any other applicable governmental agency.

“[Repair](#)” means to restore to proper working condition any Equipment or Improvement.

“[Resident](#)” means a person who meets the eligibility requirements and is admitted to the Veterans Home to receive skilled nursing care services.



“[Resident Council](#)” means the collective group of Residents elected by the entire Resident population to represent the Residents in the scheduling of activities, acceptance of goods or funds, and purchase of items for use by the Resident population.

“[Responsible Party](#)” means a person other than the Resident who agrees in writing to be financially responsible for all unpaid balances owing as a result of the care provided in the Veterans Home by Operator.

“[Sentinel Event](#)” means an unexpected occurrence involving death or serious physical or psychological injury, or the risk thereof.

“[Service Connected Disability](#)” or “[SCD](#)” means a disability as defined under 38 U.S.C. § 101(16).

“[Short Period Internal Cost Report](#)” means an interim cost report settlement filed with Medicare and Medicaid consistent with the terms of this Agreement and the regulations contained in the Medicare Provider Reimbursement Manual (CMS Pub. 15-2).

“[Solicitation](#)” means GLO Request for Proposals (“RFP”) No. 1914-JW, incorporated herein by reference.

“[Solicitation Response](#)” means Operator’s full and complete response to GLO RFP No. 1914-JW which is incorporated herein by reference.

“[Standard of Care](#)” means quality of care consistent with the standards of a reasonably prudent operator and in accord with all standards set forth by applicable Regulatory Agencies. Such standards shall define the minimum standards of care required to be provided in the Veterans Home. Operator shall meet or exceed these standards of care.

“[T.A.C.](#)” means the Texas Administrative Code.

“[TELS](#)” means the web-based facility management system implemented by the Veterans Land Board.

“[Timely Billing](#)” means billing Medicare, Medicaid, the Board, USDVA or any other Responsible Party within fourteen (14) days after the close of the monthly billing cycle in which the services are performed. However, notwithstanding the preceding sentence, billing for per-diem reimbursement must be received by the Board within the first three (3) business days of each month and must be filed with the USDVA by the close of the fifth (5th) business day of each month.

“[Transition Plan](#)” means a comprehensive plan to assure the proper care of the Residents of the Veterans Home, for a period not to exceed one hundred twenty (120) days, in the event of transfer of operation and management of the Veterans Home to a new operator upon the expiration or termination of this Agreement for any reason.

“[USDVA](#)” or “[VA](#)” means the United States Department of Veterans Affairs.

“[Utilities](#)” means water, wastewater, natural gas, electricity, sewer, fuels (including diesel oil, propane, and gasoline), telephone, cable television or satellite system, garbage disposal, and related items.

“[Variable Fee Component](#)” means the calculated per-Resident per-day fee shown on **Schedule 8.02**.

“[Veterans Home](#)” means the Texas State Veterans Home in Amarillo, Texas.

“[Veterans Home Records](#)” means all of the books and records pertaining to the operation of the Veterans Home.

## **1.02 INTERPRETIVE PROVISIONS**

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Agreement as a whole and not to any particular provision section, exhibit, or schedule of this Agreement unless otherwise specified;
- (c) The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Agreement, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;
- (d) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement;
- (e) All exhibits and schedules referenced in this Agreement are attached hereto and are considered part of the terms of this Agreement;
- (f) This Agreement may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with their terms;
- (g) Unless otherwise expressly provided, any reference to any action of the Board or by the Board by way of consent, approval, or waiver shall be deemed modified by the phrase “in its/their sole discretion.” Notwithstanding the preceding sentence, any approval, consent, or waiver required by or requested of the Board shall not be unreasonably withheld;
- (h) Unless otherwise expressly provided, if any provision under this Agreement states that Operator must comply with all requirements of a statute, regulation, Regulatory Agency, or similar standard, such provision shall mean that Operator must be in Material Compliance with such requirements; and
- (i) In the event of conflicts or inconsistencies between this Agreement and its attachments, such conflicts or inconsistencies shall be resolved by reference to the Agreement and attachments in the following order of priority: Signed Agreement, including its attachments in the following order: **Schedule**

**8.02; Attachment A; Attachment C; Schedule 2.08; Schedule 3.02; Attachment B; Attachment D; Attachment E; the Solicitation, and the Solicitation Response.**

**1.03 ACCOUNTING PRINCIPLES**

Unless the context otherwise clearly requires, all accounting terms shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP or GASB, as applicable, consistently applied.

**ARTICLE II. AUTHORITY AND CONDITIONS PRECEDENT**

**2.01 MANAGER AND OPERATOR**

The Board, pursuant to its authority under TEX. NAT. RES. CODE § 164.005, hereby engages Operator, and Operator hereby accepts such engagement and agrees to operate and manage the Veterans Home on behalf of the Board, under the terms and conditions set forth in this Agreement.

**2.02 RELATIONSHIP OF THE PARTIES**

The relationship of the Parties shall be that of the Board as owner and of Operator as independent contractor. All acts performed by Operator during the term of this Agreement as Operator of the Veterans Home shall be deemed to be performed in its capacity as an independent contractor. Nothing contained in this Agreement is intended to or shall be construed to give rise to, or to create a partnership or joint venture, or to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the Board whatsoever with respect to the indebtedness, liabilities, and obligations of Operator or any other party. Operator shall be solely responsible for, and the Board shall have no obligation with respect to:

- (i) Withholding of income taxes, FICA, or any other taxes or fees;
- (ii) Industrial or workers' compensation insurance coverage or the equivalent thereof (which Operator may self-insure);
- (iii) Participation in any group insurance plans available to employees of the State of Texas;
- (iv) Participation or contributions by the State of Texas to the State Employees Retirement System;
- (v) Accumulation of vacation leave or sick leave; or
- (vi) Unemployment compensation coverage provided by the State of Texas.

**2.03 RETENTION OF AUTHORITY BY THE BOARD**

Operator shall manage and operate the Veterans Home in the name of, and for the account of, the Board. Notwithstanding any other provision of this Agreement, by entering into this Agreement, the Board does not delegate to Operator any powers, duties, or responsibilities that it is prohibited by law from delegating. The Board also retains such other authority and control that has not been expressly delegated

to Operator pursuant to this Agreement. The Board shall at all times maintain ownership of the assets, and ultimate control over the operation, of the Veterans Home.

#### **2.04 REGULATORY COMPLIANCE**

Operator understands that as a material condition of this Agreement and for the purposes of Section 8.03 and **ARTICLE IX**, Operator shall comply with all applicable regulatory requirements for the operation of long-term care facilities including, without limitation:

- (a) 38 C.F.R. §17.190 *et seq*;
- (b) 38 C.F.R. §51.1 *et seq.*;
- (c) 42 C.F.R. Part 483;
- (d) 45 C.F.R. Parts 160 and 164;
- (e) Texas Health and Safety Code Chapters 181 and 242; and
- (f) 26 Texas Administrative Code Part 1, Chapter 554.

Operator will be deemed to have knowledge of these laws and regulations and be deemed to understand them.

#### **2.05 LICENSING**

If applicable, Operator shall obtain and maintain all licenses, permits, qualifications, certifications, and approvals from any applicable governmental or Regulatory Agency required for the operation of the Veterans Home. Operator shall file annually with the Board current copies of all required licenses and certifications and make them available for inspection by the Board.

#### **2.06 OPERATIONAL POLICIES**

Operator shall submit for the Board's review Operator's current policies, procedures, protocols, and forms, consistent with all applicable procedural and regulatory guidelines, including those described herein, before the execution of this Agreement. Operator will forward to the Board copies of all plans, policies, and procedures at least annually including, as they are enacted, copies of any supplements, changes, or alterations. Operator shall make any required information available to the Board in portable document format (.pdf) files or any other format agreed upon between the Parties. Operator further agrees to comply with its current procedures for reviewing and updating all plans, policies, procedures, and protocols, which calls for all plans, policies, procedures, protocols, and forms to be reviewed by Operator for regulatory and procedural compliance on an as-needed basis. Any policies, procedures, and forms developed under this Agreement, including any updates, will be the property of the Board and, in the event of the cancellation or termination of this Agreement, will remain so. Operator's policies, procedures, protocols, and forms not developed under this Agreement remain the proprietary information of Operator and the Board agrees that any request for such policies, procedures, protocols, and forms will be subject to all protections provided to third-party interests under the Texas Public Information Act (Chapter 552 of the Texas Government Code).

**2.07 BOARD’S ON-SITE REPRESENTATIVE (“OSR”)**

The Board shall have the right under this Agreement to designate an OSR who shall have a physical presence at the Veterans Home. The OSR shall have the right to participate in Operator’s staff meetings regarding the operations of the Veterans Home, and who shall be informed of all Resident complaints. However, nothing herein shall be construed as limiting the right of Operator to conduct confidential meetings with its managerial employees outside the presence of the OSR. The OSR will closely monitor Operator’s compliance with this Agreement to protect the interests of the Board. The OSR shall participate in any entrance and exit conferences or similar meetings with surveyors or inspectors discussing the results of an inspection or survey of the Veterans Home. Operator shall not interfere with such duties of the OSR except as may be reasonably required to fulfill its duties to the Board. The OSR will serve as the Board’s on-site official regarding contact with the USDVA. Additionally, the OSR will act, on behalf of the Board, as an advocate to ensure that the rights of Residents are protected. Except for emergency situations, the OSR shall not interfere with Operator’s employees as they perform the duties of Operator under this Agreement. Operator is responsible for the administrative expenses of the OSR including, but not limited to, office supplies, materials, telephone and service, and any other reasonably related expenses. The Board shall receive and consider any complaints or conflicts that Operator has concerning the status of an OSR. Furthermore, to the extent permitted by law, the Board assumes full responsibility for the consequences of any actions taken by the OSR in the course of his/her duties, and nothing in this Agreement shall be construed as establishing an agency relationship between Operator and the Board’s OSR for any purpose.

**2.08 INSURANCE**

Operator shall acquire insurance and/or bonds, with financially sound and reputable independent insurers, in the type, amount, and under the conditions listed in **Schedule 2.08, “Required Insurance and Bonds,”** attached hereto and incorporated herein in its entirety for all purposes, for the duration of this Agreement. Furthermore, Operator agrees to provide to the Board, annually, all insurance policies obtained by Operator under the terms of this Agreement, including a schedule of coverage (or “underwriter’s schedules”) establishing to the satisfaction of the Board the nature and extent of coverage granted by each such policy. In the event that following any audit by the Board any such policies are found to be deficient to comply with the terms of this Agreement, Operator will provide such additional policies as the Board may reasonably request or that are required by law or regulation.

**ARTICLE III. REPRESENTATIONS AND WARRANTIES - OPERATOR**

**3.01 OPERATOR REPRESENTATIONS**

To induce the Board to enter into this Agreement, Operator hereby represents and warrants to the Board as follows:

(a) **Organizational Existence and Power**

Operator is a Texas limited liability corporation, duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation, and has the power and authority and all governmental licenses, authorizations, consents, and approvals to own its assets, carry on its business as now, and proposed to be, conducted and to execute, deliver, and perform its obligations under this Agreement;

(b) **Organizational Authorization; No Contravention**

Operator has taken all necessary action to authorize the execution, delivery, and performance of this Agreement. This Agreement constitutes the valid and binding obligation and agreement of Operator, enforceable in accordance with its terms; and neither the execution and delivery of this Agreement, nor compliance with the terms of provisions hereof, will result in any breach of the terms, conditions, or provisions of, or conflict with or constitute a default under, or result in the creation of any lien, charge, or encumbrance upon any property or assets of Operator pursuant to the terms of any indenture, mortgage, deed of trust, note, evidence of indebtedness, agreement, or other instrument to which Operator may be a party, or by which it or they or any of its properties may be bound, or violate any provision of law, or any applicable order, writ, injunction, judgment or decree of any court, or any order or other public regulation of any governmental commission, bureau, or administrative agency;

(c) **Governmental Authorization**

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any governmental agency is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Operator of this Agreement; and

(d) **Standard of Performance**

In performing its obligations under this Agreement, Operator will use best efforts and will act with professionalism in accordance with acceptable and prevailing Standard of Care so that the Veterans Home is operated in accordance with all applicable federal, state, local, or Regulatory Agency Standards of Care and consistent with the terms of this Agreement. Operator will use its best efforts to meet or exceed all minimum Standard of Care as imposed by any federal, state, or local Regulatory Agency. Furthermore, Operator shall not place in jeopardy with any Regulatory Agency the Board's (i) license as a long-term care facility; (ii) Medicare and Medicaid certification; (iii) certification to provide certified Alzheimer's care; (iv) recognition by the USDVA as a veterans nursing facility; or (v) any other license, certification, or credential required to maintain the Veterans Home.

**3.02 LITIGATION**

Except as specifically disclosed in **Schedule 3.02**, "Litigation," attached hereto and incorporated herein by reference for all purposes, there are no actions, suits,

proceedings, claims, or disputes pending or, to the best knowledge of Operator, threatened or contemplated, at law, in equity, in arbitration, or before any governmental authority, against Operator that purport to affect or pertain to this Agreement. Furthermore, Operator shall notify the Board, without delay, of any lawsuit or potential lawsuit related to the operation of the Veterans Home or any action that may affect this Agreement.

**3.03 NO DEFAULT**

No Default or Event of Default on the part of Operator exists under Section 9.02 or would result from the execution of this Agreement.

**3.04 HISTORICALLY UNDERUTILIZED BUSINESSES (“HUBS”)**

Operator shall make a good faith effort to utilize HUBs, as defined in Section 2161.001 of the Texas Government Code and 34 TAC §20.282 and report all HUB expenditures to the Board on a monthly basis, concurrently with the invoice for the Operations Fee.

The Operator shall provide to the Board pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder. Operator shall submit monthly compliance reports (Prime Contractor Progress Assessment Report) to [HUB@glo.texas.gov](mailto:HUB@glo.texas.gov) specifying the use, including expenditures to HUB subcontractors, if applicable. Any modifications to the HSP must be submitted to the Board for prior approval through a HUB Subcontracting Plan Change Order. If the HSP is modified without the Board’s prior approval, the Board may initiate remedial action as provided in Chapter 2161 of the Texas Government Code.

**3.05 MARKETING**

Operator will cooperate with the Board in any marketing plans and procedures the Board implements. Consistent with all applicable state, local, and federal laws and regulations, Operator may market the Veterans Home and seek Resident admissions in order to fill Resident beds or raise the daily census at the Veterans Home; however, Operator must submit any marketing plans to the Board’s Communications department for review and approval prior to participating in such marketing efforts. Operator will cooperate with the dissemination of informational materials, media releases, and other related informational materials generated by the Board. Operator will not present, disseminate, or otherwise release any information for any marketing aspects without the prior express written approval of the Board’s Privacy Officer, Communications Department and, if applicable, the Public Information Office.

**3.06 INFORMATION SYSTEMS AND ELECTRONIC MEDICAL RECORDS SYSTEM**

Operator shall provide systems for accounting, billing, purchasing, and bill payment functions for the Veterans Home. These systems must be able to interface with and bill Medicare and Medicaid electronically.

Operator shall maintain either PointClickCare®, or a compatible (as approved by the Board), cloud-based medical records system. Operator shall use current industry-standard transfer security and other Board-approved encryption protocols when transferring Resident health information. Operator’s electronic medical

records system must meet all applicable federal and state legal and regulatory requirements for electronic medical records systems and Operator shall maintain such system in accordance with HIPAA and Chapter 181 of the Texas Health & Safety Code. Operator shall adhere to the requirements outlined in **Attachment E** concerning the privacy and security of Protected Health Information and Operator's information security compliance.

Operator shall at the request of the Board or the Board's designee submit an information security plan within one hundred twenty (120) days from the initial execution of this Contract and annually thereafter. Such plan shall include information security plans and procedures for ensuring the security of all confidential Board information entrusted to the Operator, including Protected Health Information. Operator's information security plan shall be prepared in consideration of accepted industry practices including, without limitation, the NIST Cybersecurity Framework or HIPAA/HITECH and compliance with all applicable federal and state regulations concerning the privacy and security of, and access to, Protected Health Information.

The Board must procure electronic and information resource products in compliance with State of Texas accessibility requirements specified in Texas Administrative Code Title 1, Part 10, Chapter 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If applicable, Operator shall provide the Texas Department of Information Resources with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas accessibility requirements or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

## **ARTICLE IV. REPRESENTATIONS AND WARRANTIES - BOARD**

### **4.01 BOARD REPRESENTATIONS**

To induce Operator to enter into this Agreement, the Board represents and warrants to Operator as follows:

**(a) Payment of Management and Operation Fees**

As complete compensation for the services provided by Operator under this Agreement, the Board agrees, in accordance with **ARTICLE VIII**, to pay Operator the Operations Fee.

**(b) Eligibility Rules**

The Board shall, in accordance with Regulatory Agency standards and with the cooperation of Operator, establish eligibility rules for admission to the Veterans Home. The Board agrees to cooperate with Operator to ensure the maximum utilization of the Veterans Home, and the Board shall use its best



efforts to assist Operator in disseminating any and all public information regarding the eligibility of applicants to reside in the Veterans Home.

**(c) Capacity**

The Board represents that it will use its best efforts to achieve full capacity for the Veterans Home. However, the Board does not guarantee that the Veterans Home will operate at full capacity or at any given level of utilization.

**(d) Capital Expenditures**

The Board shall contract for and purchase Capital Equipment and make Capital Improvements (collectively “Capital Expenditures”) in a manner consistent with state and federal purchasing requirements and with the needs and requirements of the Veterans Home. Operator shall make recommendations to the Board for such Capital Expenditures. The Board shall have the ultimate authority in determining the amount of Capital Expenditures for the Veterans Home, except that the Board shall ensure sufficient Capital Equipment or such Capital Improvements as are necessary to retain appropriate licensure of the Veterans Home and to meet all appropriate minimum Standards of Care for Residents in the Veterans Home.

**(e) Marketing**

The Board shall provide, or arrange for, marketing of the Veterans Home to achieve and maintain full capacity for the Veterans Home, consistent with all applicable state, local, and federal laws and regulations.

In engaging in its marketing efforts, the Board shall be in full compliance with both state and federal anti-kickback laws, including Chapter 102 of the Texas Occupations Code, and 42 U.S.C. § 1320a-7b(b).

**4.02 NO DEFAULT**

No Default or Event of Default on the part of the Board exists under Section 9.03 or would result from the execution of this Agreement.

**ARTICLE V. MANAGEMENT AND OPERATION**

**5.01 HEALTH - MANAGEMENT AND OPERATION**

Operator shall, in consultation with, for, and on behalf of, the Board, at Operator’s expense, and subject to the provisions of this Agreement, manage and supervise all areas of daily operations of the Veterans Home in compliance with all applicable Regulatory Agency requirements. For the following services, Operator shall adhere to its Solicitation Response, unless doing so would be unsafe or impractical or unless the Board requests otherwise.

(a) **Health Care Services**

(i) Generally

Operator shall manage the Veterans Home so that each Resident receives the necessary and appropriate care including medical, pharmaceutical, nursing, dental, dietary, recreational, social, psychosocial and rehabilitative services needed to maintain or improve levels of functioning as required by law, regulation, Standard of Care, and/or as prescribed or directed by appropriate practitioners. Subject to the provisions of Section 5.03(b) relating to allocation of expense, Operator shall provide or coordinate with appropriate third-party payers or Responsible Party to provide such care.

(ii) Primary Physician

Each Resident must have a designated primary physician who will be responsible for the overall medical care of the Resident. Residents may be seen or treated by a physician or other health care practitioner of their own choosing at each Resident's own expense or in accordance with federal reimbursement guidelines.

(iii) Nursing Services

Nursing services shall be provided by Operator twenty-four (24) hours per day, seven (7) days per week. **THE MIX AND NUMBER OF STAFF MUST ADDRESS THE APPROPRIATE STANDARD OF CARE AND THE INDIVIDUAL RESIDENT'S ACUITY LEVEL AND THE COLLECTIVE RESIDENT POPULATION'S ACUITY LEVEL (i.e., CMS 3 STAR RATING).** The Operator shall work with the Board or an outside consultant to develop an acuity staffing plan. Nursing services shall also be designed to focus on rehabilitative nursing, addressing proper restorative programs and assisting each Resident to achieve and maintain the highest possible level of self-care and independence. Nursing services shall be provided under the supervision of Operator's Director of Nursing.

(iv) Rehabilitative Services

For the general Resident population, Operator shall provide specialized rehabilitative services including physical therapy, speech therapy, occupational therapy, and psychological services. Operator shall comply with Medicaid and Medicare guidelines where applicable.

For seventy percent (70%) or higher Service Connected Disability Veteran Residents, Operator shall follow Medicare guidelines for rehabilitative and therapy services.

(v) Dental Services

Operator shall provide or arrange for complete dental services through the VA or dentist of resident's choice, including emergency, and routine services. Operator shall assist non-veteran private-pay or insured residents in obtaining dental services at no cost to the Board or to the Operator.

(vi) Social Services

Operator shall provide a social services program designed to attain or maintain the highest practicable mental and psychosocial well-being of each Resident, said program shall be directed by a licensed social worker.

(vii) Specialized Medical Equipment

Operator shall assist Residents in procuring, as may be required for any Resident, specialized medical equipment including prosthetics, orthotics, hearing aids, corrective eye wear, therapeutic mattresses, and specialized beds.

(viii) Pharmaceuticals

Operator shall provide complete pharmacy goods and services, including medical supplies, all over-the-counter medications, and dietary supplements. All prescription medications, over-the-counter medications, and medical supplies shall be ordered, billed, and dispensed under the terms of **Attachment A**, attached hereto and incorporated herein for all purposes in its entirety.

(ix) Psychological Services

Operator shall coordinate and/or contract for psychological services for residents as appropriate at no cost to the Board or the Operator.

(x) Other Services

Operator shall provide other services as required to operate a safe, sanitary, and attractive facility, including, but not limited to grounds maintenance, extermination and pest control, facility-wide housekeeping, barber and beautician services, Alzheimer activities, disbursement of personal funds (via trust accounts) to Residents, and any other personal care service reasonably requested by the Board, or that may be required by any Regulatory Agency.

**(b) Infection Control**

Operator shall institute and maintain an infection control program designed to prevent the development and transmission of disease and infection including communicable diseases. All infection control recommendations

made by the Board or its representative shall be duly considered by Operator. However, the final measures to be taken with regard to infection control shall comply with 26 TAC §§554.1601, 554.1602 and any emergency rules that may be issued by HHSC and/or CMS with respect to any communicable disease.

**(c) Disposition of Remains**

Operator shall submit for review by the Board mortuary policies and procedures to ensure the sensitivity and expediency of death notification, documentation, and disposition of remains. Operator shall develop a plan for deceased Residents that do not have a disposition plan on file.

**(d) Peer Review and Quality Assurance Committee**

Operator shall establish a peer review and quality assurance committee (“Committee”), as provided for under Section 151.002 of the Texas Medical Practice Act and Section 161.031 of the Texas Health and Safety Code, that shall include the Director of Nursing, a primary physician designated by the Medical Director, the OSR and at least three (3) other Veterans Home staff members. Operator shall be responsible for objectively measuring the quality of health care provided at the Veterans Home, as well as for compliance with changes to quality assurance-related state and federal laws and regulations. The Committee shall meet at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and shall develop and implement appropriate plans of action to correct identified quality deficiencies within an established time period. The OSR shall report to the Board, no less often than quarterly, concerning the nature and scope of the activities carried on by the Committee, and the Committee shall make recommendations to the Board, as applicable. Operator, the Board, and the OSR shall ensure that the work product of the Committee, including its books, documents, deliberations, papers, internal communications, and memoranda, shall be maintained so as to preserve the legal privilege available for the same. Further, the Board and Operator shall keep all Resident personal, health, and other information, as appropriate, confidential in compliance with HIPAA and state and federal law.

**(e) Nutrition and Dining Program**

Operator shall provide a Nutrition and Dining Program to ensure a home-like dining experience that meets all Resident dietary needs including special dietary meals, goods, and supplements. These services shall be reviewed by a registered nutritionist and/or dietician. Operator shall employ a dining coordinator to ensure the quality, taste, and nutrition of the Nutrition and Dining Program.

**5.02 ADMINISTRATIVE - MANAGEMENT AND OPERATION**

Operator must develop and implement all necessary administrative systems including, but not limited to, accounting, credential processing, personnel, reporting, administrative records, medical records, purchasing, and information systems. For the following services, Operator shall adhere to its Solicitation

Response, unless doing so would be unsafe or impractical or unless the Board requests otherwise.

**(a) Employee Matters**

Except for the OSR, Operator shall employ and maintain appropriate staffing which exceed the level necessary to maintain compliance with USDVA guidelines for State Veteran's Homes, Title XVIII (18) (Medicare) of the Social Security Act, HHSC regulations, or regulations of any other applicable Regulatory Agency, including Title 26, Chapter 554 of the Texas Administrative Code. Operator shall: (i) staff to acuity at the Veterans Home; (ii) work with the Board and, possibly, an outside consultant contracted by the Board, to develop an acuity staffing plan; (iii) recruit, employ, train, promote, direct, discipline, suspend, and discharge all personnel (except those listed in this Section), in compliance with all applicable federal and state employment laws; (iv) establish salary levels, personnel policies, and employee benefits; and (v) establish employee performance standards, as needed during the term of this Agreement, to ensure the efficient operation of all departments within, and services offered by, the Veterans Home. Operator must employ a Medical Director (who may be an employee of, or an independent contractor with, Operator), an Administrator, and a Director of Nursing, all of whom must be properly licensed and/or possess the appropriate education and experience in the long-term health care field. The Medical Director, Administrator, and Director of Nursing shall be responsible for meeting each Resident and becoming familiar with each Resident's medical history, needs, and individualized care plan. Pursuant to Chapter 657 of the Texas Government Code, a veteran's employment preference shall be afforded to qualifying individuals in all Veterans Home employment opportunities, as applicable. In order to ensure the continuing safety and health care of the Residents of the Veterans Home, upon termination of this Agreement for any cause, the Board or the successor operator selected by the Board shall have the right (but not the obligation) to offer employment to any or all employees of Operator who are regularly employed in providing services at the Veterans Home.

**(b) Board Participation**

The Board shall have the right to review the selection and continued employment of the Medical Director, the Administrator and the Director of Nursing. In the event that the Board has any concerns to either the selection or continued employment of any of these individuals, the Board shall submit to Operator objective evidence indicating that such individual or individuals have failed to comply with policies or procedures (promulgated either by Operator or the Board) or that the performance of such individual or individuals has not been adequate in accordance with usual and customary standards for such position in the industry. After consultation, Operator shall address such concerns by taking such remedial action as Operator deems appropriate, subject to the Board's approval or, if necessary, by removing or reassigning such individual or individuals. Nothing contained

herein shall in any way be deemed to modify any employee's status as an at will employee of Operator, nor shall any individual fulfilling any of the functions described above be in any way a third-party beneficiary or receive any other rights or authorities under the terms of this clause. The selection and continued employment of any parties fulfilling the functions described above are in the discretion of Operator, subject to the Board's review and approval.

**(c) Miscellaneous Employee Matters**

To ensure a safe and orderly Resident environment, Operator shall ensure the following:

**(i) Background Checks**

Prior to employment, all employees shall be subjected to a thorough background investigation in accordance with all applicable federal and state laws and regulations. Background checks shall include criminal history, employment history, credential certification, and, where appropriate, contractor eligibility. In exercising its obligations hereunder, Operator may obtain information from any third parties in the business of providing such investigations. The results and documentation thereof will be maintained by Operator as part of the employee's personnel file.

**(ii) Tuberculosis (TB) & Communicable Disease Testing**

Operator shall test all employees for TB prior to commencement of employment and annually (unless circumstances dictate sooner) thereafter. Operator shall test all employees for any communicable disease as may be mandated by a Regulatory Agency. The results and documentation thereof will be maintained in a file separate from the employee's personnel file.

**(iii) Licensing and Credentialing**

Operator shall verify that all personnel employed by Operator are properly licensed, certified, and meet Regulatory Agency standards for the work they are performing. Operator shall credential all health care practitioners in accordance with 38 C.F.R § 51.210(j) and the interpretive guidelines issued thereunder.

**(iv) Orientation and Training**

Operator shall provide all personnel with an employee orientation and continuing education program regarding the Veterans Home policies, procedures, and practices including annual training in Resident rights, disaster preparedness, cardio-pulmonary resuscitation, first aid, and HIPAA

compliance. Operator shall submit an orientation and training program, subject to Board Review on an annual basis.

Operator shall develop a written personnel policy manual that shall include an organization chart (to include the number of full-time equivalent employees in each position). The personnel policy manual shall, at a minimum, address the following:

1. Job qualifications and job descriptions, including position title, position description, reporting responsibilities, and licensing requirements;
2. In-service training and staff development;
3. Veterans preference in hiring;
4. Criminal background/history checks;
5. TB and Hepatitis vaccinations;
6. Communicable Disease vaccinations mandated by HHSC;
7. Employee misconduct registry;
8. Promotions policy;
9. Grievance and appeal procedures;
10. Annual employee performance evaluations;
11. Personnel records;
12. Benefits structure;
13. Holidays;
14. Employee leave;
15. Hours of work;
16. Basis for determining salaries;
17. Disciplinary procedures;
18. Termination procedures;
19. Equal Employment Opportunity program;
20. Confidentiality statements;
21. Emergency procedures (e.g., fire, inclement weather/natural disasters, bomb threats, active shooter, etc.);
22. Risk Management;
23. Personnel policies addressing sexual harassment, Whistleblower Act protection, possession of

firearms on State property, and workplace violence prevention;

24. Alzheimer's training; and

25. HIPAA and Texas Medical Records Privacy Act compliance and training.

(v) Emergency Staffing

Operator shall use its best efforts to ensure, to the extent reasonably possible, continued operation and appropriate staffing in the event of a catastrophic event including natural disasters, war, labor strike, epidemic, pandemic, or dispute, provided that where the Board's approval is first obtained, any additional necessary staffing costs required to ensure the continued operation which exceed Operator's current prevailing wages or salary for regular full-time employees shall not be an Operating Expense of Operator hereunder but, instead, shall be an expense of the Board.

**(d) Admissions**

Operator is responsible for the review of medical and financial eligibility, in accordance with standards established by the USDVA, Regulatory Agencies, and the Board, for each potential Resident admittance.

Operator shall create an admissions review team, including the Board's OSR, to review the medical and financial eligibility of potential veteran and non-veteran Residents for admission to the Veterans Home. The admissions review team shall evaluate potential Residents in accordance with the admissions policy approved by the Board. Operator and the Board agree to (i) cooperate to facilitate a smooth and orderly admissions process; (ii) to timely admit all eligible applicants; and (iii) to seek the fullest possible utilization of the Veterans Home, consistent with the policies and procedures of the Veterans Home. The Board shall be in full compliance with both state and federal anti-kickback laws, including Section 102 of the Texas Occupations Code and 42 U.S.C. §1320a-7b(b).

Upon admission of each Resident, Operator shall create an individualized care plan for the veteran or non-veteran Resident. Operator shall also ensure that each admitted veteran or non-veteran Resident executes a non-testamentary letter or documents instances in which an admitted Resident refuses to execute a non-testamentary letter. The non-testamentary letter should describe the process that will be followed for disbursement of Resident funds upon the death of the Resident and the process that will be followed for the processing of the Resident's remains.

Upon admission of a Resident as a Medicaid Pending Resident, Operator shall collect the estimated applied income from the veteran or non-veteran Resident during the Medicaid application process. Operator must track and monitor Medicaid applications. If the Medicaid application is denied, Operator is responsible for collecting Resident charges up to the point the



application is rejected and for the current month before the Resident may re-apply for Medicaid benefits. If the collection efforts are unsuccessful, Operator shall follow its Resident discharge procedures.

**(e) Community Development, Transportation, and Transfer Agreements**

Operator shall coordinate with various community sources for such transportation services for all Residents as needed to fulfill their medical, therapeutic, and recreational needs and, to the extent unavailable from other community sources, provide such transportation services to Residents. Furthermore, Operator shall maintain written transfer agreements with local civilian and USDVA hospitals and shall arrange transportation in the event a Resident needs hospital care. Operator shall maintain contact with the receiving facility to ensure the return of the Resident to the Veterans Home at the earliest appropriate date, if applicable. Operator shall provide and maintain at its own expense at least one (1) wheelchair-accessible passenger van or bus for veteran and non-veteran Resident transportation. Operator shall hold title to all vans or buses used for Resident transportation. Operator shall pay all fuel, maintenance, registration, and inspection costs.

**(f) Emergency and Disaster Preparedness (All Hazards Plan)**

Operator shall submit its disaster preparedness plan annually, which shall include emergency evacuation plans and procedures. Operator's disaster preparedness plan shall be prepared in compliance with all applicable federal, state, and local regulations concerning safety, fire prevention and security of and access to Resident medical records. Operator shall conduct safety drills in accordance with its disaster preparedness plan (which, unless otherwise approved by the Board and Operator, shall be conducted at least quarterly on each shift). In addition, all emergency equipment must be tested at least quarterly or in accordance with the requirements of such equipment, and all of Operator's employees shall receive regular training in disaster preparedness.

**(g) Resident Rights**

Operator shall submit for the Board's review Operator's policy regarding protection of veteran and non-veteran Residents' rights and a complaint resolution program which shall be consistent with Regulatory Agency procedures, allowing veteran and non-veteran Residents to express grievances and to recommend changes in policies and services. The OSR shall be included in the complaint process. The Board shall determine the time, frequency, and percentage of recipients (Residents and family members) for participation in satisfaction surveys. Operator shall cooperate with such satisfaction surveys, except that Operator will in no event be obligated to expend its funds for satisfaction surveys. The Board, upon obtaining such satisfaction surveys, will provide copies to Operator along with a copy of any satisfaction survey summary. Any incidents, accidents, or unexpected or unexplained injury or death of a Resident which is reportable to any Regulatory Agency will be reported to the Board prior to such report being forwarded to any such Regulatory Agency. Further, the

OSR shall be entitled to be present at any and all regularly scheduled daily meetings by Operator's staff reviewing care and status of Residents. In the event that the Board shall receive any complaints or grievances, the OSR shall refer all such complaints or grievances to Operator. Operator shall determine the appropriate corrective action, if any, which shall be taken in regard to any such complaint or grievance, which action shall be at the sole discretion of Operator. In the event that Operator shall receive any complaint regarding any of the Board's functions hereunder, Operator shall immediately refer such complaint to the OSR for any appropriate corrective action as determined by the Board in its sole discretion.

**(h) Volunteer Programs**

Operator shall be responsible for the recruitment and coordination of volunteers to enhance the quality of life for all Residents, subject to any and all applicable local, state, and federal rules, requirements, or guidance related to Covid-19 or any other infectious disease.

**5.03 FISCAL - MANAGEMENT AND OPERATION**

The fiscal year for the Veterans Home will begin September 1 and end August 31 of each year. Prior to the start of each fiscal year, Operator shall prepare and submit to the Board for its review and approval a proposed Capital Expenditure budget for the Veterans Home. Operator and the Board each agree to utilize their best efforts to resolve all budgetary issues and to approve the proposed budget prior to September 1. For the following services, Operator shall adhere to its Solicitation Response unless the Board requests otherwise.

**(a) Capital Expenditure Budget**

On an annual basis, Operator shall notify the Board of the need for the purchase of any Capital Equipment or the addition of any Capital Improvements (collectively "Capital Expenditures") which Operator believes are necessary for the effective management and operation of the Veterans Home under this Agreement. The Board shall respond to Operator's recommendation in a timely manner acknowledging those items that have been approved or rejected, providing a basis for the latter. Upon receipt of written approval for those Capital Expenditure budget items, Operator may take the appropriate steps, in compliance with Operator Action Request ("OAR") and Operator Reimbursement Request ("ORR") policy and procedures, to purchase or acquire items approved during the fiscal year; however, requests must be resubmitted for approved items not purchased by the end of the fiscal year in which they were initially approved. If a Regulatory Agency requires certain Capital Expenditures as part of a final and non-appealable compliance order applicable to the Veterans Home, the Board shall make, or approve the making of, such Capital Expenditure.

Capital Expenditure requests that were not included in the proposed budget submitted by Operator prior to the start of the fiscal year must be requested through the OAR policy. The Board shall respond in accordance with the

timelines set forth in the OAR policy acknowledging that (i) Operator's request has been denied, providing the basis for denial, (ii) Operator request has been approved and Operator may take the appropriate steps to purchase or acquire the approved items, or (iii) additional information is required before a final determination will be made.

**(b) Accounting**

Operator shall provide accounting support to the Veterans Home, which shall include timely preparation of all required cost reports and tax returns (including payroll related tax returns) at Operator's expense as required by the Board. All accounting procedures and systems utilized in providing said support shall be in accordance with the operating capital and cash programs developed by Operator, which programs shall conform to GAAP or GASB, as applicable, and shall not materially distort income or loss. Any tax and reimbursement obligations owed due to any governmental programs shall be deemed to be Operating Expenses of the Veterans Home and shall be paid by Operator; provided, however, that any reimbursement obligation under the Medicare or Medicaid programs arising through no fault of Operator shall be a responsibility of the Board.

**(c) Billing Payor Sources During Current Agreement Term**

Operator shall, in the name of and on behalf of the Board, promptly issue or shall take billing invoices to all veteran and non-veteran Residents (or to the Resident's responsible party or guardian), contractors, vendors, governmental agencies (including the Board, USDVA, Medicare, and Medicaid) or other appropriate party for all goods and services furnished or provided by the Operator.

Operator shall take all reasonable measures to pursue Medicare or any other third-party payment plan to provide accurate and Timely Billing and collections for services rendered to all Residents each month. Operator, in complying with this provision, shall produce accurate and Timely Billing and collections to (i) the USDVA for per-diem reimbursement payments or other benefit claims for all eligible Residents; and (ii) the Residents or other entities responsible for the costs of a Resident's care, including Medicare. The Board will only reimburse Operator for billing submitted to Medicare and Medicaid upon receipt of reimbursement from Medicare and Medicaid or as otherwise provided for herein. Operator shall, from and after the date of this Agreement, be responsible for any amounts not billed to Medicare, Medicaid or any other third-party payment plan to the extent that Operator is responsible for such billing under this Agreement. Operator shall, from and after the effective date of this Agreement, be financially responsible for its errors in any billings that it submits to Medicare, Medicaid, and any other third-party payment plan. Operator shall, from and after the effective date of this Agreement, be financially responsible for all funds discovered in any audits that are due to Medicare, Medicaid, and any other third-party payers that must be remitted due to billing errors of Operator.

**(d) Operator Service Invoices to the Board**

Operator shall invoice the Board for the services performed for the following payor sources and in accordance with Section 5.04 of this Agreement:

- (i) Fixed Fee: Contractual Monthly Fee that covers veteran and non-veteran private pay, Medicaid and seventy percent (70%), or greater, Service Connected Disability Residents;
- (ii) Non-Medicare Part A and Equivalent Insurance: Variable Fee Rate per Non-Medicare Part A and Equivalent Insurance Residents multiplied by the daily non-Medicare and Equivalent Insurance census (semi and/or private room);
- (iii) Medicare Part A or Equivalent Insurance: Variable Fee Rate per Medicare Part A and Equivalent Insurance Residents multiplied by the daily Medicare Part A and Equivalent Insurance Census;
- (iv) Medicare Part B or Equivalent Insurance: Reimbursement rate of eighty-percent (80%) based on CMS fee schedule;
- (v) Medicare Part B or Equivalent Insurance Co-Insurance: Reimbursement rate of 100% based on the services billed to various third parties;
- (vi) 70% or greater Service Connected Disabled: In addition to the Fixed and Variable Fees outlined above, Operator will bill VLB for the following services provided to 70% or greater Service Connected Disabled Veterans: therapy services and other ancillary charges applicable to 70% or greater Service Connected Disabled Veterans.

For the avoidance of doubt, the term “Equivalent Insurance” refers to any insurance plan that provides substantially the same benefits for skilled nursing facility care, ancillary services, and therapy services as Medicare Part A or Medicare Part B, as applicable, but does not include the enhanced per diem for SCD residents.

**(e) Development of Charge Structure and Collection of Accounts**

For ancillary services, Operator shall implement a charge structure for Residents of the Veterans Home. Operator, in the name of and on behalf of the Board, shall promptly issue bills and other necessary reports to appropriate parties and governmental agencies and shall collect accounts and monies owed for goods and services furnished by the Veterans Home in the name of and for the account of the Board including, without limitation, timely and vigorous enforcement of the rights of the Board and the Veterans Home as creditors under any contract or in connection with the rendering of any services; provided, however, that any expenses incurred by Operator in so doing shall be treated as Operating Expenses of the Veterans Home and payable by Operator. All monies collected by Operator for the Veterans Home shall be deposited promptly in the name of the Board

in the Board’s account designated for the Veterans Home. Operator shall be given “deposit only” access to the Board’s Veterans Home account for such purposes.

**(f) Collections Liability**

In accordance with its collections policy, Operator shall take, on behalf of the Board, all reasonable measures to pursue collections on all goods and services provided by Operator, including those billed to Medicare, Medicaid, private insurance, or any other third-party payment arrangement.

Operator, in accordance with its admissions and collections policy, shall promptly and diligently (but no later than 60 days from the date the last payment was received for any Resident account) pursue all collections on any Residents’ unpaid balances due to the Board for the care provided from any payor source. If Operator is unable to collect unpaid balances from Residents from whom there is inadequate collection or no reasonable assurance of collection, Operator must initiate an involuntary discharge with respect to such Residents in accordance with its approved admissions and/or collections policy, state and federal law. Operator understands and acknowledges that repeated failure to comply with this subsection without prior approval by the Board shall constitute an Event of Default in accordance with Section 9.02(a), subject to the notice and cure provisions thereof.

**(g) Other Resident Income**

Operator shall collect promptly, in the name of and on behalf of the Board, revenue from all sources available to Residents to pay for the Residents’ cost of care in the Veterans Home. Such revenues shall be deposited promptly in the Board’s name in the appropriate bank account of the Board. All required sweep transactions shall be promptly activated after revenues are deposited in the appropriate bank account of the Board.

**(h) Veteran and Non-Veteran Resident Expense Allocation**

Specialized beds, as well as personal care service beyond those included in the daily rate of reimbursement pursuant to HHSC, USDVA, Medicare, or Medicaid regulations, may be paid for by the Board or Operator, depending upon payor type or the totality of the circumstances contributing to the need; however, notwithstanding any other provision herein to the contrary, the following health care services are to be provided solely at the expense of Resident or Responsible Party, and not at the expense of Operator:

- i. visits or treatment by Resident-selected primary physicians and specialists;
- ii. rehabilitative services including physical therapy, psychological therapy, speech therapy, and occupational therapy, not otherwise paid for under Medicare, Medicaid, or other governmental healthcare programs;
- iii. dental services, including emergency and routine services; and

iv. specialized medical equipment, including prosthetics, orthotics, hearing aids, and corrective eye wear.

**(i) Resident Trust Fund Accounts and Other**

Operator, in accordance with Regulatory Agency standards, shall establish and maintain personal spending accounts and trust funds, on behalf of each Veterans Home Resident. Operator shall, if applicable, coordinate with the Board on assisting with the management of monetary donations controlled by the Resident Council, for the benefit of the residents. Operator shall not commingle the funds in these accounts with any other financial account established for the operation of the Veterans Home or any other financial account associated with Operator. Operator shall establish and maintain all appropriate security and accounting systems in connection with the trust funds.

**(j) Financial Controls**

Operator shall establish, supervise, and administer the financial controls over the operations and management of the Veterans Home.

**5.04 MEDICARE AND MEDICAID**

**(a) Provider**

The Veterans Home, by and through the Board, will enter into a Health Insurance Benefits Agreement (HCFA 1561) with the Centers for Medicare and Medicaid Services (CMS) to provide Medicare Part A and Medicare Part B services to eligible Residents under the Medicare consolidated billing provisions for nursing homes. The Veterans Home shall be licensed in the name of the Board and the Board shall serve as the provider of services in accordance with the provisions of Section 1866 of the Social Security Act and applicable provisions in Medicare regulations.

**(b) Cost Reports**

Operator shall timely and accurately prepare, in the name of and on behalf of the Board, all billings and the Medicare and Medicaid cost reports in accordance with Title 42 C.F.R. and the Provider Reimbursement Manual (CMS Pub. 15-2) at its own expense. Operator is hereby authorized by the Board to make appropriate and accurate representations regarding eligibility, billings, and provision of services to Medicare and Medicaid on behalf of the Board. Operator also is authorized by the Board to make reasonable elections to Medicare and Medicaid as permitted in the Medicare and Medicaid regulations and in the Medicare Provider Reimbursement Manual (CMS Pub. 15-2). Operator will certify that all billings are correct and will be responsible for the reimbursement of any resulting overpayment due to errors in billing or eligibility. Operator shall, at its expense, have Medicare and Medicaid cost reports prepared by a party (which may be an Affiliate of Operator) with adequate experience in the preparation of such reports. Operator shall oversee such party's preparation of the cost reports and coordinate with such third-party to ensure that the filing of cost reports is timely and accurate.

**(c) Medicare and Medicaid Certification**

The Board shall ensure that the Veterans Home is state licensed, Medicare-certified, and Medicaid-certified at all times during the term of this Agreement. Operator shall maintain the Veterans Home in accordance with this Agreement and in such a way that Medicare and Medicaid certification and state licensure is maintained. Operator also is responsible for, and shall provide, programs or operations reasonably needed to maintain the Veterans Home as Medicare-certified, Medicaid-certified, and state licensed.

**(d) Federal and State Healthcare Program Payments**

All payments received from any federal or state healthcare program, including Medicare, Medicaid, and any applicable coinsurance or deductible amounts, whether made directly or indirectly by the Resident or paid through any supplemental insurance policy such as Medigap, shall be deposited directly to the Board's bank account for the Veterans Home.

**(e) Patient Billing**

Operator may, in the name of and on behalf of the Board, bill the Residents' Medigap insurance policies, if available, or any other available payer source for Medicare co-insurance and deductibles; however, if such supplemental insurance is available to Residents, Operator shall not bill these same amounts to the Resident.

**(f) Medicare Part B Services**

For cost report settlements relating to a cost report period that includes a period partially covered by this Agreement, the settlement payments will be allocated as set forth herein. The cost report to be filed with Medicare or Medicaid (the "Filed Cost Report") shall be required to cover the entire cost report year. An additional cost report pertaining only to the term covered by this Agreement (the "Short Period Internal Cost Report") may, if usable by Operator, be generated by Operator. All cost reports shall be prepared using methodology consistent with Medicare and Medicaid regulations and the Medicare Provider Reimbursement Manual (CMS Pub. 15-2). Any variation in the amount of reimbursement to or from the Veterans Home will be allocated in accordance with the normal division of such payment, i.e., other than the fixed fee, out of Medicare Part A, which is paid to the Board; all other receipts or charges arising out of any cost report settlement shall be attributed to or paid to Operator.

**(g) Cost Report Settlements**

For cost report settlements related to a cost report period that includes a period partially covered by this Agreement, the settlement payments will be prorated as set forth herein. The cost report to be filed with Medicare (the "Filed Cost Report") shall be required to cover the entire cost report year. An additional cost report which pertains to this Agreement (the "Short Period Internal Cost Report") shall be prepared. Both cost reports shall be prepared using a methodology consistent with the Medicare and Medicaid regulations and the Medicare Provider Reimbursement Manual (CMS Pub.

15-2). The prorated settlement payment due to Operator shall be calculated by using the total reimbursement due to the provider per the Short Period Internal Cost Report as the numerator, and the total reimbursement due to the provider per the Filed Cost Report as the denominator. For any cost report settlements, the amount used by the Medicare Fiscal Intermediary as the total amount due to the Veterans Home shall be multiplied by the fraction determined above to calculate the gross amount due to Operator. This amount will then be reduced by any previous payments credited under this Agreement for such cost report year.

**(h) Minimum Data Sets Reporting and Record Maintenance**

Operator shall use the state approved Resident Assessment Instrument (RAI) to complete and submit Minimum Data Set (MDS 3.0) and Resident Assessment Protocols (RAPs) on a schedule and as required by applicable federal regulations, including 42 C.F.R. § 483.20. Operator shall be responsible for maintaining all records relating to Resident assessments and classifications to include a Resident's MDS, RAP, and Resource Utilization Group (RUGIII) classifications. Operator shall permit the Board to inspect and copy said records upon request.

**(i) Data Sets Reporting and Record Maintenance Amendments**

In the event the laws, rules, and regulations governing or otherwise relating to Medicare reimbursement change or are amended such that Operator determines that the Board's participation in Medicare reimbursement is no longer financially attractive, the Parties shall enter into negotiations to modify or reform this Agreement, together with any other applicable agreements between the Parties. Operator shall continue to provide services to those Residents covered by Medicare after termination of the Board's Medicare provider status until the earlier of the Resident's discharge from the Veterans Home or the termination of Medicare benefits.

**(j) Separately Billable Medicare Part B Services**

Medicare Part B covered services which are not required to be billed by the Board under the provider number of the Veterans Home under the Medicare consolidated billing provisions for nursing homes and that are separately billable items (e.g., Medicare Part B services other than physical therapy, occupational therapy, or speech therapy services), may be furnished by an appropriate, qualified third-party. All such separately billable Medicare Part B covered services shall be billed to the appropriate payer by the third-party that provides such services, and Operator shall not bill any payer for such services on behalf of the Board. With the prior approval of the Board to be based upon the best interests and welfare of the Residents of the Veterans Home, Operator shall either provide such separately billable Part B services itself or arrange for another third-party supplier to provide such services. However, nothing in this Agreement shall be deemed to grant any right or entitlement of Operator to supply separately billable Part B covered services to Residents of the Veterans Home without the prior approval of the Board.



**(k) Billing and Payment of Separately Billable Medicare Part B or Equivalent Services**

Physical therapy, occupational therapy, and speech therapy services and other like services that may be treated the same for billing purposes under Medicare regulations, that are covered under Medicare Part B or insurance plans with substantially similar benefits as Medicare Part B and furnished to Residents of the Veterans Home who are not in a Medicare Part A covered stay (“Medicare Part B or Equivalent Therapy Services”) shall be furnished by Operator in accordance with Medicare and other insurance plan requirements. All such Medicare Part B or Equivalent Therapy Services shall be billed to Medicare or the applicable insurance plan by Operator in the name of the Board and using the Medicare provider number or other identifier assigned to the Veterans Home. The Board shall pay to Operator for such Medicare Part B or Equivalent Therapy Services a per unit fee equal to the Medicare allowable amount, as published in the Medicare fee schedule for the year in which the service is furnished, for each such Medicare Part B or Equivalent Therapy Service furnished by Operator. For Medicare Part B or Equivalent Therapy Services, the Board shall promptly pay the eighty-percent (80%) portion billed to Medicare or other applicable payer after receiving such funds from Medicare or the payer. Operator shall bill the remaining twenty-percent (20%) coinsurance amount to the appropriate payer on behalf of the Board, and the Board shall pay Operator said coinsurance amount within ten (10) days of the earlier to occur of (i) the Board’s receipt of such funds from the payer, or (ii) Operator’s transfer of such coinsurance receivable to the Board upon exhaustion of Operator’s standard collection procedures.

**ARTICLE VI. FACILITY MAINTENANCE, CAPITAL ASSETS, PURCHASING, AND SURPLUS PROPERTY**

**6.01 GENERALLY**

Operator is prohibited from using the Veterans Home and any other Board property for any purpose other than for the management and operation of the Veterans Home as authorized under this Agreement. Operator shall maintain and provide a safe, clean, sanitary, and comfortable environment for all Residents in the Veterans Home. Operator shall be responsible for maintaining the building and grounds of the Veterans Home, including performing all routine and preventive Maintenance on all Capital and Non-Capital Equipment and all Capital and Non-Capital Improvements. Except as otherwise noted herein, all Maintenance (but not Repairs) shall be characterized as an Operating Expense and shall be paid for by Operator. Furthermore, Operator shall ensure adequate maintenance, grounds and housekeeping personnel are available at all times reasonably necessary to perform Operator obligations under this Agreement. Use of the Veterans Home, Capital Improvements, Capital Equipment and any other Board property for a purpose not authorized by this Agreement shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to the Board under contract, at law, or in equity.

## 6.02 RISK MANAGEMENT AND LOSS PREVENTION

Operator shall submit for review by the Board a risk management and loss prevention program designed to prevent the misappropriation, loss, or damage of Capital Equipment and/or Capital Improvements. Operator shall reimburse the Board for any Capital Equipment or Capital Improvement damaged or destroyed as a result of the acts or omissions of Operator and/or its agents, volunteers, and employees. Operator shall be financially responsible to the Board for all losses of and damages to Capital Equipment and Capital Improvements that occur due to the negligent or intentional acts of Operator and/or its agents, volunteers, or employees, and not due to reasonable wear and tear.

## 6.03 FACILITY MAINTENANCE AND REPAIRS

Operator shall be responsible for all Maintenance in the Veterans Home and must maintain in good and working condition and in sufficient quantity all Equipment necessary to operate and manage the Veterans Home in a manner consistent with all Regulatory Agency requirements and all applicable laws, regulations, and the requirements of this Agreement. In addition, Operator shall replace obsolete or run-down Non-Capital Equipment and make Non-Capital Improvements on an “as needed” basis. Operator shall make all Repairs on all Equipment and Improvements in the Veterans Home, utilizing technicians certified or qualified to service subject Equipment or Improvements; however, (i) if any Repair on a single unit of Capital Equipment or Capital Improvement exceeds **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** (excluding taxes); (ii) if the subject Equipment or Improvement has exceeded its useful life and frequent repairs are necessary to extend same; or (iii) if the need for such Repair results from a manufacturing, design, or construction defect of Capital Equipment or a Capital Improvement then, in any of such events, the cost of such Repair shall be the responsibility of the Board. Pursuant to OAR policy, in each instance in which the Board and Operator have a good faith disagreement regarding the cause of the necessity for Repair or replacement (e.g., whether or not the subject Capital Equipment or Capital Improvement has exceeded its useful life; whether Operator properly performed its Maintenance obligations with respect thereto, in accordance with the subject item’s operations and maintenance manual and properly documented; or whether a Repair is necessitated by Operator negligence), Operator shall pay the first **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** per any single Capital Equipment unit of the subject Repair or replacement and the Board shall pay the balance. Notwithstanding the preceding sentence, Operator shall be responsible for the full cost of any Repair necessitated by Operator’s negligence or intentional failure to perform its maintenance obligations under this Agreement. Before performing any Repair the cost of which shall be the responsibility of the Board, Operator shall notify the Board (provided that if Operator reasonably believes that such Repair is needed immediately to avoid threatening the safety and well-being of the Residents, Operator shall proceed to make such Repair and shall notify the Board per emergency OAR procedures).

**(a) Warranty Repairs**

Operator shall use its best efforts to obtain all necessary warranty repairs on all Capital and Non-Capital Equipment and Capital and Non-Capital Improvements, ensuring they are completed prior to the expiration date on the respective warranties. Operator shall keep available for inspection a Warranty Log on the status of all warranty repairs in the Veterans Home. In complying with this provision, Operator shall not be obligated to incur any financial obligation, except for any damages or liability resulting from any negligent or intentional failure, omission, or neglect by Operator.

**(b) Scheduled Maintenance and Records**

Operator shall fully comply with the Veterans Home detailed maintenance schedule in TELS, an internet-based building maintenance software application, for Capital and Non-Capital items, as applicable, in accordance with the subject item's operations and maintenance manual. Operator shall provide the appropriate electronic mobile devices (e.g., smartphones or tablets) to interface with the TELS system. Operator agrees to work and cooperate with the Board in updating the maintenance schedule in TELS to account for agreed upon modifications, including the addition of newly acquired Capital and Non-Capital items. Operator shall perform all scheduled or manufacturer recommended maintenance on all Capital Equipment. Operator shall keep detailed maintenance records in accordance with the manufacturer's specifications on all Capital Equipment at the Veterans Home. Such records shall be made available for inspection to the Board or the Board's OSR during regular business hours. Such records shall be the basis for determining reimbursement for Repairs under this Section.

**(c) Maintenance Staff**

Operator shall hire at least three (3) full-time maintenance staff (e.g., a maintenance director and two (2) maintenance support staff). Maintenance staff shall not perform laundry or janitorial services.

**(d) Training**

Operator shall make available its Director of Maintenance and maintenance support staff for training on the Veterans Home physical plant within thirty (30) days from Operator's assumption of operations. Training will be provided by person selected and compensated by the Board.

**(e) Communication**

Operator shall report immediately to the Board any issue that may affect veteran and non-veteran Resident health, safety, and comfort. Examples include, but are not limited to, water heater outages, air conditioning outages, plumbing outages, or electricity outages.

**(f) Laundry and Janitorial Services**

Operator shall provide complete laundry services for the operation of the Veterans Home and personal laundry services for the veteran and non-veteran Residents. Operator shall provide full janitorial services including,

but not limited to, trash removal, extermination and pest control, and facility-wide housekeeping.

**(g) Grounds**

Operator shall maintain the Veterans Home grounds and keep them in an attractive condition, appropriate to the seasonal weather and the location’s soil, water, climate, and topography. Operator shall ensure that the grass, trees, bushes, shrubs, flowers, and other plants are mowed, trimmed, clipped, watered, and fertilized as seasonally appropriate. Furthermore, Operator shall sweep and clean all sidewalks and outside concrete or paved areas, keeping them free of trash and debris.

**6.04 TITLE TO CAPITAL ASSETS**

Except as provided for in Section 6.05(b), legal title to all Capital Equipment and Capital Improvements rests with the Board. The Board and Operator acknowledge and agree that the assets set forth on **Attachment B**, attached hereto and incorporated herein in its entirety for all purposes, are the pieces of Capital Equipment present in, or the Capital Improvements made to, the Veterans Home as of the date of this Agreement. Furthermore, the Board and Operator agree to review and update **Attachment B** no less often than annually. Nothing in this Agreement shall operate to transfer title to the Board or limit the right of Operator upon expiration or termination of this Agreement for any reason to remove items of equipment or other personal property and supplies purchased solely by Operator (and not charged to the Board) for use by its staff in performing their responsibilities under this Agreement that are beyond the usual and customary equipment and supplies for fulfilling Operator’s duties under this Agreement. Operator shall not remove Capital Improvements, Capital Equipment or other Board property from the continental United States.

**6.05 PURCHASING**

Operator shall purchase and pay for all Consumables, Non-Capital Improvements, Non-Capital Equipment, Information Technology Equipment (not otherwise provided by the Board), Utilities, and any other supplies or provisions required for operation of the Veterans Home. These expenditures shall be characterized as Operating Expenses. Notwithstanding the preceding sentence, the Board may elect to contract directly with the Texas General Land Office (“GLO”) or a local utility provider for the natural gas needs of the Veterans Home or with a local utility provider for the natural gas and electricity needs of the Veterans Home, if such direct contracts are reasonably expected to result in reduced charges for such Utilities, subject to applicable legislation.

**(a) Capital Expenditures; Prohibited**

Operator shall not purchase or otherwise acquire for use at the Veterans Home any Capital Equipment or make any Capital Improvement without written approval from the Board.

**(b) Emergency Capital Expenditures**

In the event that Operator believes that the acquisition of Capital Equipment is needed or any Capital Improvement is required immediately to avoid any threat to the safety and well-being of the Residents, Operator shall so notify the Board and the Board's Facility Maintenance Coordinator and request, after stating the reasons therefor, an emergency purchase of Capital Equipment and/or Capital Improvement. Due to the urgent nature inherent in such contexts, notification to the Board requesting authorization may be accomplished via telephone or electronic mail. The Board shall respond promptly, but in no event later than twenty-four (24) hours after receiving such emergency request. If such emergency request is approved, the Board and Operator will coordinate the purchase of the Capital Equipment and/or Capital Improvement in an expedited manner. If Operator must act without approval of the Board in order to prevent an immediate threat to the health, safety, or wellbeing of a Resident, legal title to any Capital Equipment purchased by Operator shall rest with Operator, however, title to any Capital Improvement shall remain the property of the Board. The Board will reimburse Operator for all necessary and reasonable emergency Capital Improvement expenditures after examining the circumstances surrounding such purchases; however, the Board reserves the right, upon submission of a detailed invoice, to review the cost of emergency repairs and/or procurements made by Operator, to verify that they are reasonable prior to reimbursing Operator for same. In addition, the Board at its option may purchase any Capital Equipment acquired by Operator in an emergency at its fair market value. Such value shall be determined at the time the Board exercises its right to purchase, but such valuation shall take into account any amount that Operator paid for such Capital Equipment which was in excess of fair market value at the time of such emergency purchase, it being understood and agreed that Operator may pay in excess of fair market value in time of emergency if reasonably necessary for the health, safety, or welfare of Residents of the Veterans Home.

**(c) Third-Party Service Contracts**

Unless otherwise notified by the Board, Operator shall enter into and pay for all service contracts necessary to operate and manage the Veterans Home in a manner consistent with all applicable federal, state, and local laws, regulations, and the terms of this Agreement. All contracts between Operator and a third-party for such services shall require the third-party to allow the assignment, at the Board's direction, of Operator's rights and obligations under such contracts to the Board or Operator's successor operator chosen by the Board. Operator shall use its good faith efforts to maintain compliance with all contracts. Operator shall execute such contracts in its legal capacity. Prior to engaging any contractor, Operator shall provide a background check, and shall verify the contractor's eligibility for receiving state or federal contracts, using the Texas Comptroller of Public Accounts' resources pertaining to suspended and debarred vendors; and the federal procurement or non-procurement

program exclusion records accessible through the federal government's System for Award Management (“SAM”). In the event that any third-party service contracts are entered into by the Board (rather than Operator) then, in such event, Operator shall have the right to consult with the Board on any contracts which have an effect on Operator’s ability to comply with the terms of this Agreement. If at any time during the term of this Agreement Operator shall present to the Board objective evidence of any non-compliance by any contractor selected by the Board, which non-compliance impairs or affects Operator’s ability to effectively perform its functions under this Agreement, the Board shall secure corrective action by the contractor in default thereof, up to and including termination.

**(d) State and Federal Contracts**

The Board at its option may make available to Operator or Operator’s subcontractors the ability to purchase goods and services under State Term Contracts (“STC”) or Federal Supply Schedules (“FSS”). If Operator engages in such contracts all purchases must be made for the exclusive use of the Veterans Home and in accordance with the particular terms of the contract.

**(e) Information Technology Equipment**

Operator shall be responsible for payment of all necessary expenses related to usage charges, licensing fees, upgrades, maintenance and repair, encryption, purchase of software, and compliance with federal and state laws and regulations as is necessary to maintain the information systems for the Veterans Home. Any information technology hardware purchases mandated as a result of any action by any Regulatory Agency or by the Board, shall be acquired by the Board with all costs being an obligation of the Board. Operator shall purchase initial information systems (software) for the Veterans Home, which may include, without limitation, PointClickCare<sup>®</sup>, TELS, and operating systems, subsequent to the Board’s approval prior to the actual purchase. If, pursuant to Operator requests, the Board reimburses Operator for the actual purchase price of such initial information systems on or before the date Operator begins operations at the Veterans Home, such initial information systems shall become the property of the Board.

**6.06 SURPLUS PROPERTY**

Operator shall cooperate with the Board in identifying and disposing of Equipment (if any) the Operator believes is surplus or beyond repair. Operator shall submit a list of such Equipment to the OSR at least 90 days before disposing of any such Equipment and shall coordinate with the OSR to dispose of such Equipment in accordance with applicable state and federal surplus property disposal laws.

## **ARTICLE VII. RECORDS, REPORTS, AND AUDIT**

### **7.01 OWNERSHIP OF DOCUMENTS AND WORK PAPERS**

To the extent allowed by law, the Board shall own all records, documents, files, reports, work papers, and working documentation, electronic or otherwise, created in connection with the Veterans Home, except that Operator's internal administrative files and internal correspondence shall remain the property of Operator. Operator shall be entitled to retain a set of such work papers for its files. To the extent that any records are owned by a Resident, Operator may have access to such records; however, the Board shall have the ultimate right to possess and control such records. Upon termination of this Agreement, Operator shall deliver such documents to the Board. Operator's use of any Resident records shall expressly be subject to the requirements of any federal or state law, statute, regulation, or decision, including HIPAA.

### **7.02 BOARD ACCESS TO RECORDS**

As between the Board and Operator, the Board or any duly authorized representative(s) shall have, for the purpose of making audits, examinations, excerpts, and transcriptions, unimpeded, prompt access to any of Operator's books, documents, papers, reports including, HIPAA risk assessment and vulnerability scan reports, and/or records that are maintained or produced in relation to the Veterans Home and/or this Agreement. Operator shall retain all records related to this Agreement for seven (7) years after final payment is made under this Agreement and all pending matters are closed. However, if any audit, litigation, or other action is commenced before the end of the seven (7) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the seven (7) year period, whichever is later. Notwithstanding the terms of this provision, however, the retention of any records by Operator shall be in accordance with all state and federal regulations and requirements, as well as the record retention policy promulgated by Operator and approved by the Board. It is also agreed that following the termination of the Agreement, if Operator is involved in any audit, litigation, or other action, Operator shall, as allowed by law, have access to and the use of any and all records, files, documents, or other information as necessary to prepare for or defend itself in such actions, whether such records, files, or documents are in the possession of the Board or a successor operator.

### **7.03 GOVERNMENT ACCESS TO BOOKS AND RECORDS**

Operator shall comply with all applicable federal and state laws and regulations governing the maintenance of documentation to verify the cost of services rendered under this Agreement. The Parties agree that if this Agreement is subject to the provisions of Section 1861(v)(1)(I) of the Social Security Act or the regulations promulgated in implementation thereof (initially codified in 42 C.F.R. §§ 420.300 through 420.304) then, until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, Operator shall make available, upon written request of the Secretary of the Department of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized

representatives, this Agreement, and books, documents, and records of Operator that are necessary to certify the nature and extent of such costs.

#### **7.04 REPORTS**

Operator shall be familiar with all federal and state agency required reporting, including all appropriate Regulatory Agencies and Medicare and Medicaid. Operator shall file all necessary documentation in electronic or written format in accordance with all regulations (including HIPAA) for licensure, per diem reimbursement, or other reports in the name of and on behalf of the Board. Operator shall prepare and provide to the Board any operational information which the Board may from time-to-time request, including any information needed to assist the Board in complying with any reporting obligations imposed by a regulatory entity, or other contractual requirements. Operator, in complying with this Agreement, shall not be obligated to supply any non-mandated information, or to supply any information more than once. In addition, Operator shall file:

##### **(a) Financial Reports**

- Within thirty (30) calendar days after the end of each calendar month, Operator shall provide the Board with (i) an unaudited balance sheet with respect to the Veterans Home, dated the last day of such month, and (ii) an unaudited statement of income and expenses for such month relating to the operation of the Veterans Home, and (iii) a schedule of all accounts receivable depicting the previous month's ending balance, payments applied during the month, adjustments, current month's invoice amounts, the new month's ending balance, and (iv) an accounts receivable aging;
- Within forty-five (45) days after the end of the fiscal year of the Veterans Home, Operator shall provide the Board with financial statements that will allow the Board to perform its fiscal year-end audit. These include (i) a balance sheet of the Veterans Home dated the last day of said fiscal year; (ii) a statement of income and expense for the year then ended relating to the operation of the Veterans Home; and (iii) a statement of cash flows for the year then ended for the Veterans Home. Such financial statements shall be signed by Operator's Chief Financial Officer, Chief Accounting Officer, or equivalent position certifying their accuracy; and
- Within one hundred twenty (120) days after the end of Operator's fiscal year, which ends on September 30, Operator shall provide the Board with combined audited financial statements from an auditor acceptable to the Board including (i) a balance sheet of the Veterans Home dated the last day of said fiscal year; (ii) a statement of income and expense for the year then ended relating to the operation of the Veterans Home; (iii) a statement of cash flows for the year then ended for the Veterans Home; and (iv) audit adjustments reconciling audited annual financial statements to unaudited monthly financial statements previously provided by Operator.



The balance sheet and statement of income and expense shall include columns setting forth the applicable amounts for the prior fiscal year. Operator shall prepare reports comparing that data reported in the proceeding sentence to data from the prior year's operations (if applicable) and compare the current reports to the budget developed for the same year. In this connection, all such reports shall be prepared on forms reasonably acceptable to the Board and Operator, and all statements and reports shall be prepared on an accrual basis in accordance with GAAP consistently applied. Operator shall also provide, on a monthly basis, a statement reconciling the Veterans Home's accounts receivable to its cash receipts. As additional support to required reporting information under this Agreement, Operator shall, at the Board's request, provide the Board with access to and/or copies of (i) all bank statements and reconciliations; (ii) detailed cash receipts and disbursement records; (iii) general ledger listing; (iv) summaries of adjusting journal entries; (v) copies of all paid bills; and (vi) any other supporting documentation the Board may reasonably request within such reasonable time as not to impair the performance of Operator's functions hereunder. Operator's financial reports, described in this Section remain the proprietary information of Operator and the Board agrees that any request for such financial reports will be subject to all protections provided to third-party interests under the Texas Public Information Act.

**(b) Census Reports**

Operator shall provide the Board, through the OSR, with daily census reports for the Veterans Home. In addition, Operator shall provide an accurate Monthly Census Report to the Board at the end of each month no later than the third (3rd) business day of each following month for purposes of determining the Operations Fee. Operator shall provide census reports in form and content as required by the Board and in accordance with HIPAA and all federal, state, and local requirements. Operator shall reconcile the Monthly Census Report to actual census numbers claimed under Medicaid requirements. Operator shall explain and resolve any existing differences between the Monthly Census Report and the census numbers submitted to Medicaid.

**(c) Incident Reports**

In compliance with all applicable federal, state, and local laws, regulations, or standards, Operator shall maintain an incident reporting system to track all accidents, incidents, abuses, deaths, safety concerns, medication errors, or other reportable incidents. Operator shall notify the Board and the Committee immediately of any suspected abuse of a Resident, any unexpected or unexplained injury or death of a Resident, any accident involving a Resident, any immediate threat to the health or safety of a Resident, any medically unexpected changes in a Resident's health status or any work-related incident involving staff resulting in hospital confinement. Operator shall immediately make available to the Board, its OSR, and the Committee any reports, notes, or other documents related to any incident. Furthermore, for any incidents reportable to any Regulatory

Agency, Operator shall provide copies to the Board and its OSR simultaneously with making any reports to any Regulatory Agency. In conjunction with the Committee, Operator shall provide copies of all surveys and any complaint investigation reports generated by any Regulatory Agency to the Board upon receipt thereof.

Adverse Incident Report: Must be submitted to the Board for review no later than 12:00 p.m., noon, on the following business day.

Sentinel Event: Must be reported within twenty-four (24) hours of the event; a copy must be sent to the USDVA at the same time.

**(d) Additional Reports**

All Resident or family council meeting minutes in the possession of Operator shall be provided upon request, subject to any impediments by any law or regulation, including HIPAA.

**7.05 BOARD AUDIT RIGHTS**

Operator and the Board recognize that Operator shall be subject to a number of audits from several state and federal agencies, based on its duties of operating the Veterans Home. Operator shall supply the Board with all reports based on an audit of the Veterans Home regardless of the source of such reports. Nothing herein shall limit the right of the Board to demand one (1) annual program and/or fiscal audit of the Veterans Home, using an auditor of the Board's choice, the expense of which shall be borne by Operator up to **FIFTEEN THOUSAND DOLLARS (\$15,000)** per year. At any time, the Board shall have the right, in addition, to perform an annual program and/or fiscal audit, to conduct a special or targeted audit of any aspect of the operation of the Veterans Home, using an auditor of the Board's choice. The costs associated with performing such special or targeted audits shall be the responsibility of the Board. Operator shall maintain such financial records and other records as may be prescribed by the Board or by applicable federal and state laws, rules, and regulations. Operator shall retain these records for a period of six (6) years after final payment or until they are audited by the Board, whichever event occurs first. These records shall be made available during the term of this Agreement and the subsequent six (6) year period for examination, transcription, and audit. An annual HIPAA Security Risk Assessment conducted by the Board is not considered an "audit" for purposes of this Section.

**7.06 COSTS OF REPRODUCTION**

Operator shall bear all costs of reproduction under this Agreement for any and all reports, medical records and documents; however, the Parties agree to share all information in electronic form subject to applicable law, or to make such documents available by inspection whenever possible to control the costs of reproduction. However, notwithstanding the preceding sentence, Operator shall not be financially responsible for duplicate requests of medical records or other information that has been previously delivered to the Board if such cost of duplication exceeds **TWO HUNDRED DOLLARS (\$200.00)**.

**7.07 STATE AND FEDERAL AUDIT AND INSPECTION RIGHTS**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Agreement or indirectly through a subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a subcontract under the Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. The Comptroller General, the General Accounting Office, the Office of Inspector General, and any authorized representative of the U.S. Government shall also have this right of inspection. Operator shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Operator and the requirement to cooperate is included in any subcontract it awards.

**ARTICLE VIII. TERM, RENEWAL AND COMPENSATION**

**8.01 TERM OF AGREEMENT**

This Agreement shall be effective as of September 1, 2024 (the “Effective Date”) and shall remain in effect through August 31, 2027, unless sooner terminated as provided by this Agreement, and subject to the conditions set forth herein. The Board may, at its sole discretion and subject to applicable limitations in the General Appropriations Act and other law, choose to renew this Agreement for up to one additional term of three (3) years upon mutual written agreement of both parties.

**8.02 MANAGEMENT AND OPERATIONS FEE**

As complete consideration for Operator’s services under this Agreement, including Operator’s payment of all Operating Expenses, the Board shall, subject in all events to the availability of funds as set forth in Sections 8.09 and 9.01(a), pay Operator the Operations Fee for the Veterans Home in accordance with the terms of **SCHEDULE 8.02**, attached hereto and incorporated herein in its entirety for all purposes. The amount of the Operations Fee for a given month is calculated as set forth in Section 5.03(d) and **SCHEDULE 8.02**. The Operations Fee shall be paid to Operator by the Board as invoices are received by the Board, but no more frequent than monthly, and consistent with the requirements of the Prompt Pay Act (Chapter 2251 of the Texas Government Code). For the purposes of the Prompt Pay Act, the Board’s payment of the Operations Fee is overdue on the thirty-first (31st) day after the date the Board receives a proper invoice for Operator’s services under the Agreement and a complete Monthly Census Report. For purposes of Section 2251.042 of the Prompt Pay Act, the Board’s rejection of an invoice due to an inaccurate or incomplete Monthly Census Report shall constitute a bona fide “dispute.” For purposes of determining the relevant time period to calculate the Operations Fee, “Day 1” for the Veterans Home is the effective date. In the event that the Veterans Home’s Day one (1) is not on the first (1st) day of the month, the Average Daily Census shall only be multiplied by the number of days in the month for which residents received services in the Veterans Home.

### **8.03 WITHHOLDING & REDUCTION OF OPERATIONS FEE**

#### **(a) USDVA Withholds Per Diem**

In the event the USDVA withholds any per diem payments due to the fault of Operator (as determined by the USDVA), the amount actually withheld will not be included in any calculation of the Operations Fee, and Operator will not be compensated for that amount unless and until such decision is reversed by the USDVA, at which time the previously withheld amount shall be added to the current calculation of the Operations Fee due to Operator.

#### **(b) Regulatory Agency Citations & Penalties**

If, after any survey or investigation by any Regulatory Agency, the Veterans Home is found not to be in compliance with state licensure requirements and/or is not in compliance with federal health care program participation requirements, in at least three (3) consecutive surveys or investigations occurring in a nine (9) month period and such non-compliance is found to have caused actual harm or immediate jeopardy to residents of the Veterans Home, the Board may reduce payment of the Operations Fee by 10% on the next Operations Fee invoice received by the Board following the date the Board received notice of the third non-compliance finding and/or deficiency. Such reduction of the Operations Fee shall continue to be applied to each subsequent invoice until the Board receives written notification by the Regulatory Agency that the Veterans Home is in substantial compliance with all state licensure requirements and federal health care program participation requirements.

In the event any Regulatory Agency assesses any administrative fines or penalties against the Veterans Home, Operator shall promptly pay such fine and correct any deficiencies, the presence of which resulted in such fine or administrative penalty. Notwithstanding the provisions herein, Operator shall have the right to contest any such fine or administrative penalty, so long as the Board's license is not in any manner imperiled by such action. The Board may withhold from payment of the Operations Fee the amount of any such assessed fine or administrative penalty until such fine or administrative penalty is actually paid by Operator to the assessing Regulatory Agency or until Operator's appeal or contest of such fine or administrative penalty is decided in favor of Operator, whichever occurs first.

The Board and Operator shall cooperate in good faith to assure that any portion of the Operations Fee withheld by the Board pursuant to this provision is withheld only once (e.g., to assure that any such amount is not both credited by Operator and separately withheld by the Board, thereby resulting in duplicate benefit to the Board); and in furtherance thereof the Board shall, at a minimum, verbally notify Operator of its intention to withhold a portion of the Operations Fee prior to the actual withholding.

**(c) Suspension of Veterans Home License**

In the event that the Board’s license is suspended, the Board may hold in abeyance the Operations Fee, and the Operations Fee will not be considered due and/or accrue interest under the Prompt Payment Act. Notwithstanding anything contained in this clause to the contrary, however, in the event that any penalty is assessed against the Veterans Home as a result of any failure by the Board to perform any of its duties, then the Board shall be solely responsible for any fines or penalties assessed as a result of such failure. If Operator pays any such aforementioned fine or penalty on behalf of the Board, the Board shall promptly reimburse Operator for such fine or penalty.

**8.04 RENEWAL AND EFFECTIVE DATE OF FEE INCREASE**

Should the Board choose to renew this Agreement in accordance with Section 8.01, then the Parties agree to negotiate in good faith the Operations Fee applicable for the upcoming renewal term, based on the past performance and projected performance of the Veterans Home. If the Parties cannot agree on the renewal Operations Fee prior to the expiration of the current term, then this Agreement shall continue in effect under the current Operations Fee structure; **provided, however**, that the Parties shall continue negotiations and any subsequent changes to the Operations Fee shall be made retroactive to the renewal date; **and provided further**, that if the Parties cannot agree on changes to the Operations Fee structure, then either party may terminate this Agreement by providing one hundred twenty (120) days’ written notice to the other Party.

**8.05 VARIABLE FEE CALCULATION**

The Variable Fee Component of the Operations Fee is determined in accordance with Section 5.03(d) and **SCHEDULE 8.02**. For purposes of determining the number of Residents in the Veterans Home on a given day, Residents admitted on that day shall be counted in the day’s census and Residents discharged on that given day shall not be counted in the day’s census. By the third (3rd) business day of every month, Operator shall provide the Board with an accurate Monthly Census Report, concurrent with the monthly Operations Fee invoice for the Veterans Home from the preceding month. The Board shall retain the right to perform a “look-back” audit to confirm the accuracy of the Monthly Census Report and the Variable Fee Component of the Operations Fee. The Board shall have the right to make adjustments (up or down) to the monthly Operations Fee payable to Operator to correct amounts paid to Operator for a previous month’s Operations Fee that was based on an incorrect Monthly Census Report provided by Operator or to make any adjustments for any amounts due the Board from Operator. However, prior to making such adjustments, Operator and the Board shall meet and review the Board’s audit and both Parties shall make a good faith effort to jointly determine the corrections necessary, if any, to the Monthly Census Report and the following adjustments to the Operations Fee.

## 8.06 DELIVERY OF INVOICES

By the third (3<sup>rd</sup>) business day of each month, Operator shall submit an Operations Fee invoice. Operator shall ensure that the Operations Fee invoice accurately reflects the figures submitted in the Monthly Census Report Operator submits in accordance with Section 7.04(b). The Board will not accept the monthly Operations Fee invoice unless Operator submits it with an accurate Monthly Census Report.

Except as otherwise provided herein, any and all invoices and any subsequent modification(s) thereto including, without limitation, invoices for Management and Operations Fees, Capital Expenditures, or any other expenditure reimbursable under this Agreement must be submitted to the Board within ninety (90) days from the “date of delivery”. As used in this paragraph, the date of delivery for Capital Expenditures means the date the Capital Equipment is delivered to the Facility, or the Capital Improvement is completed, as applicable and as confirmed by a representative from the GLO Construction Services Division, and date of delivery for health care services means the date the VLB receives payment for such services. Notwithstanding the foregoing, the Board in its discretion may authorize payment for invoices submitted more than 90 days after the date of delivery.

This requirement shall not apply to any invoices or any subsequent modification(s) thereto if **BOTH** of the following conditions are met: (1) the subject of a dispute with regard to services provided under Medicare Part A, and (2) in an amount of **\$20,000.00** or greater. No invoices in an amount less than **\$500.00** shall be submitted by Operator to the Board.

## 8.07 OPPORTUNITIES FOR ADDITIONAL REVENUE

Operator and the Board recognize that, from time to time, the Veterans Home may benefit from providing services beyond the scope of this Agreement to (i) members of the community surrounding the Veterans Home; and (ii) Residents, to the extent that payment for such additional services to Residents are available through a managed care program. Operator may, with the Board’s approval, enter into contracts on the Board’s behalf to provide such services or may itself provide such services. The revenues received under such contracts shall be revenues of the Board and shall be deposited in the Board’s name in the bank account designated by the Board. Operator shall be entitled to a contract management fee or other compensation in addition to the monthly Operations Fee, for each contract entered into. Operator and the Board agree to negotiate in good faith the amount of Operator’s fee for the services it provides under each contract entered into; provided, however, that any additional fee paid to Operator shall be payable on a per-unit basis or a combination of per-unit and periodic fixed fees. Nothing herein shall be deemed to obligate Operator to enter into any additional contracts or arrangements that it, in its sole discretion deems imprudent, whether on account of compensation issues or otherwise. The term of any contract executed must be limited by the term of this Agreement, including the Board’s right to terminate such contract without cause.

## **8.08 GIFT SHOP REVENUES**

In the event Operator elects to institute a gift shop in the Veterans Home, the Board and Operator understand and agree that all revenues from the gift shop will be retained by the volunteer program responsible for operating and maintaining the gift shop. If at any time the gift shop is operated and maintained by Operator rather than a volunteer program, all revenues will be allocated as provided in Section 8.07. All inventories in the gift shop shall be at the expense of the volunteer program and not the Board.

## **8.09 LIMITED OBLIGATION AGREEMENT**

**THIS AGREEMENT IS A LIMITED OBLIGATION OF THE BOARD, AND ANY PAYMENT REQUIRED BY THE BOARD UNDER THIS AGREEMENT SHALL BE LIMITED TO SOLELY THE FUNDS RECEIVED BY THE BOARD FOR THE PAYMENT OF VETERANS HOME'S RESIDENTS' NURSING CARE; NEITHER THE FAITH AND CREDIT NOR TAXING POWER OF THE STATE OF TEXAS OR THE UNITED STATES OF AMERICA OR THE GENERAL REVENUES OF THE BOARD ARE PLEDGED TO MAKE ANY PAYMENT REQUIRED UNDER THIS AGREEMENT.**

## **8.10 OPERATIONS FEE ADJUSTMENT PROVISIONS**

The Parties agree that the fees set forth on **SCHEDULE 8.02** have been based in part upon, *inter alia*, state and federal laws. Therefore, the Parties agree, in the event that state or federal laws should be amended in a manner which directly results in an increase of ten-percent (10%) or more in Operator's Operating Expenses, when compared to the preceding six (6) month period, to negotiate in good faith a possible increase to such Operating Expenses. Negotiations to compensate Operator for the financial impact, if any, of changes in state or federal laws shall begin prior to the first and second anniversaries of the first day of the term of this Agreement, and shall become effective in the second and third years, respectively. The Parties shall use their best efforts to reach agreement on the Operations Fee for upcoming periods prior to each of the first and second anniversary dates of the first day of the term of this Agreement. **SCHEDULE 8.02** shall promptly be amended to reflect the agreement of the Parties. Adjustments, if any, shall be retroactive to the first day of the second and third years of the term, regardless of the date of final execution of any amendment(s). This Section shall also be applicable to the second year of any renewal term of this Agreement.

## **ARTICLE IX. TERMINATION AND REMEDIES**

### **9.01 TERMINATION**

Either Party may terminate this Agreement in the Event of Default by the other Party, or as otherwise specified herein. In the event of notice of termination, notice of non-renewal, or default, Operator will cooperate, if applicable, in the development of a Transition Plan for transitioning all aspects of facility operation from the current Operator to a new operator designated by the Board, with such transition occurring no later than one hundred twenty (120) days from the date of the receipt of notice of termination by either Party. The Transition Plan shall include a proviso addressing the contingency of a new operator not actively in place within one hundred twenty (120) days from the date of termination notice receipt,

in which case, Operator shall continue managing the Veterans Home on terms the Parties shall negotiate in good faith, until such time as a new operator is in place. Any outstanding obligations shall be resolved in accordance with Section 9.06.

**(a) State Termination for Non-appropriation**

This Agreement shall not be construed as creating any debt on behalf of the State in violation of Tex. Const. Art. III § 49. This Agreement is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Texas State Legislature, the Board's excess lending profits, and/or federal sources. If such funds become unavailable, the Board shall have the right to terminate this Agreement. Operator shall be provided with written notice no less than one hundred twenty (120) calendar days prior to the Board's termination of this Agreement. In the event that the Board exercises its rights to earlier termination under the provisions of this clause, the Board shall pay Operator the reasonable costs resulting from the early termination. During the transition period, the Board shall not be liable for any other fees (except the Operations Fee), costs (except those for which the Board is contractually obligated under this Agreement), or damages.

**(b) Termination Without Cause by the Board**

The Board shall have the right to terminate this Agreement without cause. Operator shall be provided with written notice no less than ninety (90) calendar days prior to the Board's termination of this Agreement. In the event that the Board exercises its rights to earlier termination under the provisions of this clause, the Board shall pay Operator the reasonable costs resulting from the early termination. During the transition period, the Board shall not be liable for any other fees (except the Operations Fee), costs (except those for which the Board is contractually obligated under this Agreement), or damages.

**(c) Termination as Relief for Operator**

Operator shall have the right to petition the Board for the termination of this Agreement as relief from an unforeseen catastrophic natural or economic event, arising through no fault of Operator, that impairs the ability of Operator to perform its duties herein. Upon a finding that good cause exists for such termination, the Board shall terminate this Agreement with respect to the Veterans Home. In the event that this Agreement is terminated as described in this paragraph, Operator shall cooperate with the Board to ensure that Residents of the Veterans Home are not endangered or left without proper housing or medical care. In the event that this Agreement is terminated, such termination shall occur at the earlier of either:

- (i) one hundred twenty (120) days following the petition to the Board for early termination; or
- (ii) the date upon which any catastrophic natural or economic event causes Operator to be no longer fiscally capable of carrying out this Agreement.



## 9.02 OPERATOR EVENTS OF DEFAULT

With respect to Operator, it shall be an Event of Default hereunder in any of the following circumstances:

**(a) Material Compliance**

If Operator fails to keep, observe, or perform any material agreement, term, or provision of this Agreement, and such default continues for a period of thirty (30) calendar days after notice thereof has been given to Operator by the Board specifying the event or events constituting the default, provided that no Event of Default shall be deemed to exist hereunder where the act, event, or condition noticed as constituting the default is one which by its nature or circumstances reasonably requires more than thirty (30) days to cure, and promptly following receipt of notice, Operator in good faith initiates and diligently pursues measures which upon conclusion may reasonably be expected to have cured or eliminated the noticed act, event, or condition;

**(b) Failure to Pay Third-Party Operators**

If Operator fails to make payments or keep any covenants owing to any third-party which would cause the Board to lose possession of the Veterans Home or any personal property or service arrangements that would be required to operate the Veterans Home in the normal course of business;

**(c) Voluntary Insolvency**

If Operator:

- (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise;
- (ii) voluntarily ceases to conduct its business in the ordinary course;
- (iii) commences any Insolvency Proceeding with respect to itself; or
- (iv) takes any action to effectuate or authorize any of the foregoing.

**(d) Involuntary Insolvency**

If Operator:

- (i) has any involuntary Insolvency Proceeding commenced or filed against it, or any writ, judgment, warrant of attachment, execution, or similar process is issued or levied against a substantial part of Operator's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution, or similar process shall not be released, vacated, or fully bonded within sixty (60) days after commencement, filing, or levy;
- (ii) admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or

(iii) acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar person for itself or a substantial portion of its property or business.

**(e) Jeopardizing Resident Health**

If Operator:

Subject to the notice provisions of (a) above, shall negligently fail to keep, observe, or perform any material agreement, term, or provision of this Agreement and such negligent failure constitutes a final finding of Immediate Jeopardy as defined under 42 C.F.R. § 489.3.

**(f) Non-Compliance with Law or Regulation**

If, after survey by any licensing or certifying agency, the Veterans Home is found to have performed Substandard Quality of Care pursuant to 42 C.F.R. § 488.301 in at least three (3) consecutive surveys in a six (6) month period, or loses certification with the Medicaid or Medicare contracts and, after reviewing the facts and circumstances relating to such survey findings, including without limitation, any relevant information presented by Operator, the Board determines such survey findings reflect evidence of endangerment of Residents at the Veterans Home.

If the licensing agency cites the Veterans Homes with an Immediate Jeopardy citation twice (2) during two separate licensing surveys or investigations within a two-year period; the Board reserves the right to seek a new operator if the Board determines the operator has not made sufficient progress to correct the deficient practice. If the licensing agency cites the Veterans Home with three (3) Immediate Jeopardy citations in three separate licensing surveys or investigations within a two-year period; the Board must seek a new operator for the Veterans Home within 120 days.

In Addition, the Board may terminate this agreement pursuant to Section 2(g) of the Business Associate Agreement, **Attachment C**.

**(g) Fraud**

If Operator or its managerial employees, officers, directors, or affiliates is indicted of a felony involving health care fraud.

**(h) Loss of License**

If Operator or an officer or director, (or manager, if Operator is a limited liability company) or Operator is excluded, de-licensed, or sanctioned by a Regulatory Agency from participation in any federal and/or state health care program.

**9.03 BOARD EVENTS OF DEFAULT**

With respect to the Board, it shall be an Event of Default hereunder if the Board fails to keep, observe, or perform any material agreement, term, or provision of this Agreement, including the non-payment of the Operations Fee hereunder for any

cause not specifically allowed hereunder, and such default continues for a period of thirty (30) calendar days after notice is provided to the Board by Operator.

#### **9.04 FORCE MAJEURE/NO DEFAULT**

Any delays in or failure of performance by either Party, except in respect of the obligation of payments under this Agreement, shall not constitute an Event of Default hereunder if, and to the extent, such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the Party affected, and which by the exercise of due diligence such Party is unable to prevent, Force Majeure. The Party claiming Force Majeure shall promptly notify the other Party in writing of the Force Majeure event and, if possible, such notice shall set forth the extent and duration thereof. The Party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so, and shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the other Party may terminate this Agreement immediately upon written notification to the non-performing Party.

#### **9.05 REMEDIES UPON DEFAULT-OPERATOR/BOARD**

If any Event of Default by either Party shall occur, either Party, in addition to any other remedy available to it at law, may terminate this Agreement in accordance with the terms herein, thereby releasing all Parties from any further continuing operational obligations whatsoever hereunder, provided that both Parties shall cooperate to ensure the Residents of the Veterans Home are not endangered or left without proper medical care. **NOTHING CONTAINED IN ANY PORTION OF THIS AGREEMENT SHALL BE CONSTRUED IN ANY WAY TO WAIVE SOVEREIGN IMMUNITY BY THE BOARD OR THE STATE OF TEXAS.**

#### **9.06 WINDING UP**

In the event of termination of this Agreement for any reason, the Parties shall perform the winding up tasks specified in this Section. The Parties agree that the provisions of this Section shall survive termination of this Agreement.

- (a) The Parties shall account for, and properly present to each other, all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set-off under this Agreement;
- (b) Operator shall account and present for inspection to the Board all Capital Equipment and Capital Improvements, and any damaged or missing Capital Equipment and/or Capital Improvements shall be the financial responsibility of Operator unless otherwise provided for herein;
- (c) Operator shall return the Veterans Home to the Board fully stocked and equipped to the same extent as it was provided to Operator as of the Effective Date, to ensure the continued operation of the Veterans Home;
- (d) Operator shall return all keys, access cards, and security codes to the Board;
- (e) Operator shall satisfactorily complete work in progress at the contracted rate or as otherwise agreed if so requested by the Board;

- (f) Operator shall execute any documents and take any actions necessary to effectuate an assignment of this Agreement if so requested by the Board; and
- (g) Operator shall cooperate with any successor operator in facilitating a seamless transition process. Operator shall assist successor operator with any necessary transitions applicable to information systems for accounting, billing, purchasing, bill payment functions and medical records; provided, however, that Operator shall not be required to incur any additional expense with respect to such transition efforts that would be above and beyond normal operations services, unless such expense is requested by the Board and the Board agrees to reimburse Operator for such expense.

#### **9.07 SURVIVAL OF TERMS AND CONDITIONS**

All provisions, terms, and conditions of this contract which explicitly, or by their nature, evidence that the Parties intend they survive the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. In addition, the provisions, terms, and conditions of this Agreement pertaining to the following subjects shall survive the termination or expiration of this Agreement: definitions, interpretive provisions, operator representations, confidentiality, ownership of documents and work papers, Board and government access to records, Board and government audit and inspection rights, costs of reproduction, winding up, waiver, severability, choice of law, venue, attorneys' fees, indemnity, intellectual property, infringement, merger and integration, amendment, and public information.

### **ARTICLE X. MISCELLANEOUS**

#### **10.01 CUMULATIVE RIGHTS AND REMEDIES; NO WAIVER**

A right or remedy herein conferred upon or reserved to either of the Parties hereto is not intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of an Event of Default hereunder. The failure of either Party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the Parties hereof may be exercised from time to time and as often as may be deemed expedient by the Parties thereto, as the case may be.

#### **10.02 WAIVER OF PRIVILEGE**

The Parties agree that any applicable attorney-client or other legal privilege shall not be deemed waived by this Agreement.

#### **10.03 ASSIGNMENT**

Operator may not, without the prior written consent of the Board, which may be withheld or granted in the Board's sole discretion, assign its obligations as Operator hereunder or lease, assign, or sub-manage the Veterans Home. Notwithstanding

the foregoing, Operator may assign its rights and obligations under this Agreement to an Affiliate of Operator with the written approval of the Board, so long as Operator executes a guaranty, in form and substance acceptable to the Board, in which Operator guarantees the due and complete performance by such Affiliate of all the obligations and duties otherwise assigned hereunder.

#### **10.04 SEVERABILITY**

If any one or more of the provisions contained in this Agreement is held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, but this Agreement shall be reformed and construed and enforced to the maximum extent permitted by applicable law.

#### **10.05 APPLICABLE LAW**

This Agreement shall be interpreted, construed, applied, and enforced in accordance with the laws of the State of Texas applicable to contracts between parties that are to be performed entirely within Texas.

**NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE BOARD OR THE STATE OF TEXAS.**

#### **10.06 DISPUTE RESOLUTION**

Except as otherwise provided by statute, rule or regulation, Operator shall use the dispute resolution process established in Chapter 2260 of the Texas Government Code and related rules to attempt to resolve any dispute under this Agreement including a claim for breach of contract by the Board, that the Parties cannot resolve in the ordinary course of business. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of such a claim constitutes grounds for Operator to suspend performance of this Contract. Notwithstanding this provision, the Board reserves all legal and equitable rights and remedies available to it. This provision shall not apply to any matter with respect to which the Board or Operator may make a decision within its sole and complete discretion. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE BOARD.**

#### **10.07 CHOICE OF LAW AND VENUE**

Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Operator irrevocably waives any objection, including any objection to personal jurisdiction, the laying of venue, or based on forum non convenience, it has or may have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any related document. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO, VLB, OR THE STATE OF TEXAS.**

#### **10.08 CONFIDENTIALITY**

To the extent permitted by law, Operator and the Board shall keep all information, in whatever form produced, prepared, observed, or received by Operator or the Board, confidential to the extent that such information is: (a) confidential by law;

(b) marked or designated “confidential” (or words to that effect) by Operator or the Board; or (c) information that Operator or the Board is otherwise required to keep confidential by this Agreement. Operator must not advertise that it is doing business with the Board, use this Agreement as a marketing or sales tool, or make any communications or announcements relating to this Contract through press releases, social media, or other public relations efforts without the prior written consent of the Board.

#### **10.09 INDEMNITY – ACTS OR OMISSIONS**

OPERATOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE STATE OF TEXAS, THE BOARD, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, DAMAGES, PROCEEDINGS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF OPERATOR OR ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUPPLIERS, CONTRACTORS, SUBCONTRACTORS, ASSIGNEES, DESIGNEES, ORDER FULFILLERS, OR SUPPLIERS OF CONTRACTORS OR SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. OPERATOR AND THE BOARD SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. OPERATOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. OPERATOR SHALL COORDINATE ITS DEFENSE WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND OPERATOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE WRITTEN CONSENT OF THE OFFICE OF THE ATTORNEY GENERAL.

#### **10.10 TAXES, WORKERS COMPENSATION, UNEMPLOYMENT INSURANCE**

- (a) Operator shall be solely liable and responsible for payment of Operator’s and Operator's employees’ taxes of whatever kind, arising out of the execution or performance of the Agreement. Operator shall comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers’ compensation. The Board and the State of Texas shall not be liable to Operator or its officers, agents, employees, representatives, contractors, assignees, designees, or others for the payment of taxes, or the provision of unemployment insurance, workers’ compensation, or any benefit available to a state employee or employee of another governmental entity.
- (b) Operator shall indemnify, defend, and hold harmless the State of Texas, the Board, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from

tax liability, unemployment insurance, or workers' compensation in the execution or performance of the Agreement and any Purchase Orders issued under the Agreement. Operator and the Board shall furnish timely written notice to each other of any such claim. Operator shall be liable to pay all costs of defense including attorneys' fees. Operator shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Operator may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

#### **10.11 INFRINGEMENT INCLUDING INDEMNITY**

- (a) Operator shall indemnify, defend, and hold harmless the State of Texas, the Board, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from infringement of any United States patent, copyright, trade or service mark, or any other intellectual or intangible property right that occurs in the execution or performance of the Agreement and any Purchase Orders issued under the Agreement. Operator and the Board shall furnish timely written notice to each other of any such claim. Operator shall be liable to pay all costs of defense including attorneys' fees. Operator shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Operator may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.
- (b) Operator shall have no liability under this Section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Operator's written approval, (iii) any modifications made to the product by the Operator pursuant to Customer's specific instructions, or (iv) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- (c) If Operator becomes aware of an actual or potential claim, or the Board provides Operator with notice of an actual or potential claim, Operator may (or in the case of an injunction against the Board, shall), at Operator's sole option and expense; (i) procure for the Board the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with a functionally equivalent or superior product or service so that the Board's use is non-infringing.

#### **10.12 LEGAL PROCEEDINGS**

Operator shall, through its legal counsel, promptly coordinate all pertinent legal matters and proceedings with the Board's counsel, excluding any proceedings in front of the Equal Employment Opportunity Commission. As soon as practicable after Operator obtains actual knowledge thereof, Operator shall notify the Board in

writing of all pending or threatened legal proceedings (other than those pending in front of the Equal Employment Opportunity Commission) affecting the Veterans Home or the Board.

#### **10.13 NOTICES**

All notices required or permitted hereunder shall be given in writing by hand delivery, by registered or certified mail, postage prepaid, or by overnight delivery. Notice shall be delivered or mailed to the Parties at the following addresses or at such other places as either Party shall designate in writing:

**TO OPERATOR:**

Texas VSI, LLC  
201 North Main Street  
Anderson, SC 29621  
Attention: President/CEO

**TO THE BOARD:**

Texas General Land Office  
Office of General Counsel, Mail Code 158  
P.O. Box 12873  
Austin, Texas 78711-2873  
Telephone: (512) 463-5007

**WITH A COPY TO:**

Bobby Breeden, Director  
Texas State Veterans Homes Program  
Veterans Land Board of the State of Texas  
1700 North Congress  
Austin, Texas 78701-1495

Notice given in any other manner shall be deemed effective only upon receipt by the Party notified. Either Party may change its address for notice by written notice the other Party has herein provided.

#### **10.14 ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the Parties and supersedes all prior agreements and understanding, and shall be binding upon and inure to the benefit of their successors and assigns. This Agreement may not be modified or amended except by written instrument signed by both of the Parties hereto.

#### **10.15 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same Agreement.

#### **10.16 TEXAS PRODUCTS AND MATERIALS**

Operator, in performing the Agreement, shall purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside this state.



## **10.17 PUBLIC RECORDS**

The Board shall post this Agreement to the GLO's website. Operator understands that the Board will comply with the Texas Public Information Act, as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas (the "Attorney General"). Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the PIA. In accordance with Section 2252.907 of the Texas Government Code, Operator is required to make any information created or exchanged with the Board or the State of Texas pursuant to the Agreement, and not otherwise excepted from disclosure under the PIA, available to the Board in portable document file (".pdf") format or any other format agreed upon between the Parties that is accessible by the public at no additional charge to the Board or the State of Texas. By failing to mark any information that Operator believes to be excepted from disclosure as "confidential" or a "trade secret," Operator waives any and all claims it may make against the Board for releasing such information without prior notice to Operator. The Attorney General will ultimately determine whether any information may be withheld from release under the PIA. Operator shall notify the Board's Office of General Counsel within twenty-four (24) hours of receipt of any third-party written requests for information and forward a copy of said written requests to [PIALegal@glo.texas.gov](mailto:PIALegal@glo.texas.gov). If a request for information was not written, shall forward the third party's contact information to the above-designated e-mail address.

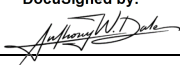
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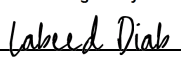
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GLO CONTRACT No. 25-004-000-E513**

The Parties hereby certify that they are authorized by their respective entity to execute this Agreement, to be effective as of the date last signed

**TEXAS GENERAL LAND OFFICE AND  
VETERANS LAND BOARD**

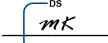
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**Tony Dale**  
Executive Secretary

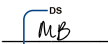
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President/CEO

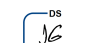
Date of Execution: 8/8/2024

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**ATTACHMENTS:**

- ATTACHMENT A. PHARMACEUTICALS**
- ATTACHMENT B. CAPITAL EQUIPMENT AND IMPROVEMENTS**
- ATTACHMENT C. BUSINESS ASSOCIATE AGREEMENT**
- ATTACHMENT D. GENERAL AFFIRMATIONS**
- ATTACHMENT E. NURSING HOME INFORMATION AND SECURITY APPENDIX**
- SCHEDULE 2.08. REQUIRED INSURANCE AND BONDS**
- SCHEDULE 3.02. LITIGATION**
- SCHEDULE 8.02. MANAGEMENT AND OPERATIONS FEE**

**ATTACHMENTS FOLLOW**

**ATTACHMENT A - PHARMACEUTICALS**

**GLO CONTRACT NO. 25-004-000-E513**

## PHARMACEUTICAL AGREEMENT

**WHEREAS**, pursuant to **Article V** of the Agreement, Operator is responsible for providing complete pharmacy goods and services for all Residents of the Veterans Home; and

**WHEREAS**, Operator acknowledges that it is responsible for all costs of over-the-counter medications for all Residents of the Veterans Home; and

**WHEREAS**, Operator specifically acknowledges that it is responsible for: (i) obtaining and dispensing medications; (ii) providing pharmacy consulting services; and (iii) the collection of payer source information for proper billing to the Board, Medicaid, the United States Department of Veterans Affairs (“USDVA”), or other third-party insurance or Responsible Party, for all Residents; and

**WHEREAS**, the Board acknowledges it is responsible for the costs of prescription medications and medical supplies for Residents whose prescriptions and supplies are not covered by Medicaid, the USDVA, or other third-party insurance; and

**WHEREAS**, Operator acknowledges that the Board has contracted with a pharmacy services vendor for the provision of prescription medications and medical supplies and the provision of all emergency, on-call, and Medicaid prescription medications and medical supplies for the Veterans Home from which Operator shall obtain such prescription medications and medical supplies; and

**WHEREAS**, Operator acknowledges that the Board has an agreement with the USDVA for the provision of prescription medications and medical supplies for Aid and Attendance Residents from which Operator shall obtain such prescription medications and medical supplies; and

**WHEREAS**, both Operator and the Board acknowledge that prescription medications can be designated as over-the-counter medications and as this occurs, Operator and the Board will negotiate whether Operator or the Board will be responsible for the cost of such medication;

**NOW, THEREFORE**, the Parties mutually agree as follows:

- a. **POLICY AND GUIDELINES**. Operator has received and reviewed the Board’s *Prescription Medication Ordering Guidelines*, dated December 16, 2019, attached to this **Attachment A** and incorporated herein for all purposes in its entirety, and agrees to comply with the terms and conditions listed therein.
- b. **DEVIATION FROM POLICY**. Operator acknowledges that any charges resulting from a deviation from the Board’s Guidelines shall be the responsibility of Operator and any such charges may be withheld from the Monthly Operations Fee.


- c. **MODIFICATION OF GUIDELINES.** The Board hereby agrees before modifying its *Prescription Medication Ordering Guidelines* that it shall consult and consider any recommendations of Operator. Furthermore, Operator agrees to cooperate in good faith with the Board in making any modifications deemed necessary by the Board.
- d. **MONTHLY AUDITS.** Operator and the Board acknowledge that the Board will perform monthly audits of the contracted vendor pharmacy monthly invoice which includes all pharmaceutical billing and ordering for the previous month. The Board agrees to notify Operator in writing of any discrepancies or errors discovered during those audits, and Operator agrees to notify the Board of any factual disagreements regarding the discrepancies or errors. Operator agrees to reimburse the Board for all invoice amounts associated with any undisputed discrepancy or error. Operator will make any reimbursement to the Board through Operator's normal accounts payable procedures. The Board agrees it will not deduct such reimbursements from Operations Fee payments made to Operator under the Management and Operations Agreement except for such reimbursements that have not been paid within sixty (60) days of the Board's notification to Operator of the discrepancy or error. If disputed discrepancies and/or errors totaling more than **TWO THOUSAND DOLLARS (\$2,000.00)** in the aggregate are not fully resolved within forty-five (45) days of Operator's written notification, notice shall be sent for resolution to the Board's designated representative, the Deputy Director of the Veterans Homes program, and Operator agrees to abide by that decision. All discrepancies and errors shall be handled directly between the Board and Operator and not through the contracted pharmacy services vendor.
- e. **NEW OVER-THE-COUNTER MEDICATIONS.** As prescription medications are reclassified as over-the-counter medications, the Board and Operator shall discuss the impact of the change and shall cooperate in good faith to determine whether the costs of these medications are the responsibility of Operator or the Board.
- f. The Parties acknowledge and agree that this **Attachment A** may be amended by written agreement at any time.

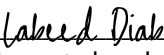
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**SIGNATURE PAGE FOR ATTACHMENT A TO  
GLO CONTRACT No. 25-004-000-E513**

**GENERAL LAND OFFICE AND  
VETERANS LAND BOARD**

**TEXAS VSI, LLC**

DocuSigned by:  
  
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Tony Dale, Executive Secretary

DocuSigned by:  
  
\_\_\_\_\_  
Name: Lakend Diab

Title: President & CEO

Date of execution: 8/8/2024

Date of execution: 8/8/2024

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**ADDENDUM TO ATTACHMENT A  
GLO CONTRACT NO. 25-004-000-E513**

**PRESCRIPTION MEDICATION ORDERING GUIDELINES  
(14 PAGES)**

## PRESCRIPTION MEDICATION ORDERING GUIDELINES (“Guidelines”)

I. **Purpose.** The purpose of this document is to define the guidelines for ordering prescription medications for Texas State Veteran Home (“TSVH”) Residents and provide guidance regarding medications paid for by the Veterans Land Board (“VLB”). These guidelines reflect the necessary steps the Operator must follow in order for the VLB to pay for prescription medications and are intended to be consistent with all applicable federal, state, and local laws.

II. **Definitions.**

A&A or Aid and Attendance means the VA pension provided as a benefit to veterans and surviving spouses.

Brand Name Medication means a medication identified by a trademarked name that is protected by patent.

Eligible Veteran Resident means a veteran who meets eligibility criteria for admission to a TSVH.

Generic Medication means a medication identified by its chemical, proprietary, or non-proprietary name, that is readily available to pharmacies for dispensing from three or more of the non-affiliated top ten national manufacturers and either (i) is substitutable for a drug under state law or (ii) if not addressed by state law, is accepted by the U.S. Food and Drug Administration as therapeutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient. Generic Medications are no longer protected by patent.

GLO means the General Land Office. Employees of the VLB are considered employees of the GLO, and the terms “VLB” and “GLO” are used interchangeably throughout these Guidelines.

HHSC means the Texas Health and Human Services Commission, successor agency to the Texas Department of Aging and Disability Services (“DADS”).

HPDSC Veteran or Higher Per Diem Service Connected Veterans means any Eligible Veteran Resident whose SCD rating is seventy percent (70%) or higher.

NFR means the non-formulary request form.

Non-HPDSC Veteran means any Eligible Veteran Resident who is not an HPDSC Veteran (i.e. any Eligible Veteran Resident has an SCD rating lower than 70%).

Non-Specialty Drug means any prescription medication not on the Specialty Drug List.

Non-Veteran Resident means any Resident who is not an Eligible Veteran Resident.

Operator means each entity contracted by the VLB to operate each TSVH (collectively, “Operators”).

OTC Medication or Over-the-Counter Medication means medicine sold directly to a consumer without a prescription from a healthcare professional.



PDP means Prescription Drug Plan.

Primary Pharmacy means the initial source pharmacy based upon Resident status (e.g. veteran, non-veteran, a Resident with A&A coverage, HPDSC Veteran) and payor source. The Primary Pharmacy can be the VA, Vendor Pharmacy, or other (e.g. hospice pharmacy).

Resident means any resident of TSVH, regardless of veteran status or payor source.

SCD or Service Connected Disability means the service connected disability rating as determined by the VA. Determination of a service-connected disability rated at 70% or more should be determined by the hospital inquiry or the service connected rating letter provided by the VA.

Specialty Drug means any medication listed on the Specialty Drug List.

Specialty Drug List means the most current version of the CVS Specialty® Pharmacy Distribution Drug List, which may be updated from time to time and is available at <https://www.cvsspecialty.com/content/dam/enterprise/specialty/pdfs/SpecialtyDrugs.pdf>.

VA means the United States Department of Veterans Affairs.

VA Formulary means the National Formulary for medications as listed by the VA's Pharmacy Benefits Management Services, as updated by the VA and located at <http://www.pbm.va.gov/nationalformulary.asp>.

Vendor Pharmacy means a pharmacy provider under contract with the VLB that has a network of pharmacies to cover each TSVH.

**III. General.** Pharmacy services will be provided by the Vendor Pharmacy, VA pharmacy, or hospice pharmacy, as applicable. The correct pharmacy must be used to order prescription medications for Residents.

**A. VLB Payment.**

1. **Generally.** Subject to the payment limitations and exclusions set forth below:
  - a. For Non-HPDSC Veterans who are not otherwise covered by another medication coverage plan, the VLB pays for prescription medications.
  - b. For Non-HPDSC Veterans who are otherwise covered by another medication coverage plan, the VLB does not pay for prescription medications but will pay for coinsurance.
  - c. For HPDSC Veterans, the VLB pays for prescription medication as outlined below in Section III.D.
2. **Medicare Part A.** The VLB pays the Vendor Pharmacy for all Medicare Part A pharmacy orders for Residents. The Vendor Pharmacy will be used for all Medicare Part A medications and HPDSC Veterans.

3. **OTC Medications.** The VLB does not pay for OTC Medications. All OTC costs will be charged to the Operator.
  4. **VA Provided Medication.** The VLB does not pay for prescription medications for those Eligible Veteran Residents who are provided medications by the VA, which includes Eligible Veteran Residents with A&A benefits and certain Non-HPDSC Veterans.
  5. **Appetite Enhancers.** The VLB will pay for appetite enhancers, such as Megace/Marinol, if the attached protocols in the addendums are followed. Compliance with the protocol is accepted with the presentation of documentation of protocol criteria.
  6. **Vitamins.** The VLB will pay for vitamins that require a prescription.
- B. **VA Formulary and Generic Medications First.**
1. **Physicians Formulary Requirement.** To the extent it is reasonably able, the Operator shall ensure that physicians who write prescriptions for Residents follow the VA Formulary, located at <https://www.pbm.va.gov/apps/VANationalFormulary>, subject to the limitations set forth in Section III.D. Vendor Pharmacy will be required to return the script unfilled if the prescription is not on the VA Formulary and none of the guidelines below apply. In that circumstance, the Operator shall notify the physician of the options available to the Resident's physician, so that the physician may prescribe an alternative.
  2. **Generic Medications First Approach.**
    - a. **VA Formulary.** The VA Formulary lists medications by the Generic Medication name. Operator must use the VA Formulary, unless (i) prescription medications are received with proper justification documenting the clinical, therapeutic need for the Brand Name Medication, or (ii) a Generic Medication equivalent is not available or does not exist.
    - b. **Vendor Pharmacy Guidelines for Dispensing Brand Name Medication.** In addition to complying with 22 TEX. ADMIN. CODE § 309.3, *Substitution Requirements*, the Vendor Pharmacy must follow the guidelines below when dispensing Brand Name Medication:
      - i. When a prescription is issued for a Brand Name Medication that has no Generic Medication equivalent, the pharmacist will dispense the Brand Name Medication.
      - ii. If a Generic Medication equivalent becomes available, a pharmacist may substitute the Generic Medication equivalent, unless the practitioner has specified on the initial prescription that the Brand Name Medication is medically necessary.
      - iii. A practitioner may prohibit the substitution of a Generic Medication equivalent for a Brand Name Medication by writing across the face of the written prescription, in the practitioner's own handwriting, the phrase "brand necessary" or "brand medically necessary." In which case, the pharmacist will

dispense the Brand Name Medication or, if the medication is not reasonably available to the Resident, consult the practitioner further.

C. **NFR.**

1. **Generally.** Each month, the facility designated charge or pharmacy nurse will complete the NFR, an example of which is attached hereto as **Addendum D**, for all medication ordered from the Vendor Pharmacy instead of the VA pharmacy for (i) Eligible Veteran Residents with A&A benefits and (ii) Eligible Veteran Residents with an SCD rating between 50% and 60%.
2. **Required Documentation.** If required to document the medication in the NFR, the following must be included:
  - a. The Resident's first and last name;
  - b. Whether the Resident is an Eligible Veteran Residents with A&A coverage or an Eligible Veteran Residents with an SCD rating between 50% and 60%;
  - c. The name and dosage of the medication ordered;
  - d. The Resident's diagnosis for which the medication is indicated;
  - e. Whether the medication was prescribed prior to the Resident's admission to TSVH;
  - f. Whether there is an equivalent medication available on the VA Formulary and, if there is, the justification for not using the medication available on the VA Formulary;
  - g. The prescribing healthcare provider's first and last name; and
  - h. If the information is available, whether VLB approved the medication or the applicable VLB denial code.
3. **NFR Monthly Submission Process.** The completed NFR is to be delivered electronically and encrypted to the VLB e-mail address no later than the 3rd business day of the following month.
4. **NFR Not Required.** The NFR is not required for any of the following: (i) new admissions, (ii) new orders, (iii) antibiotics, or (iv) refills ordered through the Vendor Pharmacy that were unavailable from the VA pharmacy.

D. **Special Payment Rules Pertaining to HPDSC Veterans.**

1. For HPDSC Veterans, the VLB does not pay for certain Specialty Drugs if the drugs are on the on the Specialty Drug List *and* are prescribed or furnished by a specialty physician (i.e. a physician who is not a TSVH primary care physician).
2. For HPDSC Veterans, the VLB will pay for both of the following:
  - a. Drugs prescribed by a primary care physician contracted or employed by TSVH to provide primary care services to its Residents; and

- b. Non-Specialty Drugs that are prescribed by a specialty physician.

E. **Cost Analysis.**

1. **Generally.** The VLB requires the Operators to perform a medication cost analysis **prior** to admission or readmission, whichever is applicable, of a patient to a TSVH if the patient has (i) Medicare Part A benefits or benefits from having an SCD rating of 70% or greater and (ii) admitting medications that cost more than twenty-five dollars (\$25.00) per patient day (PPD).
2. **Obtaining a Cost Analysis.** To obtain a cost analysis, the Operator shall submit a list of the patient's medications to the Vendor Pharmacy and it shall complete the analysis.
3. **Submitting Cost Analyses.** The Operator shall submit all its patients' medication cost analyses via secure email to the appropriate VLB staff member (currently Sara Rodriguez RN, Quality Nurse Team Lead) in Austin, Texas for review.
4. **VLB Response.** The VLB shall review and provide a response to the Operator within 2 business days of receipt.

F. **Primary Pharmacies by Payor Type.**

1. **Generally.** The Vendor Pharmacy, VA, or hospice pharmacies are used for all Residents' medication needs.
2. **Hospice Medication.** Hospice medications for Hospice diagnoses are always obtained from the hospice pharmacy.
3. The Primary Pharmacy shall provide medication to all Residents as directed by Operator staff. Primary Resident classifications are as follows:
  - a. Eligible Veteran Residents:
    - i. Eligible Veteran Residents not eligible for A&A coverage and have no SCD rating;
    - ii. Eligible Veteran Residents with A&A coverage;
    - iii. Eligible Veteran Residents with an SCD rating less than 50%;
    - iv. Eligible Veteran Residents with an SCD rating between 50% and 60%; and
    - v. HPDSC Veterans.
  - b. Eligible Veteran Residents and Non-Veteran Residents with Medicare Part A coverage
  - c. Non-veteran Residents (Resident is responsible for medication costs).

4. **Residents with VA Prescription Benefits.**

- a. A&A Residents and Eligible Veteran Residents with an SCD rating between 50% and 60% are entitled to VA prescription benefits. Thus, their prescriptions should be filled at a VA facility.
- b. The Vendor Pharmacy shall only be required to fill prescriptions for the following Eligible Veteran Residents for new orders or under emergency or extraordinary circumstances.
- c. Notwithstanding the preceding, if the VA is unable to fill a prescription for Eligible Veteran Residents, the Vendor Pharmacy must fill the prescription.

<b>Resident Status</b>	<b>Primary Pharmacies</b>	<b>Supply per order</b>
<u>Residents with A&amp;A coverage</u>		
1. After the initial fill and non-emergencies- medications on VA Formulary	1. VA Pharmacy	1. 30-day supply
2. After the initial fill and non-emergencies- medications off the VA Formulary <sup>1</sup>	2. Order <b>initial</b> 10-day supply, try to get order changed to a formulary medication, if not, Vendor Pharmacy will send 30-day supply	2. Initial 10-day supply
3. <b>Initial fill</b> on admission and new orders for Residents with A&A coverage and Eligible Veteran Residents with an SCD rating between 50% and 60%.	3. Vendor Pharmacy – A one-time 10-day supply, while a 30-day supply is being obtained from the VA pharmacy.	3. Initial 10-day supply
Residents with Medicare Part A	Vendor Pharmacy	15 day
Residents with Medicare Part D	Vendor Pharmacy	30 day
Residents with Medicaid and Non-Veteran Residents	Vendor Pharmacy	30 day
Residents in Hospice (for Hospice Condition)	Hospice Pharmacy	Per Hospice orders
HPDSC Veterans	Vendor Pharmacy	30 day
Eligible Veteran Residents with an SCD rating between 50% and 60%	VA Pharmacy	30 day

- G. **Emergency Kit.** The Operator must ensure that the emergency kit is stocked with frequently used medications to provide for an immediate need. The medications in the emergency kit must be obtained from the Vendor Pharmacy. Operator is responsible for determining which medications are

<sup>1</sup> Note: *NFRs are the creation of each VAMC of Jurisdiction and should be acquired from them. VHA Handbook 1108.8 - "VHA FORMULARY MANAGEMENT PROCESS" (2/26/2009) Part 17- Procedures, items q-u are applicable to VAMC non-formulary procedures.*

needed to be kept in the emergency kit. The Operator should establish procedures to regularly check the emergency kit to ensure that needed medications are available.

#### IV. General Medication Ordering Procedures.

A. **Admission- Generally.** Prior to admission, the Operator should request that all new or re-admitted Residents bring in at least a 30-day supply of all prescribed medications when admitted. The Operator may take the following actions with respect to new admission medications:

1. Medications from a transferring nursing home may be used if ordered by a physician and the medications meet HHSC labeling and packaging requirements.
2. Medications brought from the Resident's private residence may be used at the Operator's discretion if the Operator can reasonably verify that HHSC requirements for labeling, storage, and control were met during the period when the Operator was not in possession of the medication.

B. **Admission Orders for all Payors.**

1. The Operator will send the Vendor Pharmacy, VA pharmacy, or Hospice pharmacy admission orders to ensure proper billing.
2. If the resident is not on A&A benefits and does not have benefits from an SCD rating between 50% and 60%, order a 30-day supply from a pharmacy (e.g. Vendor Pharmacy or Hospice). Medicare A resident's prescriptions will come to TSVH in 15-day supply increments. If the medication is needed immediately, contact the Vendor Pharmacy for emergency service.
3. If the resident is in receipt of A&A benefits or has SCD diagnosis related medications, and the VA did not provide initial medications, order the initial 10-day supply of medications from the Vendor Pharmacy and at the same time order a 30-day supply from the VA pharmacy.
4. A completed resident face sheet specifying payor source must be provided to the Vendor Pharmacy. Clearly designating A&A or SCD, with the percentage of service connected disability, on the face sheet will make processing easier and will avoid billing errors. A copy of the Resident's third-party payor insurance card(s) must also be submitted to the pharmacy.

C. **Readmission.**

1. The Operator shall hold prescription medication in safekeeping when the Resident is admitted to the hospital, as applicable.
2. If the Resident is prescribed the same prescription medication upon re-admission to TSVH, the Operator shall use the prescription medications held in safekeeping first before ordering a new supply subject to expiration or quality issues.
3. Follow the admission order procedure above if the medications ordered upon readmission to TSVH are not available.

**D. New Orders.**

1. Nursing staff must ask the physician if the new prescription medication can be started as soon as the supply is available, or if it is an immediate need. For medications that the physician states are needed immediately, staff should first check the emergency kit for the initial doses of the medication.
2. For Residents with A&A coverage or Eligible Veteran Residents with an SCD rating between 50% and 60%, order the initial 10-day supply from the Vendor Pharmacy.
3. Order the medications from the applicable pharmacy. Send the physician's order and insurance information to such pharmacy.

**E. Refills.**

1. All refills of prescription medications from the VA must ordered at least 7 days prior to the last dose being given and no earlier than 10 days prior to the last dose being given.
2. Refills from the Vendor Pharmacy must be ordered **no more than** 3 days prior to the last dose being given.

**F. Medications Requiring Prior Authorization.** Some Medicare Part D PDPs require prior authorization for certain type medications. The Vendor Pharmacy will fill a 3-day supply of the ordered medication and forward a prior authorization form to the Operator. If not immediately approved, the Medicare Part D Plan will forward a form for the prescribing provider to sign.

**V. Operator Appeals.**

**A. General.** The Operator has 30 days to dispute payment denials by the VLB for medications. This section describes the process for Operator disputes of pharmacy charges levied for failing to order resident medications in the manner described in these Guidelines and addenda.

**B. Appeal Process.**

1. **Filing an Appeal.** Upon receipt of the pharmacy billing statement provided by the VLB, the Operator must notify the VLB financial personnel in writing within 30 days from receipt of the pharmacy billing statement of its intent to appeal. Each separate, distinct charge in the pharmacy billing statement must be appealed separately in writing within 30 days of receiving such statement.
2. **Filing Supporting Documentation.** In addition to the intent to appeal notification, the Operator must provide supporting documentation for those medications being appealed within 34 days after it receives the pharmacy billing statement. Examples of supporting documentation, at a minimum should include, as applicable:
  - a. Face sheets documenting date of admission;
  - b. Physician orders with indication for use/diagnosis;

- c. Physician documentation supporting the need for a non-formulary Brand Name Medication, when a Generic Medication equivalent was available; and
  - d. VA pharmacy staff documentation of non-availability or non-formulary status of the medication.
3. **Late Filings.** If the Operator fails to file the appeal or supporting documentation within the specified times under Section V.B.1 or V.B.2, the appeal will be denied. Exceptions will not be made.
4. **TSVH Review.** TSVH will evaluate the supporting documentation to determine if this documentation provides sufficient reason to void the specific charge being appealed. NOTE: The review of supporting documentation by either TSVH Program staff or VLB financial management staff is not an evaluation of medication medical necessity. The review of supporting documentation is to determine compliance with these Guidelines and determine the appropriate payor for charges rendered (i.e. VLB or Operator).
5. **Decisions.** Decisions regarding appeals will be forwarded electronically within 10 business days of receipt of supporting documentation provided by the Operator.

#### Addenda

- A. Megace/Marinol Approval Protocol
- B. Xenaderm Protocol
- C. Omeprazole/PPI Protocol
- D. Non-Formulary Request Sheet



## Addendum A

## Medication Protocol

## Appetite Enhancer Approval

## I. Potential Exclusion Megace/Marinol

Unintended Weight Loss (UWL)

UWL is a weight loss of 5% or more of usual body weight in 30 days or 10% or more in 180 days and is prevalent in approximately 9% of nursing facility residents. With unintended weight loss in elderly patients, the goal is nutritional supplementation to provide sufficient calories and amino acids to help the resident effectively build protein and regain body weight. The challenge is to distinguish cachexia caused by irreversible/progressive diseases and UWL due to inadequate nutritional intake caused by factors that can be mitigated or reversed.

A. Protocol:

CMS, HHSC, and the VA require facility staff to adhere to current professional standards in providing care to residents. Although drugs promoting weight gain are available, none are specifically labeled for use in the elderly. Most of the appetite enhancers have been used to stimulate appetite in persons with AIDS and cancer. Appetite Enhancers **should not be considered** first-line or long-term therapy in elderly with unintended weight loss.

## B. Megace/ Megesterol

**Generic Name:** Megestrol Acetate

**Approved Indications for use:** Treatment of Anorexia, Cachexia, and Weight Loss in AIDS Patients

**Cautions:** Megace and Megesterol may contribute to delirium in the elderly and should be used with caution when a patient has a history of thrombophlebitis. Megace is not effective when given on an empty stomach.

## C. Marinol

**Generic Name:** Dronabinol – a Schedule CIII controlled substance

**Approved Indications for use:** Dronabinol is a cannabinoid, psychoactive element of marijuana, intended for treatment of chemotherapy-associated nausea and vomiting not controlled by other antiemetics and AIDS-related anorexia.

1. ***Cautions: Elderly persons may be more sensitive to the psychoactive/CNS effects, and postural hypotensive effects of the medication, especially those with dementia.***

***The VLB will pay for Megace or Marinol prescriptions under the following conditions:***

1. The resident has a diagnosis of HIV+ or AIDS related cachexia, which has been documented by laboratory studies; OR
2. The facility has complied with the recommendations of the HHSC Unintended Weight Loss (UWL) Best Practice framework as published at the HHSC Quality Matters website. \* *(Examples of compliance include: Documentation that other medication alternatives, such as Remeron, were prescribed and failed to produce the desired weight gain in conjunction with Best Practice recommendations.)*

## **TEXAS STATE VETERANS HOMES PROGRAM**

\* Site location: <http://mqa.dhs.state.tx.us/QMWEB/UWL.htm> Source: Texas Health and Human Services Commission (HHSC)

Problem Oriented Best Practices – Unintended Weight Loss

**TEXAS STATE VETERANS HOMES PROGRAM****Addendum B****Medication Protocol**

Xenaderm Ointment Approval

**I. Potential Exclusion Xenaderm Ointment****Pressure Ulcer/Wound Care Practices****Clinical issues:**

The change by the FDA to a *Drug Efficacy Study Implementation 5 (DESI)* status for this medication is based on the manufacturer's failure to provide required studies as to the effectiveness of the medication. FDA DESI notice 10110 was issued December 2006 as a regulatory matter and not a statement of the effectiveness of the product. The designation as a DESI drug stopped payment for trypsin related formulas used for healing skin ulcers. Neither Medicare, Medicaid or other third party payors reimburse for Xenaderm prescriptions. By the manufacturer, Xenaderm is indicated for use with Stage II or greater pressure ulcers, stasis ulcers and dehiscent wounds.

**D. Protocol:**

Residents with skin problems should be treated according to the physician's orders. As reimbursement is not available from federal programs and third party payors, the TSVH Program will pay for Xenaderm ointment if used as indicated by the manufacturer. Xenaderm must be ordered solely for the conditions identified by the manufacturer and the condition must be documented in the Resident's record.

**Addendum C****Medication Protocol****Proton Pump Inhibitors/ H2 Antagonists****I. Exclusion Proton Pump Inhibitors/ H2 Antagonists****Clinical Issues**

- **Appendix PP of the SOM F-Tag 329** - Unnecessary Drugs Table 1 speaks to PPIs (Omeprazole et al) and H2 Antagonists (Zantac, Pepcid etc....)
  - Indications for use should be based on clinical symptoms and/or endoscopic findings.
  - Duration of use etc... " *If used for greater than 12 weeks, clinical rationale for continued need /or documentation should support an underlying chronic disease... or risk factors (chronic NSAID use).*
  - PPIs are by the manufacturer intended for short-term therapy 14 days to 8-12 weeks. The course of therapy with some PPIs may be repeated after 4 months.
- **Archives of Internal Medicine May 2010** (1 editorial and 4 articles)
  - Atrophic gastritis has been demonstrated in humans with prolonged use.
  - Animal studies are showing higher rates of gastric carcinoid tumors with 2+ years PPI therapy.
  - PPI's (usage) are associated with a 42% greater risk of recurrent C-diff infections in those over 80. *An outcome of gastric acid suppression, gastric acid ph changes, and c-dificile spoor survivability in a less acidic/ more alkaline environment.*
  - There is a moderate risk of increased spinal, hand/wrist and total fractures with prolonged PPI use.
  - 53-69% of all PPI scripts are for inappropriate indications.

**E. Omeprazole (OTC Prilosec)**

- **Capsules** and **OTC** (Over the Counter) forms are both delayed release formulations. The sole benefit of capsule over tablet is the capsule may be opened and mixed with applesauce or other thickened foodstuffs for those with documented diagnosis of dysphagia or added to acidic juices for g-tube administration.
- There is no OTC liquid form of Omeprazole available at present.

**F. Protocol**

- The Program will not pay for PPIs or H2 Antagonists as they are available OTC. The exceptions are:
  1. The Program will pay for liquid Omeprazole as no OTC version is available; and
  2. The Program will pay for prescribed generic Omeprazole capsules *only* if the Resident as a documented diagnosis of dysphagia and a completed Speech Therapy evaluation (including MBS results, if ordered) is present and in the record.

### Addendum D

#### TEXAS STATE VETERANS HOME PROGRAM NON-FORMULARY MEDICATION REQUEST FORM (To be submitted by the 3rd working day of the following month)

DATE  
(MO/YR):

Order Date MM/DD/YY	Resident Name (Last, First)		A/A 50%-60%SCD	Medication Ordered / Dosage	Rx Number	Diagnosis / Indication for use	Prescribed Prior to Admission (Y/N)	VA Formulary Available	Non-Formulary Justification	Physician Name (Last, First)	VLB APPROVAL VLB Denial Code

- DENIAL CODES :**
- 1 - Over the Counter (OTC)
  - 2 - VA eligibility not maintained
  - 3 - Failed to refill in a timely manner
  - 4 - Failed to follow refill policy
  - 5 - VA Formulary Generic version available
  - 6 - Generic policy compliance proof needed

**ATTACHMENT B – PLACE HOLDER**

**CAPITAL EQUIPMENT AND IMPROVEMENTS**

**GLO CONTRACT NO. 25-004-000-E513**

## BUSINESS ASSOCIATE AGREEMENT

**WHEREAS**, the **GENERAL LAND OFFICE** and the **VETERANS LAND BOARD** (collectively, “the Board”) and **OMNICARE PHARMACY OF TEXAS 1, LP**, Texas Identification Number **17607165549** (“Business Associate”), each a “Party” and collectively “the Parties”, have entered into GLO Contract No. **22-008-000-C938** (the “Agreement”);

**WHEREAS**, the Congress of the United States enacted the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) which creates a national standard for protecting the privacy and security of patients’ Protected Health Information (“PHI”);

**WHEREAS**, the United States Department of Health and Human Services (“HHS”) promulgated rules for the implementation of HIPAA, and pursuant to the “business associate” provisions of the privacy regulations found in 45 CFR §160 and §164 Subparts A and E (“Privacy Rule”) and security regulations found in 45 CFR §160 and §164 Subparts A and C (“Security Rule”) and pursuant to the Health Information Technology for Economic and Clinical Health Act of 2009, 42 U.S.C. §§ 17931-39 (the “HITECH Act”), The Board is required to enter into agreements with the Board’s Business Associates to assure that the Board’s Business Associates appropriately safeguard patient information;

**WHEREAS**, the State of Texas enacted the Medical Records Privacy Act (“MRPA”), in 2001 and amended the MRPA in 2003 and 2011 creating standards in addition to HIPAA and the HITECH Act for protecting the privacy and security of patients’ PHI;

**WHEREAS**, the, in the event of a Breach, as defined hereafter, the Board is required under the Texas Government Code §2054.603(b) to notify the Department of Information Resources, Chief Information Security Officer, not later than 48 hours, and comply with all Department rules relating to reporting such breaches as required by this Section; and

**WHEREAS**, Business Associate provides pharmacy services for, or on behalf of, the Board requiring the use and disclosure of PHI, pursuant to the terms of the Agreement.

**NOW, THEREFORE**, the parties agree as follows:

### SECTION 1. Definitions.

- a. All terms used in this Business Associate Agreement defined in the HIPAA Statute, Regulations, and Rules or HITECH Act shall have the meaning ascribed to them in the HIPAA Statute, Regulation, and Rules, or HITECH Act, as applicable.
- b. Capitalized terms used in this Business Associate Agreement shall have the following meanings, provided that if any of the following definitions conflicts with the respective definition of such term in the Privacy Regulations, Security Regulations or HITECH Act, the definition in the Privacy Regulations, Security Regulations or HITECH Act shall control:
  1. **Breach.** “Breach” shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Regulations which compromises the security or privacy of the PHI, provided that the following shall not constitute a Breach: (A) any unintentional acquisition, access or use of PHI by a workforce member or agent of the Business Associate, if it was made in good faith, within the course and scope of such individual’s authority and does not result in further use or disclosure of the PHI; (B) any inadvertent disclosure of PHI by a person authorized to access PHI by Business Associate to another person authorized to access PHI within the Business Associate organization, provided the PHI is not further used

or disclosed; and (C) a disclosure of PHI in which Business Associate has a good faith belief that the unauthorized person to whom the disclosure was made would not reasonably have been able to retain the PHI.

2. **Business Associate.** “Business Associate” shall have the same meaning as the term “business associate” at 45 CFR §160.103 and shall refer herein to **OMNICARE PHARMACY OF TEXAS 1, LP.**
3. **Covered Entity.** “Covered Entity” shall mean, in accordance with 45 CFR §160.103, (1) A health plan; (2) A health care clearinghouse; (3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA, and, in accordance with the Texas Health and Safety Code 181.001(b)(2), includes any person who engages in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information, including a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains protected health information on an internet site.
4. **Electronic PHI.** “Electronic PHI” or “ePHI” shall mean PHI which is transmitted by or maintained in electronic media.
5. **GLO.** “GLO” shall mean the General Land Office and shall include the Veterans Land Board.
6. **Hybrid Entity.** “Hybrid Entity” shall mean a single legal entity: (1) that is a Covered Entity; (2) whose business activities include both covered and non-covered functions; and (3) that designates Health Care Components in accordance with 45 CFR § 164.105(a)(2)(iii)(D). The GLO is designated as a Hybrid Entity.
7. **Privacy Rule.** “Privacy Rule” shall mean the standards for privacy of individually identifiable health information found in 45 C.F.R. §160 & §164.
8. **Protected Health Information (“PHI”).** “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §160.103 as applied to 45 CFR §164.501, and shall refer to information obtained under the Agreement.
9. **Security Rule.** “Security Rule” shall mean the technical requirements and guidelines found in 45 C.F.R. §160 & §164.
10. **Unsecured PHI.** “Unsecured PHI” shall mean PHI, in any medium, which is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified in guidance issued by HHS.

## **SECTION 2. Rights and Responsibilities of Business Associate**

- a. Business Associate shall have the right to use and disclose PHI in order to perform services for or on behalf of the Board, consistent with the terms of this Business Associate Agreement and consistent with the Privacy Rule and Security Rule.
- b. In providing services, Business Associate shall use and disclose PHI only as permitted by the terms of this Business Associate Agreement or as required by law and only to the extent that such use and disclosure would not violate the Privacy Rule, Security Rule, or HITECH Act if performed by the Board. Upon the request of Board, Business Associate may use PHI to provide data



aggregation services related to the healthcare operations of the Board as permitted by 45 CFR §164.504(e)(2)(i)(B).

- c. Business Associate may use and disclose PHI received during the performance of the Agreement if necessary for the proper management and administration of the Agreement, provided that Business Associate may disclose PHI to third parties not employed by Business Associate only if (i) the disclosure is required by law, or (ii) Business Associate enters into a business associate agreement with the recipient, if the recipient is a subcontractor, or obtains reasonable assurances from the recipient, if the recipient is not a subcontractor, that (A) the PHI 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 recipient, and (B) the recipient will notify Business Associate of any breach of confidentiality of PHI.
- d. To the extent that Business Associate may use or disclose PHI as provided by this Business Associate Agreement and HIPAA, the HITECH Act, or State Law, Business Associate shall make reasonable efforts limit the disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure.
- e. Business Associate shall utilize appropriate safeguards in accordance with HIPAA and the HITECH Act to prevent any use or disclosure of PHI not authorized by the terms of this Business Associate Agreement.
- f. Business Associate shall utilize administrative, physical, and technical safeguards in accordance with HIPAA and the HITECH Act that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that Business Associate creates, receives, maintains, or transmits for or on behalf of the Board.
- g. Business Associate shall report to the Board On-Site Representative and GLO Privacy Officer: (i) any Breach, use, or disclosure of PHI not permitted under the terms of this Agreement without delay and no later than twenty-four (24) hours after becoming aware of such use or disclosure; and (ii) any unauthorized access, use, disclosure, modification, or destruction of Electronic PHI or interference with systems operations in an information system containing Electronic PHI without delay and no later than twenty-four (24) hours after becoming aware of such incident where each incident affects the Board's PHI. In the event that Business Associate becomes aware of any violation of any HIPAA provision and fails to notify the Board and take corrective action, the Board may immediately terminate the Agreement without prior notice to Business Associate.
- h. With respect to any improper uses and disclosures of PHI reported to the Board under Section 2 (g) above that constituted, in Business Associate's determination, a Breach of Unsecured PHI, Business Associate shall also, within six (6) business days of discovering such incident, report to the GLO's Privacy Officer the following: (i) a brief description of the incident, including the date of the incident, the date of the discovery of the incident, and identification of each patient whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, improperly accessed, acquired, used, or disclosed, (ii) a description of the types of Unsecured PHI involved in the incident, (iii) any steps the patient should take to protect himself or herself from harm resulting from the incident, (iv) a brief description of what Business Associate is doing to investigate the incident, mitigate the harm to the patient, and protect against future occurrences; and (v) any other relevant information. Business Associate and the Board shall cooperate with respect to providing any notification of the Breach to the patient as required by the HITECH Act.

- i. Business Associate shall enter into business associate agreements, pursuant to the “business associate” provisions of the Privacy Rule found in 45 CFR §160 and §164 Subparts A and E, with agents and subcontractors to ensure that any agent or subcontractor to whom Business Associate furnishes PHI agrees to the same restrictions and conditions that apply under this Business Associate Agreement to Business Associate with respect to PHI.
- j. Business Associate shall take appropriate actions necessary to mitigate any harmful effects known to Business Associate to result from an unauthorized use or disclosure of PHI by Business Associate.
- k. Within twenty-four (24) hours of receiving an individual’s request for access, Business Associate shall allow a person who is the subject of the PHI, his/her legal representative, or the Board to have access to inspect and copy PHI maintained by the Business Associate. If the Business Associate uses or maintains an electronic health record, Business Associate shall provide such PHI in electronic format, if requested. Copies, if requested must be provided within five (5) business days.
- l. To enable the Board to respond to a patient’s request to amend the patient’s PHI, Business Associate shall make the requested PHI maintained by Business Associate available to the Board within twenty (20) business days of receiving a request from the Board and Business Associate shall amend the patient’s PHI as directed by the Board.
- m. Business Associate shall (i) maintain a record of its disclosures of PHI according to 45 CFR §164.528(a)(1), including disclosures not made for the purposes of this Business Associate Agreement, and (ii) within thirty (30) business days of receiving a request for accounting of disclosures, make available to the requestor the following information concerning such disclosures made on or after the date which is six (6) years prior to the request date: the date of disclosure; the name of the recipient and, if known, the recipient’s address; a brief description of the PHI disclosed; and a brief statement of the purpose of the disclosure.
- n. Business Associate shall make all internal practices, books, and records relating to the use and disclosure of PHI received or created by Business Associate on behalf of the Board available to the Secretary of HHS for the purpose of determining the Board’s or Business Associate’s compliance with the Privacy Rule or the Security Rule.
- o. Business Associate acknowledges that as required by the HITECH Act, Business Associate shall comply with the requirements of the Security Rule and the other applicable requirements imposed on business associates under the HITECH Act.
- p. If Business Associate conducts electronically any of the administrative or financial healthcare transactions identified as standard transactions under HIPAA for or on behalf of the Board, Business Associate shall comply with all applicable requirements of the Standards for Electronic Transactions and Code Sets promulgated under HIPAA when conducting such standard transactions for or on behalf of Hybrid Entity.
- q. Business Associate shall, pursuant to Texas Health and Safety Code §181.101, train its employees within ninety (90) days of employment regarding the state and federal law concerning PHI as necessary and appropriate for the employees to carry out their duties. If the duties of an employee are affected by a material change in state or federal law concerning PHI, Business Associate shall train the employee regarding such material change within a reasonable period, but not later than one (1) year after the effective date of the material change. Business Associate shall require its employees to sign a statement verifying training and retain the statement for six (6) years.

**SECTION 3. Obligations of the Board.**

- a. With respect to the use and/or disclosure of PHI by Business Associate , the Board shall:
  - i. Notify Business Associate in writing of any limitation(s) in its notice of privacy practices, if such limitation(s) would impact Business Associate's use or disclosure of PHI;
  - ii. Inform Business Associate in writing of any changes in, or revocation of, a patient's authorization to use or disclose the patient's PHI, if such action would impact Business Associate's use or disclosure of PHI; and
  - iii. Notify Business Associate in writing of any restrictions on the use or disclosure of PHI to which the Board has agreed, if such restriction would impact Business Associate's use or disclosure of PHI.

**SECTION 4. General Provisions.**

- a. Business Associate shall comply with all applicable federal and state laws, rules, and regulations in its performance of the Agreement. Omission of a law, rule, or regulation from this Business Associate Agreement does not relieve Business Associate of its duty to comply with such law, rule, or regulation.
- b. The Board and Business Associate are independent contractors and nothing in this Business Associate Agreement is intended to, nor shall be, construed to create any agency, partnership, employer-employee, or joint venture relationship between them.
- c. This Business Associate Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes any prior or contemporaneous verbal or written agreements, communications, and representations relating to the subject matter hereof. Notwithstanding any provision in the Agreement indicating that it is the sole agreement governing the relationship between the parties, including a provision that the Agreement shall constitute the entire agreement between the parties thereof, the terms of this Business Associate Agreement shall be effective and shall govern the relationship between the parties with respect to the subject matter hereof.
- d. In the event of any inconsistency between the terms of this Business Associate Agreement and the terms of the Agreement, the terms of this Business Associate Agreement shall prevail with respect to the subject matter hereof notwithstanding any contrary provision in the Agreement.
- e. This Business Associate Agreement may be modified or amended only upon mutual written consent of the parties.
- f. Business Associate may not assign its rights and obligations under this Business Associate Agreement without the prior written consent of the Board.

- g. Any notices to be given hereunder shall be deemed effectively given when personally delivered, received by electronic means (including facsimile, .pdf, or e-mail) or overnight courier, or five (5) calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to the Board:                    General Land Office  
P.O. BOX 12783  
Austin, TX 78711-2873  
Attn: Haley Karstens, GLO Privacy Officer

If to Business Associate :      Omnicare Pharmacy of Texas 1, LP  
14450 Trinity Blvd. Ste 200  
Fort Worth, Texas 76155  
Attn: Errin Simpkins-Travers

- h. No Third Party Beneficiaries. The terms of this Business Associate Agreement are not intended and shall not be construed to confer upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.
- i. A reference in this Business Associate Agreement to any section or provision of HIPAA, the HITECH Act, or State Law means the section or provision as in effect or as amended and for which compliance is required.
- j. The parties shall amend this Business Associate Agreement from time to time, as is necessary to comply with federal and state laws, rules, and regulations.
- k. Notwithstanding anything in this Business Associate Agreement to the contrary, the respective rights and obligations of Business Associate shall survive the termination of this Business Associate Agreement.
- l. Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, the HITECH Act, and State law.

The Term of this Business Associate Agreement will be effective as of the date signed by the last party and shall terminate when all PHI provided by the Board to the Business Associate or created or received by Business Associate on behalf of the Board is destroyed or, if feasible, returned to the Board. Upon termination of the Agreement, Business Associate shall, as directed by the Board, promptly return to the Board or destroy PHI possessed by Business Associate and its agents or subcontractors and retain no copies or back-up records of PHI. If such return or destruction is infeasible, as mutually determined by the Board and Business Associate, the obligations set forth in this Business Associate Agreement with respect to PHI shall survive termination of the Agreement and Business Associate shall limit any further use and disclosure of PHI to the purposes that make the return or destruction of PHI infeasible.

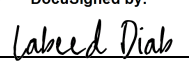
**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR  
GLO CONTRACT NO. 25-004-000-E513  
BUSINESS ASSOCIATE AGREEMENT**

**GENERAL LAND OFFICE AND  
VETERANS LAND BOARD**


**TEXAS VSI, LLC**

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Tony Dale, Executive Secretary

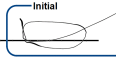
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Name: Labeed Diab


Date of execution: 8/8/2024

Title: President & CEO  
Date of execution: 8/8/2024

OGC 

ISO 

DD 

DGC 

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**GENERAL AFFIRMATIONS**

TO THE EXTENT APPLICABLE, Operator affirms and agrees to the following, without exception:

1. Operator represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Operator nor the firm, corporation, partnership, or institution represented by Operator, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract or any solicitation response upon which this Contract is based to any competitor or any other person engaged in the same line of business as Operator.\*
2. Operator shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the GLO. Any attempted assignment or delegation in violation of this provision is void and without effect. This provision does not apply to subcontracting.
3. If the Contract is for services, Operator shall comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts when available at a price and time comparable to products and materials produced outside this state, but for contracts subject to 2 CFR 200, only to the extent such compliance is consistent with 2 CFR 200.319.
4. Under Section 231.006 of the Family Code, the vendor or applicant [Operator] certifies that the individual or business entity named in this Contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate, in addition to other remedies set out in Section 231.006(f) of the Family Code.\*
5. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. Operator certifies it has submitted this information to the GLO.\*
6. If the Contract is for a “cloud computing service” as defined by Texas Government Code Section 2157.007, then pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Operator represents and warrants that it complies with the requirements of the state risk and authorization management program and Operator agrees that throughout the term of the Contract it shall maintain its certifications and comply with the program requirements in the performance of the Contract.
7. If the Contract is for the purchase or lease of computer equipment, as defined by Texas Health and Safety Code Section 361.952(2), Operator certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code, related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in Title 30 Texas Administrative Code Chapter 328.
8. If the Contract authorizes Operator to access, transmit, use, or store data for the GLO, then in accordance with Section 2054.138 of the Texas Government Code, Operator certifies that

\* This section does not apply to a contract with a “governmental entity” as defined in Texas Government Code Chapter 2251.

it will comply with the security controls required under this Contract and will maintain records and make them available to the GLO as evidence of Operator's compliance with the required controls.

9. Operator represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
10. Operator agrees that any payments due under the Contract shall be applied towards any debt or delinquency that is owed by Operator to the State of Texas.
11. Upon request of the GLO, Operator shall provide copies of its most recent business continuity and disaster recovery plans.
12. If the Contract is for consulting services governed by Texas Government Code Chapter 2254, Subchapter B, in accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Operator certifies that it does not employ an individual who has been employed by the GLO or another agency at any time during the two years preceding the Operator's submission of its offer to provide consulting services to the GLO or, in the alternative Operator, in its offer to provide consulting services to the GLO, disclosed the following: (i) the nature of the previous employment with the GLO or other state agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.\*
13. If the Contract is not for architecture, engineering, or construction services, then except as otherwise provided by statute, rule, or regulation, Operator must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under the Contract. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO OR, IF APPLICABLE, OF GOVERNMENTAL IMMUNITY BY OPERATOR.**
14. If the Contract is for architecture, engineering, or construction services, then subject to Texas Government Code Section 2260.002 and Texas Civil Practice and Remedies Code Chapter 114, and except as otherwise provided by statute, rule, or regulation, Operator shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve all disputes arising under this Contract. Except as otherwise provided by statute, rule, or regulation, in accordance with the Texas Civil Practice and Remedies Code, Section 114.005, claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d). **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO OR, IF APPLICABLE, OF GOVERNMENTAL IMMUNITY BY OPERATOR.**
  - a. Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if Operator's claim for breach of contract cannot be resolved by the Parties in the ordinary course of business, Operator may make a claim against the GLO for breach of contract and the GLO may assert a counterclaim against Operator as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Operator must provide written notice to the GLO of a claim for breach of the Contract not later than the 180th day after the date of the event giving rise to the claim.

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- The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount Operator seeks as damages; and (3) the legal theory of recovery.
- b. The chief administrative officer, or if designated in the Contract, another officer of the GLO, shall examine the claim and any counterclaim and negotiate with Operator in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
  - c. If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the Parties shall reduce the agreement or settlement to writing and each Party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a Party's rights under this Contract as to the parts of the claim that are not resolved.
  - d. If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with the GLO, unless the Parties agree in writing to an extension of time, the Parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is Operator's sole and exclusive process for seeking a remedy for an alleged breach of contract by the GLO if the Parties are unable to resolve their disputes as described in this section.
  - e. Nothing in the Contract shall be construed as a waiver of the state's or the GLO's sovereign immunity, or, if applicable, the governmental immunity of Operator. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas or Operator. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas or, if applicable, of Operator under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The GLO does not waive any privileges, rights, defenses, or immunities available to it by entering into this Contract or by its conduct, or by the conduct of any representative of the GLO, prior to or subsequent to entering into this Contract. Operator does not waive any privileges, rights, defenses, or immunities available to it by entering into this Contract or by its conduct, or by the conduct of any representative of the GLO, prior to or subsequent to entering into this Contract.
  - f. Except as otherwise provided by statute, rule, or regulation, compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Operator: (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.
15. If Chapter 2271 of the Texas Government Code applies to this Contract, Operator verifies that it does not boycott Israel and will not boycott Israel during the term of the Contract.\*
16. This Contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Operator understands that all obligations of the GLO under this Contract are subject to the availability of funds. If such funds are not appropriated or become

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unavailable, the GLO may terminate the Contract. The Contract shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49a of the Texas Constitution.

17. Operator certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
18. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Operator certifies that it is not (1) the executive head of the GLO, (2) a person who at any time during the four years before the effective date of the Contract was the executive head of the GLO, or (3) a person who employs a current or former executive head of the GLO.
19. Operator represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making a material misrepresentation during the performance of this Contract is a material breach of contract and may void the Contract or be grounds for its termination.
20. Pursuant to Section 2155.004(a) of the Texas Government Code, Operator certifies that neither Operator nor any person or entity represented by Operator has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which this Contract is based. Under Section 2155.004(b) of the Texas Government Code, Operator certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit Operator from providing free technical assistance.\*
21. Operator represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.\*
22. In accordance with Section 2252.901 of the Texas Government Code, for the categories of contracts listed in that section, Operator represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were employees of the GLO during the twelve (12) month period immediately prior to the date of execution of the contract. Solely for professional services contracts as described by Chapter 2254 of the Texas Government Code, Operator further represents and warrants that if a former employee of the GLO was employed by Operator within one year of the employee's leaving the GLO, then such employee will not perform services on projects with Operator that the employee worked on while employed by the GLO.\*
23. The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to any Party.
24. IF THE CONTRACT IS NOT FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, OPERATOR, TO

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THE EXTENT ALLOWED BY LAW, SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF OPERATOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY OPERATOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND OPERATOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. OPERATOR AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.\*

25. IF THE CONTRACT IS FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, OPERATOR, TO THE EXTENT ALLOWED BY LAW, SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO OPERATOR'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE OPERATOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO OPERATOR, OR ANY OTHER ENTITY OVER WHICH OPERATOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY OPERATOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND OPERATOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. OPERATOR AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.\*

26. TO THE EXTENT ALLOWED BY LAW, OPERATOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GLO AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF OPERATOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT,

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CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) THE GLO'S AND/OR OPERATOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE GLO BY OPERATOR OR OTHERWISE TO WHICH THE GLO HAS ACCESS AS A RESULT OF OPERATOR'S PERFORMANCE UNDER THE CONTRACT. OPERATOR AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. OPERATOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY OPERATOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND OPERATOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, OPERATOR WILL REIMBURSE THE GLO AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE GLO DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF OPERATOR OR IF THE GLO IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THE GLO WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND OPERATOR WILL PAY ALL REASONABLE COSTS OF THE GLO'S COUNSEL.\*

27. Operator has disclosed in writing to the GLO all existing or known potential conflicts of interest relative to the performance of the Contract.
28. Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from accepting a solicitation response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Operator certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.\*
29. The person executing this Contract certifies that he/she is duly authorized to execute this Contract on his/her own behalf or on behalf of Operator and legally empowered to contractually bind Operator to the terms and conditions of the Contract and related documents.
30. If the Contract is for architectural or engineering services, pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Operator shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.\*
31. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The

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acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Operator shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Contract and the requirement to cooperate is included in any subcontract it awards. The GLO may unilaterally amend the Contract to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

32. Operator certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.
33. If the Contract is for the purchase or lease of covered television equipment, as defined by Section 361.971(3) of the Texas Health and Safety Code, Operator certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.
34. Pursuant to Section 572.069 of the Texas Government Code, Operator certifies it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for the GLO involving Operator within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
35. The GLO shall post this Contract to the GLO's website. Operator understands that the GLO will comply with the Texas Public Information Act (Texas Government Code Chapter 552, the "PIA"), as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas (the "Attorney General"). Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the PIA. In accordance with Section 2252.907 of the Texas Government Code, Operator is required to make any information created or exchanged with the GLO or the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available to the GLO in portable document file (".pdf") format or any other format agreed upon between the Parties that is accessible by the public at no additional charge to the GLO or the State of Texas. By failing to mark any information that Operator believes to be excepted from disclosure as "confidential" or a "trade secret," Operator waives any and all claims it may make against the GLO for releasing such information without prior notice to Operator. The Attorney General will ultimately determine whether any information may be withheld from release under the PIA. Operator shall notify the GLO's Office of General Counsel within twenty-four (24) hours of receipt of any third-party written requests for information and forward a copy of said written requests to [PIALegal@glo.texas.gov](mailto:PIALegal@glo.texas.gov). If a request for information was not written, Operator shall forward the third party's contact information to the above-designated e-mail address.

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36. The GLO does not tolerate any type of fraud. GLO policy promotes consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Operator must report any possible fraud, waste, or abuse that occurs in connection with the Contract to the GLO in the manner prescribed by the GLO's website, <http://glo.texas.gov>.
37. If Operator, in its performance of the Contract, has access to a state computer system or database, Operator must complete a cybersecurity training program certified under Texas Government Code Section 2054.519, as selected by the GLO. Operator must complete the cybersecurity training program during the initial term of the Contract and during any renewal period. Operator must verify in writing to the GLO its completion of the cybersecurity training program.
38. Under Section 2155.0061, Texas Government Code, Operator certifies that the entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.\*
39. Operator certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Operator's business. Operator acknowledges that such a vaccine or recovery requirement would make Operator ineligible for a state-funded contract.
40. Pursuant to Government Code Section 2275.0102, Operator certifies that neither it nor its parent company, nor any affiliate of Operator or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2275.0103, or (2) headquartered in any of those countries.\*
41. If Operator is required to make a verification pursuant to Section 2276.002 of the Texas Government Code, Operator verifies that Operator does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Operator does not make that verification, Operator must notify the GLO and state why the verification is not required.\*
42. If Operator is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Operator verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a "firearm entity" or "firearm trade association" as those terms are defined in Texas Government Code section 2274.001 and (2) will not discriminate during the term of the Contract against a firearm entity or firearm trade association. If Operator does not make that verification, Operator must notify the GLO and state why the verification is not required.\*
43. If Operator is a "professional sports team" as defined by Texas Occupations Code Section 2004.002, Operator will play the United States national anthem at the beginning of each team sporting event held at Operator's home venue or other venue controlled by Operator for the event. Failure to comply with this obligation constitutes a default of this Contract, and immediately subjects Operator to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Operator may be debarred from

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contracting with the State. The GLO or the Attorney General may strictly enforce this provision.\*

44. To the extent Section 552.371 of the Texas Government Code applies to Operator and the Contract, in accordance with Section 552.372 of the Texas Government Code, Operator must (a) preserve all contracting information related to the Contract in accordance with the records retention requirements applicable to the GLO for the duration of the Contract, (b) no later than the tenth business day after the date of the GLO's request, provide to the GLO any contracting information related to the Contract that is in Operator's custody or possession, and (c) on termination or expiration of the Contract, either (i) provide to the GLO at no cost all contracting information related to the Contract that is in Operator's custody or possession or (ii) preserve the contracting information related to the Contract in accordance with the records retention requirements applicable to the GLO. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Contract and Operator agrees that the Contract may be terminated if Operator knowingly or intentionally fails to comply with a requirement of that subchapter.\*
45. If the Contract is for consulting services governed by Chapter 2254 of the Texas Government Code, Operator, upon completion of the Contract, must give the GLO a compilation, in a digital medium agreed to by the Parties, of all documents, films, recordings, or reports Operator compiled in connection with its performance under the Contract.\*
46. If subject to 2 CFR 200.216, Operator shall not obligate or expend funding provided under this Contract to: (a) procure or obtain; (b) extend or renew a contract to procure or obtain; or (c) enter into a contract to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services, as defined in Public Law 115-232, Section 889, as a substantial or essential component of any system, or as critical technology as part of any system.
47. To the extent Texas Government Code Chapter 2252, Subchapter G applies to the Contract, any iron or steel product Operator uses in its performance of the Contract that is produced through a manufacturing process, as defined in Section 2252.201(2) of the Texas Government Code, must be produced in the United States.

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## NURSING HOME INFORMATION PRIVACY AND SECURITY APPENDIX

### 1. Interpretive Provisions

- a. Any capitalized term contained in this Appendix that is not defined in this Appendix shall have the meaning assigned to the capitalized term as a defined term in the Agreement, including its Attachments.
- b. The meaning of a defined term applies to its singular and plural forms.
- c. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Appendix as a whole and not to any particular provision, section, Attachment, or schedule of this Appendix unless otherwise specified.
- d. The word “including” means “including, without limitation.”
- e. Unless otherwise expressly provided, a reference to a contract or agreement includes subsequent amendments and other modifications thereto executed according to the contract’s terms, and a reference to a statute, regulation, ordinance, or other law includes subsequent amendments, renumbering, recodification, and other modifications thereto by the enacting authority.
- f. The captions and headings of this Appendix are for convenience of reference only and shall not affect interpretation of this Appendix.
- g. The limitations, regulations, and policies contained herein are cumulative, and each must be performed in accordance with its terms without regard to other limitations, regulations, and policies affecting the same matter.
- h. Unless otherwise expressly provided, reference to any GLO action by way of consent, approval, or waiver is deemed modified by the phrase “in its sole discretion.” Notwithstanding the preceding, the GLO shall not unreasonably withhold or delay any such consent, approval, or waiver.
- i. Any document referenced in this Appendix and that is not an Exhibit to this Appendix nor included as an Attachment to the Agreement, shall be provided by the Board upon request.

### 2. Breach and Security Incident Response and Breach Notifications

In the event of a Breach, as defined in the Business Associate Agreement (“BAA”), **Attachment C** to the Agreement, or a “security incident” as defined at 45 C.F.R. §164.304 (“Security Incident”), for which Operator commences a corrective action, Operator affirms and agrees that it shall abide by the requirements of Section 2, paragraphs (g) and (h) of the BAA.

- a. Operator shall provide written correspondence to the Board’s Privacy Officer within twenty-four (24) hours of discovering the Breach or Security Incident, in accordance with Section 2 paragraph (g) of the BAA.
- b. If an incident is determined to be a Breach, Operator shall be responsible for all legally-required notifications including notice to the affected individual(s), the Office of the Texas Attorney General, and to the Secretary of the United State Health and Human Services Department – Office of Civil Rights, in accordance with Section 2 paragraph (h) of the BAA. All required notifications and public notices shall be reviewed by the Privacy Officer, Office of General Counsel and GLO Communications Director prior to publication.

### 3. Medical Records

- a. Operator shall establish a process for approval of medical records requests utilizing **Exhibit A** – *VLB Medical Records Request* form, in accordance with Section 2, paragraph (k) of the BAA.
- b. The following requests for access to Resident protected health information and electronic protected health information (collectively “PHI”), do not have to be reviewed by the Board’s Privacy Officer: requests directly from the individual or related to treatment, payment, and health care operations outlined in the HIPAA Privacy Rule at 45 C.F.R. §164.506. All other requests for such information shall be reviewed by the Board’s Privacy Officer – including, without limitation, requests from a Resident’s powers of attorney, Resident’s next-of-kin or family members, law firms, and law enforcement agencies.
- c. Board review for the release of medical records is not required for a permitted use or disclosure of PHI authorized or required under 45 C.F.R. §164.502(a)(1)-(4). Operator shall document or log all disclosures of PHI.
- d. Following the Board’s Privacy Officer’s (or the Board designee’s) review and concurrence, Operator shall ensure secure transfer of records from its medical records division to the requestor without unreasonable delay.

#### **4. Uses and Disclosures Required by Law**

- a. Upon receipt of a medical records request for any activity, or to any entity, described in 45 C.F.R. §164.512(f), Operator shall notify the Board of such request within twenty-four (24) hours.
- b. Operator shall follow **Exhibit B** - *Guidance for Disclosing PHI to Law Enforcement* in its response to law enforcement investigations when law enforcement is called to the Veterans Home, or when law enforcement requests Resident PHI or other data, as part of an investigation.

#### **5. Training**

- a. Operator shall provide the security and awareness training required under 45 C.F.R. §164.308(5) to all staff, including management and executive-level staff, on a periodic basis sufficient to educate staff on current and emerging cybersecurity issues. Staff shall receive such training within ninety (90) days of their date of hire and then annually as required by law.
- b. Following a Breach or Security Incident defined at 45 C.F.R. §164.304, for which Operator commences a corrective action, Operator shall provide post-incident training to staff with respect to HIPAA and cybersecurity compliance. Post-incident training is in addition to the annual training requirement.

#### **6. Record Transfer**

- a. Operator shall complete transition of data for current residents, including PHI, from Operator to the Board or the successor operator at the termination of the Agreement. Data of residents, including PHI, who are not current residents at the termination of the Agreement shall not be transferred from the Operator to the Board or the successor operator unless the parties agree otherwise at the time of the Termination. Notwithstanding the foregoing, Operator shall be permitted to retain copies of any hard copy records and shall be permitted to retain archived copies of electronic health records for seven years after termination of the Agreement.
- b. Record transfers shall include all electronic and hard copies of data and records stored at the onsite at the Veterans Home and offsite and shall be considered complete with regard to hard copies if original records are left onsite at the Veterans Home.



- c. Subject to Section 7.02 of the Agreement, upon expiration of the seven- (7) year record retention period Operator shall destroy, in a secure manner, physical copies of medical records and or other PHI in Operator's possession.
- d. Operator shall provide the Board with verification of destruction of data and records after the seven-year anniversary of the termination of the Agreement, following a transition of operations.

## 7. Designated Privacy and Security Officer

- a. Operator shall appoint a privacy officer as required under 45 CFR §164.530(a) and a security officer as required under 45 C.F.R. §164.308(a)(2), who is placed in charge of the creation and execution of policies and procedures that ensure the security of PHI.
- b. Operator acknowledges and agrees that the Board has right to request, and receive from the Operator, the written designations of personnel required under 45 C.F.R. §164.520(a)(2).
- c. In accordance with Section 2.04 of the Agreement, Operator shall ensure the continued appointment of a HIPAA Privacy and Security Officer.

## 8. Business Associate Relationships

- a. In accordance with the terms of the Agreement, Operator shall enter into Business Associate agreements with all third-party vendors that process, store or transmit PHI. Except as provided in Section 8.b of this Appendix, Operator shall pass through the same requirements of the BAA to their Business Associates including the requirement in Section 2 paragraph (f) of the BAA.
- b. Operator must receive Board approval before entering into a Business Associate agreement that does not contain the same passthrough terms and conditions outlined in the BAA.
- c. Operator shall maintain a list of all Business Associates and information technology systems that have access to PHI and be able to timely produce a list to the Board, upon the Board's request.
- d. Operator shall have a mechanism to track and provide to the Board, upon the Board's request, copies of Business Associate agreements entered into for operation of the Home.

## 9. Inventory

- a. The Board's Enterprise Technology Solutions department ("ETS") will provide annual guidance on IT equipment specifications that comply with all applicable State guidelines (see **Exhibit C** – *Annual Budget Request Form*).
- b. Operator shall replace all workstation and server assets within a reasonable time prior to the asset's five (5)-year warranty termination. ETS will provide Operator, the OSR, and the Deputy Director of the Board's Texas State Veterans Homes program a yearly report of assets that are four (4) years old or older.
- c. Operator shall replace all appliance-type assets (e.g., switches, routers, firewalls, kiosks, etc.) prior to the manufacturer end of support agreement.
- d. Operator shall ensure all information technology ("IT") assets are purchased with a warranty or support agreement in place that is renewed when necessary.
- e. Operator's purchasing requests for IT assets must be approved by ETS.
- f. Upon receipt of any IT assets by the Operator, the Operator shall complete *an IT Asset Receiving Form*, attached to this Appendix as **Exhibit D** ("Receiving Form"). The Receiving Form and any

supporting documentation shall be submitted to the Board via email at [property.accounting@glo.texas.gov](mailto:property.accounting@glo.texas.gov). **Operator understands and acknowledges that completion of the Receiving Form is independent of the reimbursement process.**

- g.** Following receipt of a Receiving Form, the Board will provide Asset Tags to Operator within three (3) business days or less.
- h.** Operator may seek reimbursement of IT equipment in accordance with the terms of the Agreement. Documentation included with the reimbursement request should include a list of equipment with identifying information such as the service tag, serial number, or other unique identifier (collectively, "Identifying Information") listed on the Receiving Form.
- i.** Operator shall decommission and return to the GLO all equipment that has exceeded its warranty or end of support agreement coverages as soon as practicable after warranty expiration or end of support agreement coverage.
- j.** Operator shall cooperate with the Board for decommissioning of IT assets. Operator shall submit to the Board at [property.accounting@glo.texas.gov](mailto:property.accounting@glo.texas.gov)) and [tsc@glo.texas.gov](mailto:tsc@glo.texas.gov)) an *IT Decommission Request Form*, attached to this Appendix as **Exhibit E** ("Decommission Request Form"), prior to the decommissioning of any equipment.
- k.** Operator shall encrypt all hard drives. Devices with encrypted hard drives shall then be delivered to the Board. The Decommission Request Form shall include Operator's attestation of the encryption or wiping of hard drives.
- l.** IT assets located at the Home at the time Operator initiates its services under the Agreement are the property of the Board and are tracked by a GLO-assigned Asset Tag in cross-reference with the asset's Identifying Information.
- m.** Operator will adopt policies and procedures as required by 45 C.F.R. §164.310(d)(1) that govern the receipt and removal of IT assets that contain PHI as well as their movement within the facility.
- n.** Operator shall complete an inventory of IT assets on an annual basis. Inventory lists shall include the Service Tag number(s), primary location within the Home, if applicable, and system classification (stating whether the device stores, processes, or transmits PHI), and the individually-assigned owner for the IT asset if applicable.
- o.** Multi-function devices may be leased by the Operator (e.g., printer/scanners) but must comply with the hard drive encryption, wiping, and return to the Board requirements of Section 9, paragraph (i) of this Appendix, if such device is so equipped.
- p.** Operator is responsible for the security and encryption of all hard drives.
- q.** Operator is responsible for maintenance of IT assets, including without limitation software or firmware updates and patch management.

## **10. Network Infrastructure**

- a.** Operator shall maintain and document all data flow, including without limitation network diagrams, both physical and logical.
- b.** The Home network shall be localized to the Home and properly segmented to allow access only to necessary external resources.
- c.** Operator shall maintain a vulnerability assessment plan that assesses the following:

- i. Credentialed internal and external scans preferably monthly but at least quarterly; and
- ii. Remediation of any identified vulnerabilities based on associated level of risk.

### **11. Identity and Authentication**

- a. To ensure that user-access is restricted to authenticated users, Operator shall ensure that a mechanism is in place for identity and authentication for logins to systems that process or store PHI and that, where feasible, multi-factor authentication is activated or a complimentary control is in place.
- b. Operator shall ensure logging mechanisms are in place for systems that process and store PHI.
- c. Operator shall ensure that unique user IDs are assigned to each of Operator's employees, representatives, contractors, assignees, and/or designees and that such unique user IDs are used when accessing systems that process or store PHI.

### **12. Encryption of PHI**

- a. In-transit PHI shall be protected by utilizing a National Institute of Standards and Technology ("NIST") supported encryption standard.
- b. PHI stored on any endpoint shall be protected utilizing a NIST supported encryption standard.

### **13. Business Continuity and Disaster Recovery**

- a. In accordance with **Attachment D** to the Agreement, *General Affirmations*, Operator shall maintain Business Continuity and Disaster Recovery plans based on a Business Impact Analysis identifying critical systems.
- b. Business Continuity and Disaster Recovery plans shall include runbooks specific to IT operations at the Home and shall be reviewed and tested on an annual basis.

### **14. Risk Management**

- a. In accordance with Section 2.04 of the Agreement, Operator shall perform risk analyses as required under 45 C.F.R. §164.308(a)(1)(i)(A).
  - i. Operator shall conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic PHI held by and entrusted to the Operator.
  - ii. A risk analysis shall be performed on an annual basis or at any other agreed upon cadence between the Operator and the Board.
- b. Full and complete copies of risk assessments reports shall be provided to the Board upon request in accordance with Article 7 of the Agreement.
- c. Risk analysis shall include a review of security controls of Operator's third-party vendors that process or store PHI and assess whether these controls are working at an acceptable level to secure PHI.

### **15. Electronic Medical Records ("EMR") System**

- a. In the event of transition to a successor operator, Operator shall, in good faith, coordinate with the successor operator to establish processes and timelines for transitioning EMR records of current

residents to the successor operator. Operator may keep archival electronic copies of resident records for the period that Operator operated the Veterans Home.

- b. User Access Reviews of the EMR shall take place on a recurring basis to ensure access is appropriate and necessary (e.g., ensure terminated employees no longer have access).
- c. Operator shall have established processes for ensuring that staff verify the identity of individuals seeking verbal updates on Residents.
- d. **The HIPAA Privacy Rule and Security Rule requirements shall survive termination of the Agreement and remain applicable to any PHI retained by Operator after termination of the Agreement.**

#### **16. Required Reporting and Documentation to the Board**

- a. Operator shall provide and maintain an Information Security Plan in accordance with Section 3.06 of the Agreement (i.e., policies and procedures for HIPAA Privacy Rule and Security Rule compliance).
- b. Operator shall provide the following to the Board upon request:
  - i. Risk assessment reports, including plan of action for any items requiring remediation;
  - ii. Vulnerability scans, including plan of action for any items requiring remediation;
  - iii. Any written report, analysis, work papers, notes, or other documentation created in response to a Breach or Security Incident.
  - iv. Network diagrams – for both physical and logical networks;
  - v. IT asset inventory
    - 1. Annual Physical Inventory Report and
    - 2. IT Asset Tracking Report;
  - vi. List of all systems containing PHI;
  - vii. List of all Business Associates and copies of executed Business Associate agreements; and
  - viii. Evidence that User Access Reviews are being performed on systems that contain PHI.

#### **EXHIBITS:**

**EXHIBIT A – VLB MEDICAL RECORDS RELEASE FORM**

**EXHIBIT B – GUIDANCE FOR DISCLOSING PHI TO LAW ENFORCEMENT**

**EXHIBIT C – ANNUAL BUDGET REQUEST FORM**

**EXHIBIT D – IT ASSET RECEIVING FORM**

**EXHIBIT E – IT DECOMMISSION REQUEST FORM**



### AUTHORIZATION TO RELEASE PATIENT INFORMATION

Please complete this form. Items not checked or blanks unfilled are assumed to be non-applicable or specifically not authorized for release. This release is not valid without an authorized signature and date or if it has expired.

Resident Name: \_\_\_\_\_  
Last First MI Previous Name, if any

DOB: \_\_\_\_\_ SS# \_\_\_\_\_ Phone: \_\_\_\_\_  
Home Cell

Resident Address: \_\_\_\_\_  
Street City State Zip Code

I authorize \_\_\_\_\_ to disclose to \_\_\_\_\_

Address: \_\_\_\_\_  
Street City State Zip Code

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Covering the periods of healthcare from (date) \_\_\_\_\_ to (date) \_\_\_\_\_

For the purpose of: \_\_\_\_\_  
(If requested by the patient, state "At the request of the Individual")

Method of disclosure:  Mail  Verbal  Pick Up  Fax  Email

The following information may be released: (ex. clinical summaries, lab reports, nurses' notes, or all medical records)

I give specific authorization to disclose the following information as well as documents that contain reference to:  
\_\_\_\_\_ HIV test results and documentation of AIDS diagnosis  
\_\_\_\_\_ Drug and alcohol abuse treatment records  
\_\_\_\_\_ Psychiatric/Mental Health treatment records

I understand that I may withdraw or revoke my permission at any time. If I withdraw my permission, my information may no longer be used or released for the reasons covered by this authorization. However, any disclosures already made with my permission are unable to be taken back. I may revoke this authorization by notifying the facility in writing.

Completion of this authorization form will not affect my treatment, payments, or eligibility for benefits. As a patient, I have the right to access my clinical records. Copies of the records may be obtained with reasonable notice and payment of copying cost. I understand the information to be released by this authorization may be re-released by the person or organization that receives it and may no longer be protected by Federal or Texas privacy regulations.

Unless revoked earlier, this authorization expires upon this date or event: \_\_\_\_\_

I release the individual or organization named in this authorization from legal responsibility or liability for the disclosure of the records as authorized on this form. I understand that this authorization is voluntary and that I may refuse to sign it. I will be provided a copy of this authorization, if requested. A photocopy of this authorization is as valid as the original.

Signature of Patient (or Patient Representative) \_\_\_\_\_ Date \_\_\_\_\_

Printed Name of Patient (or Patient Representative) \_\_\_\_\_ Authority of Representative to act for Patient \_\_\_\_\_

For Office Use: Identity Verified by \_\_\_\_\_



## Office of Information Security

Texas General Land Office

### Guidelines for Disclosing PHI to Law Enforcement

- I. If law enforcement resident Protected Health Information (PHI) from the Operator, the Operator must immediately notify the Veterans Land Board (VLB).
- II. Prior to sending a law enforcement requests to the VLB, the Operator must obtain a valid HIPAA authorization, which should be included in the request sent to the VLB.
- III. There are certain instances where a signed HIPAA authorization is not required. However, the operator may not release resident PHI without notifying VLB, who will review the request first, then notify the Operator if the release is approved.
- IV. Instances where a signed authorization is not required include:
  - a. To report PHI to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public.
  - b. To report PHI that the covered entity in good faith believes to be evidence of a crime that occurred on the premises of the covered entity.
  - c. To alert law enforcement to the death of the individual, when there is a suspicion that death resulted from criminal conduct.
  - d. When responding to an off-site medical emergency, as necessary to alert law enforcement to criminal activity.
  - e. To report PHI to law enforcement when required by law to do so (such as reporting gunshots or stab wounds).
  - f. To comply with a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or an administrative request from a law enforcement official (the administrative request must include a written statement that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used).
  - g. To respond to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person, but the information must be limited to basic demographic and health information about the person.
  - h. To respond to a request for PHI about an adult victim of a crime when the victim agrees (or in limited circumstances if the individual is unable to agree). Child abuse or neglect may be reported, without a parent's agreement, to any law enforcement official authorized by law to receive such reports.

### Annual Budget Request Form

#### Capital Expenditure List for: (TSVH Name/Location)

Submitted by:

Date of Submission:

#### Prioritization Key

A - Immediate Need, Should be done in the coming Fiscal Year

New IT Equipment Capital Expense Request					Existing Item Details					
Priority A	New Item Description	Justification	Vendor, Make/Model Number	Expected Cost	Replace Current Item (Y/N)	GLO Asset Tag	Serial Number or Service Tag	Vendor/Make/Model	Years in Service	Warranty Ending Date
				\$0.00						





### Equipment Decommission Transfer Form to VLB

Location	<TSVH Location City (full name optional)>		
Performed By		Date	
Summary:		Department	

#	GLO/VLB Asset Tag #	Item Name (as shown on affixed label if applicable)	Brand	Model	Qty.	Description & Reason for Decommission (i.e. out of warranty, no longer works etc.)	Identifier (mfr service tag or serial number)	Condition of Hard Drive (wiped, encrypted)	Storage Location (awaiting disposal)
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									

Email Request to	<a href="mailto:property.accounting@glo.texas.gov">property.accounting@glo.texas.gov</a> , <a href="mailto:ois@glo.texas.gov">ois@glo.texas.gov</a> , <a href="mailto:tsc@glo.texas.gov">tsc@glo.texas.gov</a>
Property Accounting Approval	<input checked="" type="checkbox"/> _____ Date: _____
Address to ship decommissioned equipment	Texas General Land Office STE B-30 Esteban Garza/Chris Symons 1700 Congress Ave Austin, TX 78701

Operator Technician Name	
Technician's Signature: <i>The Technician's signature serves as attestation that any hard drives included in this decommission lot have been encrypted or wiped.</i>	<p data-bbox="478 354 520 402">X</p> <p data-bbox="1171 375 1241 407">Date:</p>

**SCHEDULE 2.08 - REQUIRED INSURANCE AND BONDS**  
**GLO CONTRACT NO. 25-004-000-E513**

**Required Insurance and Bonds**

**GENERALLY.** Unless expressly waived in writing by the Board, Operator, as an independent contractor, must carry policies of insurance and/or bonds in amounts specified in this Schedule and must pay all premiums, taxes, and fees incident thereto. Operator shall, at its sole expense, acquire, maintain, and keep in force for the duration of this Agreement, insurance in the amounts listed below and under the requirements specified herein. Furthermore, unless specified or otherwise agreed to by the Board, the required insurance shall be in effect prior to the commencement of work by Operator and shall continue in full force until the earlier as appropriate until (i) Operator’s Date of Separation under this Agreement; or (ii) such time as the Board notifies Operator that such insurance is no longer required. Any insurance or self-insurance available to the Board shall be in excess of, and non-contributing with, any insurance required from Operator. Operator’s insurance policies shall apply on a primary basis. If, at any time during this Agreement, an insurer or surety shall fail to provide insurance to Operator or otherwise fails to comply with the requirements of this Agreement, Operator shall immediately notify the GLO/VLB as soon it has knowledge of any such failure, and shall immediately replace such insurance or bond with an insurer meeting such requirements.

**SPECIFIC COVERAGES REQUIRED.**

<b>Required Type of Coverage</b>	<b>Limits Required (000s)</b>	<b>Limits Carried (000s)</b>	<b>Carrier</b>	<b>Policy Number</b>	<b>Coverage Dates</b>
Workers’ Compensation	Statutory (including right to self-insure)				
General Liability	\$250/\$750				
Professional Liability	\$250/\$750				
Building and Contents	\$20,000				
Comprehensive Auto	\$2,000 CSL				

**CONTINUED ON FOLLOWING PAGE**

**ADDITIONAL REQUIREMENTS.**

**Approval.** Prior approval of the insurance policies by the Board shall be a condition precedent to any payment of consideration under this Agreement and insurance must be submitted for review and approval by the Board prior to the commencement of work. Any failure of the Board to timely approve nor failure to disapprove the insurance furnished by Operator shall not relieve Operator of Operator's full responsibility to provide the insurance required by this Agreement. The Operator shall provide to the Board written notice before it procures, secures, purchases, or agrees to a change in any current policies of insurance and/or bonds in effect as of the Effective Date of this Agreement that would result in change to the deductible amount that could be charged to the Board. Such notice shall include the amount of any increase to the deductible and the reason for such increase. The Board must approve, in writing, any such increase before the Operator agrees to such increase with the insurance carrier. Should the Operator fail to seek and receive written approval by the Board, such failure shall constitute a failure by the Operator to comply with a material term of this Agreement, and the Board shall not be obligated under this Agreement to pay such deductible amount. Notwithstanding anything in this Agreement to the contrary, the Board shall only be liable in the amount of the deductible previously approved in writing by the Board.

**Continuing Coverage.** The Board's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Agreement.

**Renewal.** Operator shall provide the Board with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance.

**Additional Insured Endorsement.** The Board, its officers, employees, and authorized agents shall be named as additional insureds for all liability arising under this Agreement except Professional Liability Policies. An original additional insured endorsement signed by an authorized insurance company representative must be submitted to the Board to evidence the endorsement of the Board as an additional insured on all policies.

**Subrogation.** Each liability insurance policy shall provide for a waiver of subrogation as to all additional insureds, and shall be issued by insurance companies authorized to do business in the State of Texas, and currently rated by A.M. Best as "A-" or better.

**Policy Cancellation Endorsement.** Except for ten (10) days' notice for non-payment of premium, each insurance policy shall be endorsed to specify that without thirty (30) days' prior written notice to the Board, the policy shall not be canceled, non-renewed, or coverage and/or limits reduced or materially altered, and shall provide that notices required by this Paragraph shall be sent by certified mail to the address specified in **ARTICLE X** of this Agreement. A copy of this signed endorsement must be attached to this Schedule.

**Alternative Insurability.** Notwithstanding the requirements of this Schedule, the Board reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies and/or bonds required. It will be Operator's responsibility to recommend to the Board alternative methods of insuring the Agreement. Any alternatives proposed by Operator should be accompanied by a detailed explanation regarding Operator's inability to obtain insurance coverage as described in this Agreement. The Board shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

### LITIGATION

There are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of Operator, threatened or contemplated, at law, in equity, in arbitration, or before any governmental authority, against Operator which purport to affect or pertain to the Veterans Home as of the date hereof, except as disclosed hereunder.

1. EEOC Charge No. 453-2024-00321; Ms. Laura O. Vega v. Ambrosio Guillen Texas State Veterans Home
2. EEOC Charge No. 453-2024-01393; Ms. Beatrice Alvarado v. Ambrosio Guillen Texas State Veterans Home
3. Beatrice Alvarado v. Ambrosio Guillen Texas State Veterans Home, Texas VSI, LLC, HMR Veterans Services, Inc., Salvador Porrás and Robert Ruiz; C.A. No. 2024-DCV-3087

**SCHEDULE 8.02 – MANAGEMENT AND OPERATIONS FEE**

**GLO CONTRACT NO. 25-004-000-E513**

Time Period	Variable Fee Rate per Non-Medicare Part A and Equivalent Insurance Residents	Variable Fee Rate per Medicare Part A Residents	Fixed Fee Component (Monthly Fee)
September 1, 2024 until August 31, 2025	\$276.00 per day*	\$380.00 per day	\$50,000.00
September 1, 2025 until August 31, 2026**	\$295.00 per day	\$390.00 per day	\$50,000.00
September 1, 2026 until August 31, 2027**	\$306.00 per day	\$400.00 per day	\$50,000.00
<p>Services reimbursable by Medicare Part B or Equivalent Insurance at 80% of the Medicare Part B fee schedule in accordance with Sections 5.03(d) and 5.04(k) of the Agreement.</p>			
<p>Medicare B or Equivalent Insurance coinsurance at 100% of the amounts billed to third parties in accordance with Sections 5.03(d) and 5.04(k) of the Agreement.</p>			
<p>Charges for therapy and other ancillary services provided to 70%, or greater, Service-Connected Disability Residents at UB04 amount for therapy, as determined by the CMS Part B fee schedule, and invoice amount for other ancillary services</p>			
<p>*In the event that the census for 70%, or greater, Service-Connected Disability Residents for all Texas State Veterans Homes operated by Operator, excluding that facility Operator shall operate under GLO Contract No. 23-027-000-D644, on the date this Agreement is executed increases by at least twenty (20), the \$276.00 variable fee rate shall increase to \$286.00 beginning on the first day of the month following that event.</p>			
<p>** Rate increases for the September 1, 2025 to August 31, 2026 and the September 1, 2026 to August 31, 2027 periods must be requested by Operator no later than thirty (30) days before the increased rate is to take effect (“Request for Rate Increase”). The Board, acting through the Executive Secretary, may deny a Request for Rate Increase if, on the date the Request for Rate Increase is submitted to the Board or on or before the date the rate is to take effect, Operator: (i) has been issued an “actual harm” (Level G through L) citation by a Regulatory Agency; (ii) has been issued an Immediate Jeopardy citation by a Regulatory Agency; (iii) has been issued a notice of Event of Default by the Board; (iv) has an open or unresolved priorly issued actual harm citation or Immediate Jeopardy citation; or (v) has not cured an Event of Default in accordance with the terms of the Agreement. If the Board denies a Request for Rate Increase, the existing rates shall remain in effect for each calendar month until the first full calendar month after the actual harm citation or Immediate Jeopardy citation is closed or resolved or after the Event of Default is cured, as each may be applicable. Notwithstanding the remedies available to the Board under this paragraph, the Board reserves all legal and equitable rights and remedies available to it. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE BOARD.</p>			



**AMENDMENT NO. 1 TO  
GLO CONTRACT NO. 25-004-000-E513**

**THE TEXAS GENERAL LAND OFFICE AND VETERANS LAND BOARD** (collectively, “the Board”) and **TEXAS VSI, LLC** (“Provider”), each a “Party” and collectively “the Parties” to GLO Contract No. 25-004-000-E513 (the “Contract”), desire to amend the Contract.

**WHEREAS**, the Business Associate Agreement (“BAA”), which is incorporated into the Contract as **Attachment C** incorrectly shows another entity as a party, rather than that of Provider; and

**WHEREAS**, the parties wish to execute this **Amendment No. 1** to the Contract to reflect the BAA’s actual parties;

**NOW, THEREFORE**, the Parties agree as follows:

1. **Attachment C** to the Contract, **Business Associate Agreement**, is deleted in its entirety and replaced with the revised **Business Associate Agreement**, attached hereto and incorporated herein in its entirety for all purposes as **Attachment C-1**.
2. This Amendment shall be effective upon the date of the last signature.
3. The terms and conditions of the Contract not amended herein shall remain in force and effect.

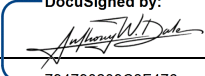
**SIGNATURE PAGE FOLLOWS**



**SIGNATURE PAGE FOR AMENDMENT NO. 1 TO  
GLO CONTRACT No. 25-004-000-E513**

**GENERAL LAND OFFICE AND  
VETERANS LAND BOARD**

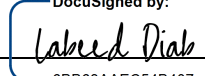
**TEXAS VSI, LLC**

DocuSigned by:  
  
794790209C3F476...

Tony Dale

Executive Secretary

Date of execution: 9/23/2024

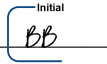
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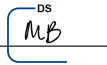
Name: Labeed Diab

Title: President & CEO

Date of execution: 9/23/2024

OGC 

DD 

DGC 

GC 

**ATTACHED TO THIS AMENDMENT:**

**ATTACHMENT C-1 – BUSINESS ASSOCIATE AGREEMENT**

## BUSINESS ASSOCIATE AGREEMENT

**WHEREAS**, the **TEXAS GENERAL LAND OFFICE** and the **VETERANS LAND BOARD** (collectively, “the Board”) and **TEXAS VSI, LLC**, Texas Identification Number 14754931690 (“Business Associate”), each a “Party” and collectively “the Parties”, have entered into GLO Contract No. 25-004-00-E513 (the “Agreement”);

**WHEREAS**, the Congress of the United States enacted the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) which creates a national standard for protecting the privacy and security of patients’ Protected Health Information (“PHI”);

**WHEREAS**, the United States Department of Health and Human Services (“HHS”) promulgated rules for the implementation of HIPAA, and pursuant to the “business associate” provisions of the privacy regulations found in 45 CFR §160 and §164 Subparts A and E (“Privacy Rule”) and security regulations found in 45 CFR §160 and §164 Subparts A and C (“Security Rule”) and pursuant to the Health Information Technology for Economic and Clinical Health Act of 2009, 42 U.S.C. §§17931-39 (the “HITECH Act”), The Board is required to enter into agreements with the Board’s Business Associates to assure that the Board’s Business Associates appropriately safeguard patient information;

**WHEREAS**, the State of Texas enacted the Medical Records Privacy Act (“MRPA”), in 2001 and amended the MRPA in 2003 and 2011 creating standards in addition to HIPAA and the HITECH Act for protecting the privacy and security of patients’ PHI;

**WHEREAS**, the, in the event of a Breach, as defined hereafter, the Board is required under the Texas Government Code, §2054.603(b), to notify the Department of Information Resources, Chief Information Security Officer, not later than 48 hours, and comply with all Department rules relating to reporting such breaches as required by this Section; and

**WHEREAS**, Business Associate provides pharmacy services for, or on behalf of, the Board requiring the use and disclosure of PHI, pursuant to the terms of the Agreement.

**NOW, THEREFORE**, the parties agree as follows:

### SECTION 1. Definitions.

- a. All terms used in this Business Associate Agreement defined in the HIPAA Statute, Regulations, and Rules or HITECH Act shall have the meaning ascribed to them in the HIPAA Statute, Regulation, and Rules, or HITECH Act, as applicable.
- b. Capitalized terms used in this Business Associate Agreement shall have the following meanings, provided that if any of the following definitions conflicts with the respective definition of such term in the Privacy Regulations, Security Regulations or HITECH Act, the definition in the Privacy Regulations, Security Regulations or HITECH Act shall control:
  1. **Breach.** “Breach” shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Regulations which compromises the security or privacy of the PHI, provided that the following shall not constitute a Breach: (A) any unintentional acquisition, access or use of PHI by a workforce member or agent of the Business Associate, if it was made in good faith, within the course and scope of such individual’s authority and does not result in further use or disclosure of the PHI; (B) any inadvertent disclosure of PHI by a person authorized to access PHI by Business Associate to another person authorized to access PHI within the Business Associate organization, provided the PHI is not further used

or disclosed; and (C) a disclosure of PHI in which Business Associate has a good faith belief that the unauthorized person to whom the disclosure was made would not reasonably have been able to retain the PHI.

2. **Business Associate.** “Business Associate” shall have the same meaning as the term “business associate” at 45 CFR §160.103 and shall refer herein to **TEXAS VSI, LLC**.
3. **Covered Entity.** “Covered Entity” shall mean, in accordance with 45 CFR §160.103, (1) A health plan; (2) A health care clearinghouse; (3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA, and, in accordance with the Texas Health and Safety Code, §181.001(b)(2), includes any person who engages in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information, including a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains protected health information on an internet site.
4. **Electronic PHI.** “Electronic PHI” or “ePHI” shall mean PHI which is transmitted by or maintained in electronic media.
5. **GLO.** “GLO” shall mean the General Land Office and shall include the Veterans Land Board.
6. **Hybrid Entity.** “Hybrid Entity” shall mean a single legal entity: (1) that is a Covered Entity; (2) whose business activities include both covered and non-covered functions; and (3) that designates Health Care Components in accordance with 45 CFR § 164.105(a)(2)(iii)(D). The GLO is designated as a Hybrid Entity.
7. **Privacy Rule.** “Privacy Rule” shall mean the standards for privacy of individually identifiable health information found in 45 C.F.R. §160 & §164.
8. **Protected Health Information (“PHI”).** “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §160.103 as applied to 45 CFR §164.501, and shall refer to information obtained under the Agreement.
9. **Security Rule.** “Security Rule” shall mean the technical requirements and guidelines found in 45 C.F.R. §160 & §164.
10. **Unsecured PHI.** “Unsecured PHI” shall mean PHI, in any medium, which is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified in guidance issued by HHS.

## **SECTION 2. Rights and Responsibilities of Business Associate**

- a. Business Associate shall have the right to use and disclose PHI in order to perform services for or on behalf of the Board, consistent with the terms of this Business Associate Agreement and consistent with the Privacy Rule and Security Rule.
- b. In providing services, Business Associate shall use and disclose PHI only as permitted by the terms of this Business Associate Agreement or as required by law and only to the extent that such use and disclosure would not violate the Privacy Rule, Security Rule, or HITECH Act if performed by the Board. Upon the request of Board, Business Associate may use PHI to provide data aggregation services related to the healthcare operations of the Board as permitted by 45 CFR §164.504(e)(2)(i)(B).

- c. Business Associate may use and disclose PHI received during the performance of the Agreement if necessary for the proper management and administration of the Agreement, provided that Business Associate may disclose PHI to third parties not employed by Business Associate only if (i) the disclosure is required by law, or (ii) Business Associate enters into a business associate agreement with the recipient, if the recipient is a subcontractor, or obtains reasonable assurances from the recipient, if the recipient is not a subcontractor, that (A) the PHI 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 recipient, and (B) the recipient will notify Business Associate of any breach of confidentiality of PHI.
- d. To the extent that Business Associate may use or disclose PHI as provided by this Business Associate Agreement and HIPAA, the HITECH Act, or State Law, Business Associate shall make reasonable efforts limit the disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure.
- e. Business Associate shall utilize appropriate safeguards in accordance with HIPAA and the HITECH Act to prevent any use or disclosure of PHI not authorized by the terms of this Business Associate Agreement.
- f. Business Associate shall utilize administrative, physical, and technical safeguards in accordance with HIPAA and the HITECH Act that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that Business Associate creates, receives, maintains, or transmits for or on behalf of the Board.
- g. Business Associate shall report to the Board On-Site Representative and GLO Privacy Officer: (i) any Breach, use, or disclosure of PHI not permitted under the terms of this Agreement without delay and no later than twenty-four (24) hours after becoming aware of such use or disclosure; and (ii) any unauthorized access, use, disclosure, modification, or destruction of Electronic PHI or interference with systems operations in an information system containing Electronic PHI without delay and no later than twenty-four (24) hours after becoming aware of such incident where each incident affects the Board's PHI. In the event that Business Associate becomes aware of any violation of any HIPAA provision and fails to notify the Board and take corrective action, the Board may immediately terminate the Agreement without prior notice to Business Associate.
- h. With respect to any improper uses and disclosures of PHI reported to the Board under Section 2 (g) above that constituted, in Business Associate's determination, a Breach of Unsecured PHI, Business Associate shall also, within six (6) business days of discovering such incident, report to the GLO's Privacy Officer the following: (i) a brief description of the incident, including the date of the incident, the date of the discovery of the incident, and identification of each patient whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, improperly accessed, acquired, used, or disclosed, (ii) a description of the types of Unsecured PHI involved in the incident, (iii) any steps the patient should take to protect himself or herself from harm resulting from the incident, (iv) a brief description of what Business Associate is doing to investigate the incident, mitigate the harm to the patient, and protect against future occurrences; and (v) any other relevant information. Business Associate and the Board shall cooperate with respect to providing any notification of the Breach to the patient as required by the HITECH Act.
- i. Business Associate shall enter into business associate agreements, pursuant to the "business associate" provisions of the Privacy Rule found in 45 CFR §160 and §164 Subparts A and E, with agents and subcontractors to ensure that any agent or subcontractor to whom Business Associate

furnishes PHI agrees to the same restrictions and conditions that apply under this Business Associate Agreement to Business Associate with respect to PHI.

- j. Business Associate shall take appropriate actions necessary to mitigate any harmful effects known to Business Associate to result from an unauthorized use or disclosure of PHI by Business Associate.
- k. Within twenty-four (24) hours of receiving an individual's request for access, Business Associate shall allow a person who is the subject of the PHI, his/her legal representative, or the Board to have access to inspect and copy PHI maintained by the Business Associate. If the Business Associate uses or maintains an electronic health record, Business Associate shall provide such PHI in electronic format, if requested. Copies, if requested must be provided within five (5) business days.
- l. To enable the Board to respond to a patient's request to amend the patient's PHI, Business Associate shall make the requested PHI maintained by Business Associate available to the Board within twenty (20) business days of receiving a request from the Board and Business Associate shall amend the patient's PHI as directed by the Board.
- m. Business Associate shall (i) maintain a record of its disclosures of PHI according to 45 CFR §164.528(a)(1), including disclosures not made for the purposes of this Business Associate Agreement, and (ii) within thirty (30) business days of receiving a request for accounting of disclosures, make available to the requestor the following information concerning such disclosures made on or after the date which is six (6) years prior to the request date: the date of disclosure; the name of the recipient and, if known, the recipient's address; a brief description of the PHI disclosed; and a brief statement of the purpose of the disclosure.
- n. Business Associate shall make all internal practices, books, and records relating to the use and disclosure of PHI received or created by Business Associate on behalf of the Board available to the Secretary of HHS for the purpose of determining the Board's or Business Associate's compliance with the Privacy Rule or the Security Rule.
- o. Business Associate acknowledges that as required by the HITECH Act, Business Associate shall comply with the requirements of the Security Rule and the other applicable requirements imposed on business associates under the HITECH Act.
- p. If Business Associate conducts electronically any of the administrative or financial healthcare transactions identified as standard transactions under HIPAA for or on behalf of the Board, Business Associate shall comply with all applicable requirements of the Standards for Electronic Transactions and Code Sets promulgated under HIPAA when conducting such standard transactions for or on behalf of Hybrid Entity.
- q. Business Associate shall, pursuant to Texas Health and Safety Code §181.101, train its employees within ninety (90) days of employment regarding the state and federal law concerning PHI as necessary and appropriate for the employees to carry out their duties. If the duties of an employee are affected by a material change in state or federal law concerning PHI, Business Associate shall train the employee regarding such material change within a reasonable period, but not later than one (1) year after the effective date of the material change. Business Associate shall require its employees to sign a statement verifying training and retain the statement for six (6) years.

### **SECTION 3. Obligations of the Board.**

- a. With respect to the use and/or disclosure of PHI by Business Associate, the Board shall:

- i. Notify Business Associate in writing of any limitation(s) in its notice of privacy practices, if such limitation(s) would impact Business Associate's use or disclosure of PHI;
- ii. Inform Business Associate in writing of any changes in, or revocation of, a patient's authorization to use or disclose the patient's PHI, if such action would impact Business Associate's use or disclosure of PHI; and
- iii. Notify Business Associate in writing of any restrictions on the use or disclosure of PHI to which the Board has agreed, if such restriction would impact Business Associate's use or disclosure of PHI.

#### **SECTION 4. General Provisions.**

- a. Business Associate shall comply with all applicable federal and state laws, rules, and regulations in its performance of the Agreement. Omission of a law, rule, or regulation from this Business Associate Agreement does not relieve Business Associate of its duty to comply with such law, rule, or regulation.
- b. The Board and Business Associate are independent contractors and nothing in this Business Associate Agreement is intended to, nor shall be, construed to create any agency, partnership, employer-employee, or joint venture relationship between them.
- c. This Business Associate Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes any prior or contemporaneous verbal or written agreements, communications, and representations relating to the subject matter hereof. Notwithstanding any provision in the Agreement indicating that it is the sole agreement governing the relationship between the parties, including a provision that the Agreement shall constitute the entire agreement between the parties thereof, the terms of this Business Associate Agreement shall be effective and shall govern the relationship between the parties with respect to the subject matter hereof.
- d. In the event of any inconsistency between the terms of this Business Associate Agreement and the terms of the Agreement, the terms of this Business Associate Agreement shall prevail with respect to the subject matter hereof notwithstanding any contrary provision in the Agreement.
- e. This Business Associate Agreement may be modified or amended only upon mutual written consent of the parties.
- f. Business Associate may not assign its rights and obligations under this Business Associate Agreement without the prior written consent of the Board.
- g. Any notices to be given hereunder shall be deemed effectively given when personally delivered, received by electronic means (including facsimile, .pdf, or e-mail) or overnight courier, or five (5) calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to the Board:

General Land Office  
P.O. BOX 12783  
Austin, TX 78711-2873  
Attn: Haley Karstens, GLO Privacy Officer

If to Business Associate : Texas VSI, LLC  
201 North Main Street  
Anderson, SC 29621  
Attn: President/CEO

- h. No Third Party Beneficiaries. The terms of this Business Associate Agreement are not intended and shall not be construed to confer upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.
- i. A reference in this Business Associate Agreement to any section or provision of HIPAA, the HITECH Act, or State Law means the section or provision as in effect or as amended and for which compliance is required.
- j. The parties shall amend this Business Associate Agreement from time to time, as is necessary to comply with federal and state laws, rules, and regulations.
- k. Notwithstanding anything in this Business Associate Agreement to the contrary, the respective rights and obligations of Business Associate shall survive the termination of this Business Associate Agreement.
- l. Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, the HITECH Act, and State law.

The Term of this Business Associate Agreement will be effective as of the date signed by the last party and shall terminate when all PHI provided by the Board to the Business Associate or created or received by Business Associate on behalf of the Board is destroyed or, if feasible, returned to the Board. Upon termination of the Agreement, Business Associate shall, as directed by the Board, promptly return to the Board or destroy PHI possessed by Business Associate and its agents or subcontractors and retain no copies or back-up records of PHI. If such return or destruction is infeasible, as mutually determined by the Board and Business Associate, the obligations set forth in this Business Associate Agreement with respect to PHI shall survive termination of the Agreement and Business Associate shall limit any further use and disclosure of PHI to the purposes that make the return or destruction of PHI infeasible.

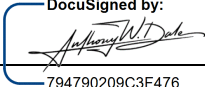
**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR  
GLO CONTRACT NO. 25-004-000-E513  
BUSINESS ASSOCIATE AGREEMENT**

**GENERAL LAND OFFICE AND  
VETERANS LAND BOARD**

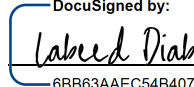
**TEXAS VSI, LLC**

DocuSigned by:

  
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Tony Dale, Executive Secretary

DocuSigned by:

  
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Name: Labeed Diab


Title: President & CEO


Date of execution: 9/23/2024

Date of execution: 9/23/2024

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