



**COMMISSIONERS COURT  
COMMUNICATION**

COURT ORDER NUMBER 144834

PAGE 1 OF 11

DATE: 3/11/2025

**SUBJECT: CONSIDERATION OF A BUSINESS ASSOCIATE AGREEMENT  
BETWEEN TARRANT COUNTY AND PROSCALAR LLC FOR THE  
PROVISIONS OF MARKETING SERVICES**

**\*\*\* CONSENT AGENDA \*\*\***

**COMMISSIONERS COURT ACTION REQUESTED**

It is requested that the Commissioners Court consider a Business Associate Agreement (BAA) between Tarrant County and Proscalar LLC. for the provision of Marketing Services Contract, RFP No. F2024026.

**BACKGROUND**

On November 19, 2024, the Commissioners Court, through Court Order #144280, approved RFP No. F2024026 Annual Contract with Proscalar LLC. Through a competitive process, Proscalar LLC was selected to provide Marketing Services.

A BAA is necessary for Proscalar LLC to conduct patient satisfaction clinical quality management activities. The Health Resources and Services Administration (HRSA) mandates Ryan White Programs implement clinical quality management activities to improve patient care, health outcomes, and patient satisfaction.

This agreement will begin on March 4, 2025, and will terminate when the Marketing Services Contract ends. Any Protected Health Information provided by the County to the Business Associate, or created, or received by the Business Associate on behalf of the County, must be destroyed or returned to the County.

The Criminal District Attorney's Office has reviewed these documents to form.

**FISCAL IMPACT**

There is no fiscal impact associated with this action.

|              |                           |              |                      |
|--------------|---------------------------|--------------|----------------------|
| SUBMITTED BY | HIV Administrative Agency | PREPARED BY: | Dulce Lozano         |
|              |                           | APPROVED BY: | Lisa McKamie-Muttiah |

STATE OF TEXAS §

§

## BUSINESS ASSOCIATE AGREEMENT

COUNTY OF TARRANT §

This Business Associate Agreement (“BA Agreement”) is between Tarrant County, Texas, (“COUNTY”), and **Proscalar LLC** (“Business Associate”), for the purpose of complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”), and the Standards for Security of Electronic Protected Health Information (the “Security Rule”) promulgated thereunder, and the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV, of the American Recovery and Reinvestment Act of 2009, Pub. L 111-5) (the “HITECH Act”), and the regulations implementing the HITECH Act and other applicable law with regard to the provision of services to Tarrant County.

Business Associate and COUNTY are engaged in a business relationship whereby Business Associate provides certain services to COUNTY (“Business Relationship”).

As part of this Business Relationship, Business Associate performs or assists in performing a function or activity on behalf of COUNTY that involves the use and/or disclosure of Protected Health Information (as defined in 45 CFR § 164.501).

### 1. Definitions

“Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this agreement shall mean the COUNTY.

“Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this agreement, shall mean **Proscalar LLC**.

Terms used but not otherwise defined in the BA Agreement shall have the same meaning given to such terms in HIPAA, the HITECH Act, or any implementing regulations promulgated thereunder, including but not limited to the Privacy Rule and the Security Rule.

### 2. Purpose

Business Associate has a legal and ethical responsibility to safeguard the privacy of individuals and protect the confidentiality of their health information. Business Associate may hear things that relate to Protected Health Information or read or see computer or paper files containing confidential or Protected Health Information, even though Business Associate may not be directly involved in providing services. Business Associate may create documents containing Protected Health Information if directed to do so by COUNTY. Because Business Associate may have contact with Protected Health Information, COUNTY requests that Business Associate agrees to the following as a condition of Business Associate’s assignment.

### 3. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in the Business Relationship or this BA Agreement, Business Associate may:

- 3.1 use and/or disclose Protected Health Information to perform functions, activities, or services for or on behalf of COUNTY, provided that such use and/or disclosure,
  - (a) would not violate the Privacy Rule if done by COUNTY;
  - (b) is reasonably limited to the minimum necessary information to accomplish the intended purpose of the use or disclosure;
  - (c) is in compliance with each applicable requirement of 45 CFR § 164.504(e);
  - (d) is in compliance with the HITECH Act and its implementing regulations;
- 3.2 use or disclose Protected Health Information as required by law;
- 3.3 use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;
- 3.4 use Protected Health Information to provide Data Aggregation services relating to the health care operations of COUNTY.

All other uses and/or disclosures not authorized by the Business Relationship or this BA Agreement are prohibited.

- 3.5 Business Associate agrees to use and disclose confidential information only in the following manner:

In accordance with Annual Contract for Marketing Services, RFP No. F2024026

### 4. Responsibilities of Business Associate

With regard to the use and/or disclosure of Protected Health Information, Business Associate agrees:

- 4.1 not to use and/or disclose Protected Health Information other than as permitted or required by the Business Relationship or this BA Agreement or as Required by Law;
- 4.2 to use appropriate safeguards to prevent the use and/or disclosure of Protected Health Information other than as provided for by the Business Relationship or this BA Agreement;
- 4.3 to protect any Protected Health Information taken off-site from COUNTY from disclosure to others, and to return all Protected Health Information in any form to COUNTY or destroy such Protected Health Information in a manner that renders it unreadable and unusable by anyone else, if COUNTY agrees to the destruction;

- 4.4** to comply with the Security Rule provisions set forth in 45 CFR Part 164, Subpart C, including provisions relating to Security Standards General Rules (45 CFR § 164.306), Administrative Safeguards (45 CFR § 164.308), Physical Safeguards (45 CFR § 164.310), Technical Safeguards (45 CFR § 164.312), Organizational Requirements (45 CFR § 164.314) and Policies and Documentation (45 CFR § 164.316), and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information Business Associate creates, receives, maintains, or transmits on behalf of COUNTY.
- 4.5** to report to COUNTY any Security Incident of which it becomes aware within 2 business days, and to report any potential Breach of Unsecured Protected Health Information within 2 business days of discovery. Any such report shall include the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during any such Security Incident or potential Breach. Any such report shall also include all other information known to Business Associate at the time of the report (such as the type of Protected Health Information involved in the event, the nature of the information, etc.) or promptly thereafter as such other information becomes available;
- 4.6** to notify COUNTY in writing within 2 business days of any use and/or disclosure of Protected Health Information that is not provided for by the Business Relationship or this BA Agreement;
- 4.7** to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BA Agreement, or as the result of any Security Incident or potential Breach, using mitigation actions that are disclosed to COUNTY in advance and authorized by COUNTY, all at the sole cost and expense of Business Associate;
- 4.8** to work cooperatively with COUNTY in connection with COUNTY's investigation of any potential Breach and in connection with any notices COUNTY determines are required as a result, and to refrain from giving any notice itself unless COUNTY expressly agrees in advance and in writing to Business Associate giving notice and to the form, content and method of delivery of such notice, all at the sole cost and expense of Business Associate;
- 4.9** to ensure that all agents and/or subcontractors that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such Protected Health Information;
- 4.10** to provide access (at the request of, and in the time and manner designated by COUNTY) to Protected Health Information in a Designated Record Set to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR § 164.524 and to notify COUNTY of any requests for access it receives from an individual within 2 business days of receipt;

- 4.11** to make any amendment(s) (at the request of, and in the time and manner designated by COUNTY) to Protected Health Information in a Designated Record Set that COUNTY directs pursuant to 45 CFR § 164.526 and to notify COUNTY of any amendment requests it receives from an individual within 2 business days of receipt;
- 4.12** to document such disclosures of Protected Health Information and information related to such disclosures as would be required for COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528;
- 4.13** to provide to COUNTY, in a time and manner designated by COUNTY, information collected in accordance with 4.12 of this BA Agreement, to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 (and HITECH Act § 13405(c) when such requirements are effective as to COUNTY);
- 4.14** to the extent Business Associate is to carry out an obligation of COUNTY under the Privacy Rule provisions set forth at 45 CFR Part 164, Subpart E (any such obligation to be carried out only when so directed by COUNTY pursuant to the Business Relationship or this BA Agreement), to comply with the requirements of the Privacy Rule that apply to COUNTY in the performance of such obligation;
- 4.15** to make its internal practices, books, and records relating to the use and/or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of COUNTY available to COUNTY;
- 4.16** to cooperate with any investigation by the Secretary of Health and Human Services, or his agent, or an oversight agency, in a time and manner designated by COUNTY or the Secretary, for purposes of determining if COUNTY or Business Associate is in compliance with the Privacy Rule;
- 4.17** if Business Associate is aware of a pattern of activity or practice by COUNTY that constitutes a material breach or violation of COUNTY's obligations under this BA Agreement,
- (a)** to give written notice of such pattern or practice to COUNTY within 2 business days of its discovery and to take reasonable steps to cure the breach or end the violation,
- (b)** if Business Associate determines that such steps appear to have been unsuccessful, to give COUNTY written notice of such determination and to report the problem to the Secretary and provide COUNTY with a copy of any such report at least 2 business days in advance of its submission to the Secretary.

## 5. Responsibilities of COUNTY with Respect to Protected Health Information

If deemed applicable by COUNTY, COUNTY shall:

- 5.1 provide Business Associate with the notice of privacy practices that COUNTY produces in accordance with 45 CFR §164.520 as well as any changes to such notice;
- 5.2 provide Business Associate with any changes in, or revocation of, permission by Individual to the use and/or disclosure of Protected Health Information, if such changes affect Business Associate's permitted or required uses and/or disclosures;
- 5.3 notify Business Associate of any restriction to the use and/or disclosure of Protected Health Information that COUNTY has agreed to in accordance with 45 CFR § 164.522.

## 6. Sanctions

Business Associate understands that violation of this agreement may result in sanctions, including, but not limited to, termination of the ability to perform services on behalf of COUNTY.

## 7. Disclosures Required by Law

Nothing in this agreement prevents Business Associate from making a disclosure of Protected Health Information, if required by law to make such a disclosure.

## 8. Term and Termination

**8.1 Term.** This agreement will begin on **October 01 , 2024** and will terminate when all of the Protected Health Information provided by COUNTY to Business Associate or created or received by Business Associate on behalf of COUNTY is destroyed or returned to COUNTY, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such Protected Health Information, in accordance with 8.3 below, or at termination of the Business Relationship between COUNTY and Business Associate.

**8.2 Termination for Cause.** COUNTY may immediately terminate the Business Relationship and/or this BA Agreement if COUNTY determines that Business Associate has breached a material term of this BA Agreement.

**8.3 Effect of Termination.** Upon termination of the Business Relationship and/or this BA Agreement, for any reason, Business Associate agrees to return or destroy all Protected Health Information received from COUNTY, or created or received by Business Associate on behalf of COUNTY. If permitted by COUNTY, Protected Health Information shall be destroyed in a manner that renders it unreadable and unusable by anyone else. Discharge or termination, whether voluntary or not, shall not affect Business Associate's ongoing obligation to safeguard the confidentiality of Protected Health Information and to return or destroy any such information in Business Associate's possession.

This Section 8.3 shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide in writing to COUNTY notification of the conditions that make return or destruction infeasible. Upon mutual written agreement of the Parties, Business Associate shall extend the protections of this BA Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information for as long as Business Associate maintains such Protected Health Information.

## **9. Miscellaneous**

### **9.1 INDEMNIFICATION.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE UNDERLYING AGREEMENT(S), AT BUSINESS ASSOCIATE'S EXPENSE, BUSINESS ASSOCIATE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COVERED ENTITY AND COVERED ENTITY'S EMPLOYEES (THE "INDEMNITEES") AGAINST ALL DAMAGES, FINES, PENALTIES, COSTS OR EXPENSES (INCLUDING REASONABLE FEES OF ATTORNEYS AND EXPERTS) AND ALL LIABILITY TO THIRD PARTIES ARISING FROM ANY MATERIAL BREACH OF THIS AGREEMENT BY BUSINESS ASSOCIATE OR ITS EMPLOYEES, DIRECTORS, OFFICERS, SUBCONTRACTORS, AGENTS OR OTHER MEMBERS OF BUSINESS ASSOCIATE'S WORKFORCE. BUSINESS ASSOCIATE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

**COUNTY MAY EMPLOY ATTORNEYS SELECTED BY IT TO DEFEND ANY SUCH ACTION, THE COSTS AND EXPENSES OF WHICH WILL REMAIN THE RESPONSIBILITY OF BUSINESS ASSOCIATE. COUNTY WILL PROVIDE BUSINESS ASSOCIATE WITH TIMELY NOTICE OF THE EXISTENCE OF SUCH PROCEEDINGS AND SUCH INFORMATION, DOCUMENTS AND OTHER COOPERATION AS REASONABLY NECESSARY TO ASSIST BUSINESS ASSOCIATE IN ESTABLISHING A DEFENSE TO SUCH ACTION.**

**THESE INDEMNITIES SURVIVE TERMINATION OF THIS BA AGREEMENT, AND COUNTY RESERVES THE RIGHT, AT ITS OPTION AND EXPENSE, TO PARTICIPATE IN THE DEFENSE OF ANY SUIT OR PROCEEDING THROUGH COUNSEL OF ITS OWN CHOOSING.**

**9.2 Survival.** The respective rights and obligations of Business Associate survive the termination of the Business Relationship and/or this BA Agreement.

**9.3 Notices.** Any notices pertaining to this BA Agreement must be given in writing and will be deemed duly given when personally delivered to a Party or a Party's authorized representative, as listed below, or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid.

A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

**If to Business Associate:**

Proscalar LLC  
2415 W. Grapevine Mills CT. Suite 593  
Grapevine, TX 76051  
Attn: Stephen Smith

**If to Covered Entity:**

Tarrant County  
2300 Circle Drive, Suite 2306  
Fort Worth, TX 76119  
Attn: HIV Administrative Agency Manager

**9.4 Amendments.** This BA Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow COUNTY to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, the HITECH Act and its implementing regulations.

**9.5 Interpretation.** Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits COUNTY to comply with the Privacy Rule.

**9.6 Third Parties.** Nothing in this BA Agreement is intended, nor shall be deemed, to confer any benefits on any third party.

**9.7 Assignments.** Neither Party may assign its rights or obligations under this BA Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld.

**9.8 Independent Contractor.** This BA Agreement does not create any relationship between the Parties other than that of independent parties contracting with each other for the sole purpose of effecting the provisions of this BA Agreement and any other agreements between them evidencing their Business Relationship.

**9.9 Governing Law and Venue.** This BA Agreement will be interpreted under the laws of the State of Texas. The venue for any lawsuit arising out of this BA Agreement will be the Fort Worth Division of the Northern District of Texas, if the lawsuit arises in Federal Court, or Tarrant County, Texas, if the matter arises in State Court.

**9.10 Third Party Interpretation.** This agreement shall not be interpreted to inure to the benefit of a third party not a party to this contract. This agreement may not be interpreted to waive any statutory or common law defense, immunity, including governmental and sovereign immunity, or any limitation of liability, responsibility, or damage to any Party to this contract, Party's agent, or Party's employee, otherwise provided by law.

**9.11 Form 1295 Compliance.** The **Proscalar LLC** acknowledges and agrees that it has fully, accurately, and completely disclosed all interested parties in the attached Form 1295, and has acknowledged the completeness of this disclosure by filing the Form 1295, attached as Exhibit A, with the Texas Ethics Commission as required by law.

**9.12 Required Attachments.** This BA Agreement will be considered incomplete without the submission of the completed Form 1295 as referenced in section 9.11.

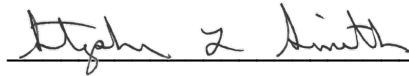
COUNTY shall be responsible to include Form 1295, attached as Exhibit A, to this BA Agreement prior to Business Associate review and execution. For the purposes of this BA Agreement, the following statement applies in regard to Form 1295:

- Exhibit A is a required component of this BA Agreement. Form 1295 is attached and must be completed prior to approval of this BA Agreement by COUNTY.
- The Parties involved in this BA Agreement are governmental entities and are not required by the Texas Ethics Commission to complete their Form 1295.

Approved on this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Commissioners Court Order  
No. \_\_\_\_\_.

**SIGNED AND EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

**BUSINESS ASSOCIATE**



Signature

Stephen L. Smith

Printed Name

Managing Partner

Title


2/5/2025

Date

**COUNTY OF TARRANT  
STATE of TEXAS**

By: Separate Electronic Signature Page  
Tim O'Hare  
County Judge

**APPROVED AS TO FORM:**

  
Criminal District Attorney's Office\*

\*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
CERTIFICATION OF FILING**

Certificate Number:  
2024-1210579

Date Filed:  
09/05/2024

Date Acknowledged:

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**  
Proscalar, LLC  
Austin, TX United States

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**  
Tarrant County

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**  
F2024026  
Marketing Services

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest (check applicable) |              |
|---|--------------------------|--|---------------------------------------|--------------|
|   |                          |  | Controlling                           | Intermediary |
|   | Smith, Stephen L.        | Coppell, TX United States                | X                                     |              |
|   | Poston, William J.       | Austin, TX United States                 | X                                     |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |

**5 Check only if there is NO Interested Party.**


**6 UNSWORN DECLARATION**

My name is Stephen L. Smith, and my date of birth is June 17, 1963.

My address is 2415 W Grapevine Mills Ct, Suite 593, Grapevine, TX, 76051, USA.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Tarrant County, State of Texas, on the 5th day of September, 2024.  
(month) (year)

  
\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)



**COMMISSIONERS COURT  
COMMUNICATION**

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| SUBMITTED BY | HIV Administrative Agency | PREPARED BY: | Dulce Lozano         |
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STATE OF TEXAS §

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- 4.17** if Business Associate is aware of a pattern of activity or practice by COUNTY that constitutes a material breach or violation of COUNTY's obligations under this BA Agreement,
- (a)** to give written notice of such pattern or practice to COUNTY within 2 business days of its discovery and to take reasonable steps to cure the breach or end the violation,
- (b)** if Business Associate determines that such steps appear to have been unsuccessful, to give COUNTY written notice of such determination and to report the problem to the Secretary and provide COUNTY with a copy of any such report at least 2 business days in advance of its submission to the Secretary.

## 5. Responsibilities of COUNTY with Respect to Protected Health Information

If deemed applicable by COUNTY, COUNTY shall:

- 5.1 provide Business Associate with the notice of privacy practices that COUNTY produces in accordance with 45 CFR §164.520 as well as any changes to such notice;
- 5.2 provide Business Associate with any changes in, or revocation of, permission by Individual to the use and/or disclosure of Protected Health Information, if such changes affect Business Associate's permitted or required uses and/or disclosures;
- 5.3 notify Business Associate of any restriction to the use and/or disclosure of Protected Health Information that COUNTY has agreed to in accordance with 45 CFR § 164.522.

## 6. Sanctions

Business Associate understands that violation of this agreement may result in sanctions, including, but not limited to, termination of the ability to perform services on behalf of COUNTY.

## 7. Disclosures Required by Law

Nothing in this agreement prevents Business Associate from making a disclosure of Protected Health Information, if required by law to make such a disclosure.

## 8. Term and Termination

**8.1 Term.** This agreement will begin on **October 01 , 2024** and will terminate when all of the Protected Health Information provided by COUNTY to Business Associate or created or received by Business Associate on behalf of COUNTY is destroyed or returned to COUNTY, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such Protected Health Information, in accordance with 8.3 below, or at termination of the Business Relationship between COUNTY and Business Associate.

**8.2 Termination for Cause.** COUNTY may immediately terminate the Business Relationship and/or this BA Agreement if COUNTY determines that Business Associate has breached a material term of this BA Agreement.

**8.3 Effect of Termination.** Upon termination of the Business Relationship and/or this BA Agreement, for any reason, Business Associate agrees to return or destroy all Protected Health Information received from COUNTY, or created or received by Business Associate on behalf of COUNTY. If permitted by COUNTY, Protected Health Information shall be destroyed in a manner that renders it unreadable and unusable by anyone else. Discharge or termination, whether voluntary or not, shall not affect Business Associate's ongoing obligation to safeguard the confidentiality of Protected Health Information and to return or destroy any such information in Business Associate's possession.

This Section 8.3 shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide in writing to COUNTY notification of the conditions that make return or destruction infeasible. Upon mutual written agreement of the Parties, Business Associate shall extend the protections of this BA Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information for as long as Business Associate maintains such Protected Health Information.

## **9. Miscellaneous**

### **9.1 INDEMNIFICATION.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE UNDERLYING AGREEMENT(S), AT BUSINESS ASSOCIATE'S EXPENSE, BUSINESS ASSOCIATE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COVERED ENTITY AND COVERED ENTITY'S EMPLOYEES (THE "INDEMNITEES") AGAINST ALL DAMAGES, FINES, PENALTIES, COSTS OR EXPENSES (INCLUDING REASONABLE FEES OF ATTORNEYS AND EXPERTS) AND ALL LIABILITY TO THIRD PARTIES ARISING FROM ANY MATERIAL BREACH OF THIS AGREEMENT BY BUSINESS ASSOCIATE OR ITS EMPLOYEES, DIRECTORS, OFFICERS, SUBCONTRACTORS, AGENTS OR OTHER MEMBERS OF BUSINESS ASSOCIATE'S WORKFORCE. BUSINESS ASSOCIATE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

**COUNTY MAY EMPLOY ATTORNEYS SELECTED BY IT TO DEFEND ANY SUCH ACTION, THE COSTS AND EXPENSES OF WHICH WILL REMAIN THE RESPONSIBILITY OF BUSINESS ASSOCIATE. COUNTY WILL PROVIDE BUSINESS ASSOCIATE WITH TIMELY NOTICE OF THE EXISTENCE OF SUCH PROCEEDINGS AND SUCH INFORMATION, DOCUMENTS AND OTHER COOPERATION AS REASONABLY NECESSARY TO ASSIST BUSINESS ASSOCIATE IN ESTABLISHING A DEFENSE TO SUCH ACTION.**

**THESE INDEMNITIES SURVIVE TERMINATION OF THIS BA AGREEMENT, AND COUNTY RESERVES THE RIGHT, AT ITS OPTION AND EXPENSE, TO PARTICIPATE IN THE DEFENSE OF ANY SUIT OR PROCEEDING THROUGH COUNSEL OF ITS OWN CHOOSING.**

**9.2 Survival.** The respective rights and obligations of Business Associate survive the termination of the Business Relationship and/or this BA Agreement.

**9.3 Notices.** Any notices pertaining to this BA Agreement must be given in writing and will be deemed duly given when personally delivered to a Party or a Party's authorized representative, as listed below, or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid.

A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

**If to Business Associate:**

Proscalar LLC  
2415 W. Grapevine Mills CT. Suite 593  
Grapevine, TX 76051  
Attn: Stephen Smith

**If to Covered Entity:**

Tarrant County  
2300 Circle Drive, Suite 2306  
Fort Worth, TX 76119  
Attn: HIV Administrative Agency Manager

**9.4 Amendments.** This BA Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow COUNTY to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, the HITECH Act and its implementing regulations.

**9.5 Interpretation.** Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits COUNTY to comply with the Privacy Rule.

**9.6 Third Parties.** Nothing in this BA Agreement is intended, not shall be deemed, to confer any benefits on any third party.

**9.7 Assignments.** Neither Party may assign its rights or obligations under this BA Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld.

**9.8 Independent Contractor.** This BA Agreement does not create any relationship between the Parties other than that of independent parties contracting with each other for the sole purpose of effecting the provisions of this BA Agreement and any other agreements between them evidencing their Business Relationship.

**9.9 Governing Law and Venue.** This BA Agreement will be interpreted under the laws of the State of Texas. The venue for any lawsuit arising out of this BA Agreement will be the Fort Worth Division of the Northern District of Texas, if the lawsuit arises in Federal Court, or Tarrant County, Texas, if the matter arises in State Court.

**9.10 Third Party Interpretation.** This agreement shall not be interpreted to inure to the benefit of a third party not a party to this contract. This agreement may not be interpreted to waive any statutory or common law defense, immunity, including governmental and sovereign immunity, or any limitation of liability, responsibility, or damage to any Party to this contract, Party's agent, or Party's employee, otherwise provided by law.

**9.11 Form 1295 Compliance.** The Proscalar LLC acknowledges and agrees that it has fully, accurately, and completely disclosed all interested parties in the attached Form 1295, and has acknowledged the completeness of this disclosure by filing the Form 1295, attached as Exhibit A, with the Texas Ethics Commission as required by law.

**9.12 Required Attachments.** This BA Agreement will be considered incomplete without the submission of the completed Form 1295 as referenced in section 9.11.

COUNTY shall be responsible to include Form 1295, attached as Exhibit A, to this BA Agreement prior to Business Associate review and execution. For the purposes of this BA Agreement, the following statement applies in regard to Form 1295:

- Exhibit A is a required component of this BA Agreement. Form 1295 is attached and must be completed prior to approval of this BA Agreement by COUNTY.
- The Parties involved in this BA Agreement are governmental entities and are not required by the Texas Ethics Commission to complete their Form 1295.

Approved on this 11<sup>th</sup> day of March, 2025, by Commissioners Court Order  
No. 144834.

SIGNED AND EXECUTED this 11<sup>th</sup> day of March, 2025.

**BUSINESS ASSOCIATE**

Stephen L. Smith

Signature

Stephen L. Smith

Printed Name

Managing Partner

Title

2/5/2025

Date

**COUNTY OF TARRANT  
STATE of TEXAS**

By: Separate Electronic Signature Page  
Tim O'Hare  
County Judge

**APPROVED AS TO FORM:**

James Marwin Nichols  
Criminal District Attorney's Office\*

\*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

### OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
 2024-1210579

Date Filed:  
 09/05/2024

Date Acknowledged:

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Proscalar, LLC  
 Austin, TX United States

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Tarrant County

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

F2024026  
 Marketing Services

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest (check applicable) |              |
|---|--------------------------|--|---------------------------------------|--------------|
|   |                          |  | Controlling                           | Intermediary |
|   | Smith, Stephen L.        | Coppell, TX United States                | X                                     |              |
|   | Poston, William J.       | Austin, TX United States                 | X                                     |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |

**5 Check only if there is NO Interested Party.**


**6 UNSWORN DECLARATION**

My name is Stephen L. Smith, and my date of birth is June 17, 1963.

My address is 2415 W Grapevine Mills Ct, Suite 593, Grapevine, TX, 76051, USA  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.


Executed in Tarrant County, State of Texas, on the 5th day of September, 2024.  
(month) (year)

  
 \_\_\_\_\_  
 Signature of authorized agent of contracting business entity  
 (Declarant)

Consideration of a Business Associate Agreement between Tarrant County and Proscalar LLC  
for the provisions of Marketing Services

**SIGNED AND EXECUTED** this 11 day of March, 2025.

**COUNTY OF TARRANT  
STATE OF TEXAS**

A handwritten signature in black ink that reads "Tim O'Hare". The signature is written in a cursive style with a long horizontal line extending to the right.

Tim O'Hare  
County Judge  
3/17/2025