

# **Exhibit “A”**

April 4, 2017

**BY E-MAIL**

Mr. Edward Murrell  
President  
Winnie-Stowell Hospital District  
P.O. Box 1997  
Winnie, TX 77665

Re: Engagement Agreement

Dear Edward:

Thank you for choosing Dentons US LLP to represent you in the matter described below.

**Our Client.** The purpose of this Engagement Letter, as well as the associated Terms of Business, is to set forth the Engagement Agreement by which Dentons US LLP will represent Winnie-Stowell Hospital District.

**Scope of Representation.** We have agreed to provide legal services in connection with assessing the permissibility of collateralization of Medicaid revenues in the context of Medicaid supplemental payment programs, as well as incidental matters, such as responding to audit letter requests.

**Terms of Business.** Attached is a copy of our Terms.

**Our Team and Charges.** Although I will be principally responsible for this engagement, it is anticipated that other lawyers and professionals will be involved. Our fees will be based on the time devoted to the representation, and the billing rates charged by each timekeeper. Currently, our standard hourly charges range from \$195 to \$1,240 per hour depending on the lawyer's or professional's experience. For the purposes of this engagement, my time will be billed at a discounted rate of \$700 per hour. Our representation of you also will involve costs, which are reviewed in the Terms.

**Conflicts.** Our Terms include provisions regarding conflicts.

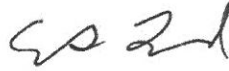
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Please indicate your agreement to the Letter and Terms by executing a copy of this Letter in the space provided below and returning it. A facsimile or scanned copy delivered via email are as acceptable as an original. We appreciate prompt receipt of an executed copy, but will commence work based on the understandings contained in this letter prior to our receipt of your signature. Of course, please contact me if you have any questions about anything in this Letter or the Terms, or with respect to any aspect of our representation of you.

Again, we are very pleased to have this opportunity to be of service and to work with you.

Sincerely,

Dentons US LLP



By:  
Charles Luband

Enclosure      *Terms of Business*

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**Agreement and Acceptance**

The undersigned hereby acknowledges and agrees that he or she has reviewed and understands the terms and conditions of this Letter and the Terms. The undersigned further agrees and accepts these provisions, including, but not limited to, all disclosures regarding conflicts of interest, and hereby waives any conflict or potential conflict of interest as set forth therein.

  
Edward Murrell, President

CL:bmb

# Terms of Business

## Dentons US LLP

February 2017

### Welcome to Dentons.

Thank you for choosing Dentons to represent you. These Terms of Business and the Engagement Letter form our Engagement Agreement.

#### Dentons and You

1. The Letter sets out the scope of our representation and identifies you as our sole client. We do not represent any other persons or entities, including your parent, subsidiaries, and affiliates, unless named in the Letter. Our advice and work is provided solely for your benefit and relates only to the matters set out in the Letter. The Terms apply as soon as we start acting on your instructions, regardless of whether or not you have signed the Letter.
2. Dentons US LLP is a member of a Swiss Verein, the other members of which are Dentons Australia Pty Ltd, Dentons Canada LLP, 北京大成律师事务所 (China), Dentons Cárdenas & Cárdenas Abogados Ltda., Dentons Europe LLP, Dentons Hong Kong, Dentons López Velarde, S.C., Dentons Muñoz CAC, Inc., Dentons Rodyk & Davidson LLP, and Dentons UKMEA LLP. Those members and their respective subsidiaries and affiliates provide legal services in different locations, each of which is its own Legal Practice. For a list of each Legal Practice by location, see [dentons.com/legalnotices](http://dentons.com/legalnotices).
3. This Engagement Agreement is between you and Dentons US LLP only and not any other Dentons Legal Practice or any entity or individual. We will conduct ourselves in accordance with the professional responsibility rules applicable in the jurisdictions in which we render services.

4. Other Dentons Legal Practices represent many clients in different geographies, including entities and individuals that may enter into transactions or have disputes with you. Unless another Dentons Legal Practice is specifically engaged by you or on your behalf, you agree that those representations by other Dentons Legal Practices do not conflict with our representation of you, and that you will not assert that other Dentons Legal Practices are precluded from representing those entities and individuals.
5. We may involve other Dentons Legal Practices to help with your matter. Unless we state otherwise, we will do so by subcontract and Dentons US LLP remains solely responsible to you for the engagement. You agree that we may pay or apportion part of our fees and costs for the work in a manner that may be considered a referral fee in some jurisdictions.

#### Our Working Relationship

6. Effective representation requires open and honest communication. We need you to provide us with clear and timely instructions, relevant information and documents, and make yourself available for consultation.
7. You should carefully check for any insurance policies that might relate to the work we do for you and notify your insurers

promptly to protect your rights. Unless you disclose these policies and we agree to advise on them in the Letter, we are not responsible for advising you about the existence or applicability of any insurance coverage.

8. We may communicate with you using any reasonable method, including electronic communications, like email, which may not be absolutely secure and present risk of interception or copying.
9. Generally, communications between a lawyer and client regarding legal advice are privileged and confidential. You may jeopardize these protections by disclosing communications to others. You agree we are under no duty to disclose to you any information that is confidential to another client or any other person.

#### Advance Clearance of Conflicts of Interest

10. Dentons US LLP represents a wide variety of companies and individuals, some of whom may be, for instance, your borrowers, investors, shareholders, creditors, or other parties with conflicting interests in a litigation, arbitration, bankruptcy, insolvency or other matters. These kinds of representations could present conflicts of interest under applicable rules. As a condition of our representation of you, you agree that, without further notice, we may represent other clients in matters, even if they are directly adverse to you, as long as:

(1) those matters are not substantially related to our representation of you; or (2) we screen our lawyers and professionals who have such information from any involvement in the adverse representation. Of course, we will not use any confidential information received from you in any way inconsistent with our professional responsibilities.

#### **Fees and Costs**

11. Our fees are set out in the Letter. Our hourly rates may be adjusted from time to time.
12. We may charge and you agree to pay for costs including travel, delivery services, imaging, printing, court fees, and other expenses. For items we purchase in bulk or through fixed fee arrangements, such as computerized legal research, technology, and support services, we will charge you a rate reasonably apportioned to you. We may need to advance costs on your behalf and you agree to reimburse us promptly. You agree that we may engage experts or third parties, such as counsel, lawyers or local agents, on your behalf to be paid directly by you.
13. Unless expressly stated otherwise, estimates we provide are subject to change and not binding on us.
14. All fees and costs of any Dentons Legal Practice, experts or third parties that we state or estimate exclude any sales, use, excise, transfer, value-added or similar taxes; those taxes will be included in our invoices to you and are payable by you. If you or another payer of those fees, costs and taxes is required, on account of any taxes, to make any deduction when paying our invoices, you must increase the overall payment so that we receive a net sum equal to our full invoiced amount.
15. Our policy is to bill monthly, except that we reserve the right to issue an interim bill and to change the frequency of billing and the time for payment. If you disagree with any invoice, please contact us immediately, otherwise we will understand that the invoice is agreeable to you. Our invoices are payable when delivered on the terms set forth therein, and you remain responsible for paying them even if you have an arrangement with a third party payor for payment. If full payment is not received when due, we reserve the right to charge reasonable interest and to hold you responsible for any collection costs, including reasonable attorneys' fees.

16. In adversarial proceedings, you agree that as of 90 days before any scheduled trial or arbitration date (or a later time that we may make such request), all fees and costs incurred up to that point will be paid and you will either provide us with a deposit (or augment any existing deposit) or make another satisfactory arrangement to ensure payment of all fees and costs estimated to be incurred from that point through the end of trial or arbitration.

17. For matters commenced with a Letter from our New York office, you may have the right to request arbitration in New York City under Part 137 of the Rules of the Chief Administrator of the Office of Court Administration of the New York State Unified Court System or applicable bar association procedures, and we agree to participate fully in that process. For matters commenced with a Letter from one of our California offices, you have the right to elect arbitration under the procedures set out in the California Business and Professions Code Section 6200, et seq. Those procedures permit a trial after arbitration, unless the parties agree in writing after the dispute has arisen to be bound by the arbitration award.

#### **Privacy, Data Protection and Other Regulation**

18. We are often asked for information about our experience. You consent to our public disclosure that you are a client and a general description of our work for you.
19. Anti-money laundering, anti-bribery, anti-terrorist and similar laws require compliance with client identification, verification, and other rules. We may not be able to represent you until we have all of the information we need for these purposes.
20. We will handle personal data you send to us about you, your employees, agents, contractors or other individuals in accordance with data protection and privacy standards equivalent to or higher than those required by law. We may transfer such data between locations in order to provide legal services to you.
21. We do not tolerate bribery or corruption.

#### **Your File and Our Records Retention**

22. Absent professional obligations or written direction from you to the contrary, we may dispose of all records relating to the representation seven years after we last

performed work on the matter, without further notice to you. We need not keep documents containing our lawyer work product, mental impressions, notes, drafts, and emails and those documents will not be considered to be part of your client file.

#### **Termination**

23. You may terminate the engagement at any time for any reason. We may terminate the engagement at any time, consistent with our ethical obligations. We expressly reserve the right to stop acting for you, and you expressly consent to our right to terminate, if you fail to pay for amounts invoiced or requested on account of costs. You remain responsible for paying fees and costs related to work performed before the end of the engagement, and we will not be liable for any resulting loss.

#### **Completion of Engagement**

24. Our representation of you will end when we have completed the services described in the Letter, send our final invoice, or, unless otherwise agreed, after six months of furnishing no billable services to you, which ever occurs sooner, without the need for further written confirmation. We may send you information, invitations, or other communications after the completion of our engagement, which do not re-establish an attorney-client relationship. Any new relationship will require a new Engagement Letter. In such a case, these Terms will apply unless new Terms are agreed to at that time.

#### **Translations**

25. If we use or prepare a translation, you should be aware that words and legal concepts used in one language may not have equivalents in another. You should not assume that any translation exactly replicates the original text.

#### **Entire Agreement**

26. The Engagement Agreement cannot be modified by any policies, procedures, guidelines, correspondence, or other document from you unless agreed to in writing by a partner of Dentons US LLP. If there is a conflict between the Terms and the Letter, the provisions of the Letter control. If any part of the Engagement Agreement is held to be illegal, invalid or unenforceable, it shall not form part of the agreement and the balance shall remain enforceable and shall not be affected.

# **Exhibit “B”**

## **RELEASE AND SETTLEMENT AGREEMENT**

This Release and Settlement Agreement ("Agreement"), is made and entered into by \_\_\_\_\_ ("NSGO") and the Texas Health and Human Services Commission ("HHSC"), in relation to claims which NSGO has or could allege against HHSC and is intended to settle, compromise and extinguish all claims which NSGO has, might have, or could have alleged against HHSC related to the Minimum Payment Amounts Program ("MPAP").

First, in March 2015, HHSC began MPAP which is a directed payment program wherein HHSC directs Medicaid managed care organizations ("MCOs") to make Medicaid payments to qualified nursing facilities. The payments approximate the difference between the Medicaid payment rate and the Medicare payment rate, in accordance with the calculation described in 1 Texas Administrative Code §353.608;

Second, all qualified nursing facilities in MPAP are owned by non-state governmental entities, such as NSGO. These entities provided local, public funding as the non-federal share of the MPAP payments;

Third, HHSC made estimates of the anticipated MPAP payments to the qualified nursing facilities prior to each program year. NSGO provided public funds in an amount based on those estimates;

Fourth, disputes and controversies exist between HHSC and NSGO (the "Parties") regarding the MPAP calculations and payments;

Fifth, the Parties acknowledge that this Agreement does not constitute an admission of liability by either of the Parties and is intended to permanently settle and compromise any and all claims and defenses relating to and/or arising out of the MPAP calculations and payments which either party has or may have, whether known or unknown at this time;

NOW, THEREFORE, for and in consideration of the covenants and agreements contained herein, and the good and valuable consideration expressed herein, the receipt and sufficiency of which are hereby acknowledged, as full and adequate consideration for all Parties, the Parties agree as follows:

**1. Agreement and Representations by NSGO:**

a. No more than, 20 days after the effective date set forth in paragraph 12 of this Agreement, NSGO agrees to repay the total sum of \_\_\_\_\_ Thousand and \_\_\_/100 dollars (\$\_\_\_\_\_) to the MCOs if HHSC has directed an MCO to recoup payments in connection with the redistribution of MPAP payments described in this Agreement;

b. NSGO agrees to return any amount of MPAP payments requested by HHSC if the Centers for Medicare and Medicaid Services ("CMS") issues a deferral, disallowance, or otherwise requires HHSC to repay any money related to MPAP;

c. NSGO and its agents, employees, successors, officers, directors, assigns, and representatives hereby knowingly and voluntarily release HHSC, and any and all past, present, and future agents, employees, officers, directors, administrators, servants, and representatives of HHSC, of and from any and all past and present actions for claims, demands, causes of action, obligations, rights, damages, liens, debts, liabilities, costs, attorney's fees, expenses, or any other tangible or intangible loss or detriment or expenses of any kind, including without limitation, claims and causes of action with NSGO has or might have, at law and in equity, known and unknown, now existing or that might arise hereafter, directly or indirectly arising out of, as a result of, or attributable to the MPAP calculations and payments, as described herein, whether based on tort, contract, statute, or any other legal theory, and whether for actual, compensatory, punitive, exemplary, statutory or other damages, contribution, or indemnification, including, but not limited to, all claims that were or could have been asserted; and

d. NSGO further covenants and agrees never to institute directly or indirectly any lawsuit, action or proceeding of any kind against HHSC and/or any and all past, present, and future agents, employees, officers, directors, administrators, servants, and representatives of HHSC, in any court with regard to any claim or cause of action that NSGO has released in this Agreement. NSGO understands and agrees that no claims whatsoever against HHSC, of the nature described above are reserved or shall be prosecuted or pursued in the future in any forum. NSGO also agrees and covenants not to file any administrative charge, complaint or proceeding, of any nature whatsoever against HHSC, with any federal, state, or local administrative tribunal with regard to any claim or cause of action which NSGO has released in this Agreement, and NSGO agrees that it will promptly withdraw any such claim that remains pending in any way.

**2. Agreements and Representations by HHSC:** No more than 30 days after the effective date set forth in paragraph 12 of this Agreement, HHSC agrees to:

a. Direct the MCOs to recoup and redistribute MPAP payments from all qualified nursing facilities, as necessary; and

b. Direct the MCOs to distribute a final MPAP payment in the total sum of \_\_\_\_\_ Thousand and \_\_\_/100 dollars (\$\_\_\_\_\_) ("Final Payment") to NSGO. The sum shall constitute the full extent of any monetary responsibility with respect to this Agreement on the part of HHSC and the payment of this sum to NSGO will fully settle any and all disputes concerning the claims which NSGO has or could assert, known or



unknown, and all other future claims and causes of action which NSGO could have arising out of and relating to the MPAP calculations and payments.

3. **Disclaimer:** It is expressly understood and agreed by and between the parties to this Agreement that this Agreement includes a compromise and settlement of all claims, and that the execution of this Agreement does not in any way constitute any admission of liability on the part of any party to this Agreement, but that all parties to this Agreement expressly disclaim any liability, concerning the claims being compromised and settled herein.

4. **Headings:** The headings, captions and arrangements used in this Agreement are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Agreement, nor to affect the meaning thereof.

5. **Governing Law:** This agreement is being executed and delivered, and is intended to be performed in Texas, pursuant to the laws of the State of Texas, which shall govern the rights and the duties of the parties and the validity, construction, enforcement and interpretation of this Agreement.

6. **Severability:** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom.

7. **Authority:** The Parties represent and warrant that the person signing this agreement on behalf of each Party is fully authorized to bind that Party to all of the terms of this agreement.

8. **Entire Agreement:** This Agreement embodies the entire agreement between the Parties with regard to the matters set forth in it and shall be binding upon, and inure to the benefit of the agents, employees, officers, directors, administrators, servants, representatives, and assigns of each Party. This Agreement supersedes any and all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing executed jointly by a duly authorized officer or agent of each of the parties. The terms of this instrument are contractual and are not mere recitals, and the undersigned specifically represent that the contents and effects hereof are fully and completely agreed to and understood.

9. **Acknowledgement:** The Parties individually acknowledge that they have read and understand the effect of this Agreement, that they have had the advice of counsel, and that they are executing this Agreement of their own free will and accord, for the purpose of making a full and final compromise and settlement and for the purposes

and consideration set forth in this Agreement. Each Party hereto has been advised that each Party should have this Agreement reviewed by such Party's attorney prior to executing same.

**10. Multiple Counterparts:** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitutes, collectively, one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**11. Interpretation:** This agreement shall not be construed against or unfavorably to any Party because of such Party's involvement in the preparation or drafting of this Agreement.

**12. Effective Date:** The Agreement shall be effective upon the date of countersignature by the Executive Commissioner of HHSC.

IN WITNESS WHEREOF, the undersigned, having represented and warranted their authority to enter into and execute this Agreement, have executed this Agreement.

**APPROVED:**

**TEXAS HEALTH AND HUMAN  
SERVICES COMMISSION:**

\_\_\_\_\_ (name of NSGO)  
**NSGO**

By: \_\_\_\_\_  
Charles Smith  
Executive Commissioner, HHSC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Hubert Oxford IV

**Subject:** FW: Good News/Bad News MPAP Program and QIPP Program  
**Attachments:** Fwd: \$400MM QIPP Pool Size; Draft MPAP Settlement Proposal Figures by NF and by NSGO w HOIV Addition for WSHD.xlsx

**Importance:** High

All,

There are several things happening with the Nursing Home MPAP and QIPP Programs right now. I will report more tomorrow but wanted to give you all a heads up.

### Good News:

- 1. Reconciliation Settlement for Eligibility Period 1 and 2:** We received the attached spreadsheet and e-mail as a settlement offer from the State of Texas to the various governmental to resolve all outstanding MPAP Reconciliations due to the District for Eligibility Period 1 and 2. This includes any under payments for each period and the 10% return of IGT for Eligibility Period 2. Bottom line, if we agree to this, the District would receive **\$2,348,075.09** shortly after the settlement agreement is approved.

From a timing perspective, we believe the District will need to approve settlement documents within a couple of weeks, which will probably require us to have a special meeting. From there, we should start receiving the funds within ten (10) days. With this said, if we accept the settlement as proposed, the District would receive \$2,348,075.09 less any expenses requested by LTC.

Provider Name	Final Payment / (Recoupment)	WSHD Share	Total Payment	% Return on IGT
Garrison Nursing Home & Rehabilitation Center	\$123,204	\$49,282	\$3,101,631	238.47%
Golden Villa Healthcare, LLC	\$50,809	\$20,324	\$2,564,574	238.47%
Highland Park Care Center	\$597,344	\$238,938	\$3,023,644	238.47%
Marshall Manor Nursing and Rehabilitation Center	\$261,850	\$104,740	\$4,391,182	238.47%
Marshall Manor West	\$100,774	\$40,310	\$3,277,154	238.47%
Rose Haven Retreat	\$194,878	\$77,951	\$2,049,768	238.47%
Spring Branch Transitional Care Center	\$508,835	\$203,534	\$12,100,574	238.47%
Clairmont Beaumont	\$403,261	\$201,631	\$4,251,866	238.47%
Hallettsville Rehabilitation and Nursing Center	\$618,478	\$309,239	\$2,394,247	238.47%
Monument Hill Rehabilitation and Nursing Center	\$409,228	\$204,614	\$1,348,455	238.47%
Oak Manor Nursing Center	\$321,948	\$160,974	\$1,688,225	238.47%
Oakland Manor Nursing Center	\$369,839	\$184,920	\$2,322,082	238.47%
The Woodlands Healthcare Center	\$1,103,240	\$551,620	\$8,760,055	238.47%
	\$5,063,689.11	<b>\$2,348,075.09</b>	\$51,273,456	

2. **Status of Eligibility Period 3:** Additionally, LTC believes that accepting this settlement is important because it is expected to trigger the State to file with CMS for Eligibility Period 3 (September 2015-August 2016). Right now, there are a couple of variables for Eligibility Period 3, such as: 1) whether the State is going to file for an entire year or five months; 2) if the application is filed with CMS and CMS rejects the application as they previously did despite the fact that the denial was based on a CMS rule not even in effect, whether the State will push back on the denial either by negotiations or lawsuit. But, some possible revenue and expenses models are as follows:

<b>Eligibility Period 3</b>	<b>One Year Existing Model</b>	<b>One Year with Revised Model**</b>	<b>5 Months</b>	<b>5 Months Revised Model**</b>
<b>IGT</b>	\$14,444,431.31	\$14,444,431.31	\$6,018,513.05	\$6,018,513.05
<b>MPAP Funds Received</b>	\$34,842,648.59	\$34,842,648.59	\$14,517,770.25	\$14,517,770.25
<b>UPL Payment Less IGT</b>	\$20,398,217.28	\$20,398,217.28	\$8,499,257.20	\$8,499,257.20
<b>Fixed Cost</b>				
Manager	(\$11,357,635.11)	(\$11,357,635.11)	(\$4,732,347.96)	(\$4,732,347.96)
Net After Fixed Cost	\$9,040,582.17	\$9,040,582.17	\$3,766,909.24	\$3,766,909.24
<b>Variable Costs</b>				
Interest	(\$1,795,068.00)	(\$866,665.88)	(\$747,945.00)	(\$180,555.39)
LTC Costs*	<u>(\$2,114,319.24)</u>	<u>(\$889,200.00)</u>	<u>(\$880,966.35)</u>	<u>(\$370,500.00)</u>
<b>Net to District</b>	<b>\$5,131,194.93</b>	<b>\$7,284,716.29</b>	<b>\$2,137,997.89</b>	<b>\$3,215,853.85</b>

\* LTC Fees for Existing Model are as proposed by LTC on a recent phone call in which they suggested paying them 50% of existing agreement for first 6 months and 75% of existing agreement for last 6 months.

\*\* Revised Model based on 6% Annual Interest on IGT and \$5,700 per month per nursing home as proposed by LTC for QIPP.

\*\*\*These models are based on one year of IGT, MPAP funds received, and expenses for MPAP per Eligibility Period 2 plus the excess funds as a result of this payment. The figures may be slightly high because there may be reconciliation funds included from the six (6) month Eligibility Period 1 but we cannot make a determination of this amount based on the settlement figures presented.

As far any timeline is concerned, we anticipate any filing of application and IGT to take place by April or May of 2017. Therefore, we will be looking at needing money to make a one-time IGT of up to \$14,444,431.31. Additionally, as far as the payback period, that has not been determined yet but if the payment is spread out over six months, we could receive as much as \$5,800,000.00 per month and could repay any loans, within 3 months of receiving the MPAP payments.

**Bad News:** Also attached is an e-mail from the State regarding the size of the QIPP fund allocations being sought by the Federal Government. Instead of the State seeking \$660,000,000.00 per year, as they did in Eligibility Period 2, the e-mail attached says the state is only seeking \$400,000,000.00 per year. This is a big deal because the IGT and return models for QIPP payments are based on \$660,000,000.00 (i.e., a large pool of supplemental funds). Practically speaking, this means that any IGT we would be making for the QIPP program would be reduced by approximately 40% which would result in lower interest costs, but the return we would also be reduced by 40%. However, there were fewer facilities that signed up for QIPP than was budgeted so there are less mouths to feed.

Be assured, as things develop, I will be sure to update you.

Sincerely,

Hubert Oxford, IV  
Benckenstein & Oxford, L.L.P.