

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is made _____, 20__ by and between _____ (physician) ("Covered Entity") and Physicians Contracting Organization of Texas ("PCOT") ("Business Associate").

WHEREAS, Covered Entity and Business Associate have entered into that certain agreement dated _____, _____ (the "Provider Participation Agreement") pursuant to which Business Associate will provide services to Covered Entity that require Business Associate to access Protected Health Information that is protected by state and/or federal law;

WHEREAS, Business Associate and Covered Entity desire that Business Associate obtain access to such information in accordance with the terms specified herein;

NOW THEREFORE, Covered Entity and Business Associate hereby agree as follows:

1. DEFINITIONS. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

1.1 Covered Entity. "Covered Entity" shall mean _____.

1.2 Business Associate. "Business Associate" shall mean Physicians Contracting Organization of Texas ("PCOT").

1.3 Data Aggregation. "Data Aggregation" means the combining of one covered entity's Protected Health Information, with another covered entity's Protected Health Information by a business associate of both such covered entities, in order to permit data analyses that relates to the health care operations of both covered entities.

1.4 Designated Record Set. "Designated Record Set" means:

- (a) A group of records maintained by or for a covered entity that is:
 - (i) The medical records and billing records about individuals maintained by or for a covered health care provider;
 - (ii) The enrollment, payment, claims, adjudication, and case or medical management record systems maintained by or for a health plan; or
 - (iii) Used, in whole or in part, by or for the covered entity to make decisions about individuals.
- (b) For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for a covered entity.

- 1.5 Individual. “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
- 1.6 Limited Data Set. HIPAA’s privacy rule makes provisions for a limited set, authorized only for public health, research, and health care operations purposes. A limited data set must have all direct identifiers removed, including the following: (i) name and social security number; (ii) street address, e-mail address, telephone and fax numbers; (iii) full face photos and any other comparable images; (iv) medical record numbers, health plan beneficiary numbers and other account numbers; and (v) device identifiers and serial numbers and biometric identifiers, including finger and voice prints.
- 1.7 Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E, of the Health Insurance Portability and Accountability Act of 1996, as amended from time to time.
- 1.8 Protected Health Information. “Protected Health Information” shall have the same meaning as the term “Protected Health Information” in 45 C.F.R. 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.9 Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. 164.501.
- 1.10 Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Service or his or her designee.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 2.1 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Services Agreement or as Required by Law.
- 2.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- 2.3 Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- 2.4 Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it.

- 2.5 Business Associate agrees to report to the Covered Entity any security incident of which it becomes aware.
- 2.6 Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- 2.7 Business Associate agrees 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 Agreement.
- 2.8 Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.9 If Business Associate receives Protected Health Information in a Designated Record Set or maintains Protected Health Information that it receives from Covered Entity in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, within sixty (60) days of receiving a written request from the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. 164.524.
- 2.10 If Business Associate receives Protected Health Information in a Designated Record Set or maintains Protected Health Information that it receives from Covered Entity in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, within sixty (60) days of receiving a written request from the Covered Entity.
- 2.11 Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, or within sixty (60) days of receiving a written request from the Covered Entity or within the time designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- 2.12 Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

- 2.13 Business Associate agrees to provide to Covered Entity or an Individual within sixty (60) days of a written request from Covered Entity information collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

3.2 Specific Use and Disclosure Provisions

- (a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation Services to Covered Entity as permitted by 42 C.F.R. 164.504(e)(2)(i)(B).
- (d) Business Associate may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 42 C.F.R. 164.502(j)(l).
- (e) Business Associates may de-identify any and all Protected Health Information created or received by Business Associate under this Agreement; provided, however, that the de-identification conforms to the requirements of the Privacy Rule. Such resulting de-identified information would not be subject to the terms of this Agreement.

- (f) Business Associate may create a Limited Data Set and use such Limited Data Set pursuant to a data use agreement that meets the requirements of the Privacy Rule.

4. OBLIGATIONS OF COVERED ENTITY

4.1 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- (a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restrictions may affect Business Associate's use or disclosure of Protected Health Information.
- (d) Covered Entity shall obtain any consent, authorization or permission that may be required by the Privacy Rule or applicable state laws and/or regulations prior to furnishing Business Associate the Protected Health Information pertaining to an individual.

4.2 Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5. TERM AND TERMINATION

- 5.1 Term. The term of this Agreement shall be effective as of April 14, 2003 and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

- 5.2 Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
- (a) provide an opportunity for Business Associate to cure the breach or end the violation and may terminate this Agreement and the Services Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - (b) Immediately terminate this Agreement and the Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - (c) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

5.3 Effect of Termination.

- (a) Except as provided in paragraph 5(c)(2) of this Agreement, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon the reasonable agreement of the Covered Entity that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. MISCELLANEOUS

- 6.1. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 6.2. Change in Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for either Party or both Parties to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. The parties agree to negotiate in good faith mutually acceptable appropriate amendment(s) to the Agreement to give effect to such revised obligations. If the Parties are unable

to agree to mutually acceptable amendment(s) within sixty (60) days of the relevant change in law or regulations, either Party may terminate the Agreement and the Services Agreement.

- 6.3 Survival. The respective rights and obligations of Business Associate under Section 5 of this Agreement shall survive the termination of this Agreement.
- 6.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- 6.5 Construction of Terms. The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Regulation issued by the Department of Health and Human Services or the Office of Civil Rights (“OCR”) from time to time.
- 6.6 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 6.7 Contradictory Terms. Any provision of the Services Agreement that is directly contradictory to one or more terms of this Agreement (“Contradictory Term”) shall be superceded by the terms of this Agreement as of the Effective Date of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity’s compliance with the Privacy Rule and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.
- 6.8 Severability; Governing Law. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court’s determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect. This Agreement shall be governed by and construed in accordance with the state laws of the State of Texas. Exclusive jurisdiction shall be Houston, Harris County.

(The rest of this page is intentionally left blank.)

Business Associate
Physicians Contracting Organization of Texas

Covered Entity

(physician)

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____