

First Amendment to Prescription Savings Program Agreement

This FIRST AMENDMENT TO THE PRESCRIPTION SAVINGS PROGRAM AGREEMENT (this "**Amendment**") is entered into by and between the Parties to the Prescription Savings Program Agreement (the "**Agreement**"), PRESCRIPTION CARE MANAGEMENT, LLC ("**PCM**") and The Texas A&M University System ("**Client**") on this 20th day of July, 2021 (the "**Amendment Effective Date**") and is in respect to the following:

RECITALS:

- A. PCM and CLIENT entered into the Agreement on September 1, 2018;
- B. It is the parties' desire to amend the Agreement in order to more efficiently carry out the intent of the Agreement;
- C. Pursuant to Section 13(D) of the Agreement any amendments must be in writing and signed by authorized representatives from both Parties;
- D. The Parties mutually agree to renew the Agreement for an additional three (3) years as provided in Section 7 of the Agreement, and this Amendment intends to reflect the mutual agreement of the Parties; and
- E. This Amendment is intended to supplement the Agreement in regard to the paragraphs specifically addressed in this Amendment, and this Amendment shall not be read or construed to supersede any portion of the Agreement, unless provided for specifically in this Amendment.

NOW, THEREFORE, in consideration of the forgoing premises, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, PCM and CLIENT agree as follows:

1. **Amendments**. The Agreement is amended as follows:

- A. Section 11 of the Agreement is hereby amended by adding the following provision as subsection C:

"C. Upon termination of this Agreement, Client shall only be responsible for paying PCM for Case Management Services performed prior to the effective date of such termination."

- B. Section 12.F of the Agreement is hereby deleted in its entirety and replaced with the following:

"The Parties shall comply with all federal and state laws, rules, and regulations applicable to the maintenance, use, and disclosure of Protected Health Information (as such term is defined in the BAA (as defined herein)), including but not limited to, the Health Insurance Portability and

Accountability Act of 1996 and the regulations promulgated thereunder (“**HIPAA**”) and Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder (the “**HIPAA Requirements**”). The Parties agree to enter into any further agreements with each other or other appropriate entities as may be necessary to facilitate compliance with the HIPAA Requirements.”

- C. Section 12.G of the Agreement is hereby deleted in its entirety and replaced with the following:

“The Parties shall comply with the terms of the Business Associate Agreement attached hereto as **Exhibit C** and incorporated herein by reference (the “**BAA**”). If PCM engages a subcontractor to assist in the provision of the Case Management Services to Client, the subcontractor will be required to execute a Business Associate Agreement with PCM which will govern the subcontractor’s use and disclosure of Protected Health Information.”

- D. Section 13.B of the Agreement is hereby deleted in its entirety and replaced with the following:

“The Parties’ obligations under this Agreement that by their nature are intended to continue beyond the expiration or termination of this Agreement shall survive such expiration or termination of this Agreement.”

- E. Section 13.D of the Agreement is hereby amended by adding the following:

“PCM shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of Client.”

- F. Section 13 of the Agreement is hereby amended by adding the following subsections:

“O. PCM shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of professional liability (E&O), all coverage must be written on an occurrence basis. All coverage must be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have

a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Client. PCM acknowledges that Client has not, by requiring such minimum insurance, assessed the risk that may be applicable to PCM under this Agreement. PCM shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PCM is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

- i. Worker's compensation insurance with the following minimum limits of coverage:

Statutory Benefits (Coverage A) Statutory

Employers Liability (Coverage B) \$1,000,000 Each Accident

\$1,000,000 Disease/Employee

\$1,000,000 Disease/Policy Limit

Workers' compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for Client. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

- ii. Business auto liability insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for bodily injury and property damage.
- iii. Commercial general liability insurance with the following minimum limits of coverage:

Each Occurrence Limit	\$1,000,000
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General Aggregate Limit	\$2,000,000
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Products / Completed Operations	\$1,000,000
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Personal / Advertising Injury	\$1,000,000
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Damage to rented Premises	\$300,000
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Medical Payments

\$5,000

The required commercial general liability policy must be issued on a form that insures PCM's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

- iv. Cyber and privacy liability insurance with minimum limits of coverage of \$1,000,000 per event, \$1,000,000 aggregate covering network security/privacy liability, privacy regulatory proceedings (including fines and penalties), privacy event expenses (mandatory/voluntary notification costs, credit monitoring, call center services, forensic, and any other fees, costs, or expenses necessary to comply with any security breach notification law that may be applicable), and cyber extortion payments. PCM shall maintain such coverage for such length of time as necessary to cover any and all claims.
- v. PCM shall deliver to Client evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by PCM under this Agreement. PCM shall provide additional evidence of insurance on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than 30 days after each annual insurance policy renewal.
- vi. All insurance policies (with the exception of worker's compensation, employer's liability and professional liability) must be endorsed and name the Board of Regents of the Client ("Board of Regents") for and on behalf of Client as additional insureds up to the actual liability limits of the policies maintained by PCM. Commercial general liability and business auto liability must be endorsed to provide primary and non-contributory coverage. The commercial general liability additional insured endorsement must include ongoing and completed operations and be submitted with the certificates of insurance.
- vii. All insurance policies must be endorsed to provide a waiver of subrogation in favor of the Board of Regents and Client. No policy may be canceled without unconditional written notice to Client at least

ten (10) days before the effective date of the cancellation. All insurance policies must be endorsed to require the insurance carrier providing coverage to send notice to Client ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section.

- viii. Any deductible or self-insured retention must be declared to and approved by Client prior to the performance of any services by PCM under this Agreement. PCM shall pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions must be shown on the certificates of insurance.
- ix. Certificates of insurance and additional insured endorsements as required by this Agreement must be emailed to the following Employer contact: SOProcurement@tamus.edu.
- x. The insurance coverage required by this Agreement must be kept in force until all services have been fully performed and accepted by Client in writing.

P. Pursuant to Section 552.372, Texas Government Code, PCM must (1) preserve all contracting information, as defined under Section 552.003 (7), Texas Government Code, related to this Agreement for the duration of this Agreement as provided by Client's records retention requirements; (2) promptly provide Client with any contracting information related to this Agreement that is in the custody or possession of PCM on request of Client; and (3) on completion of this Agreement, either (a) provide at no cost to Client all contracting information related to this Agreement that is in the custody or possession of PCM, or (b) preserve the contracting information related to this Agreement for seven years after the conclusion of this Agreement as provided by Client's records retention requirements. Furthermore, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement, and PCM agrees that this Agreement can be terminated if PCM knowingly or intentionally fails to comply with a requirement of that Subchapter J.

Q. PCM shall ensure that employees providing services for Client have not been designated by Client as Not Eligible for Rehire as defined in Client's policy 32.02, Section 4.

R. Pursuant to Section 2155.0061, Texas Government Code, PCM certifies that PCM is not ineligible to enter into this Agreement due to financial participation by a person who, during the five-year period

preceding the date of this Agreement, has been convicted of any offense related to the direct support or promotion of human trafficking, and acknowledges that Client may terminate this Agreement and withhold payment if this certification is inaccurate.

S. Performance by Client under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”). If the Legislature fails to appropriate or allot the necessary funds, Client will issue written notice to PCM and Client may terminate this Agreement without further duty or obligation hereunder. PCM acknowledges that appropriation of funds is beyond the control of Client. In the event of a termination or cancellation under this Section, Client will not be liable to PCM for any damages that are caused or associated with such termination or cancellation.

T. PCM may not subcontract any or all of the work and/or obligations due under the Agreement without prior written approval of Client. PCM acknowledges that such subcontracts may require the use of Historically Underutilized Businesses (“**HUB**”) and compliance with Texas HUB Subcontracting Plans (“**HSP**”) requirements. Subcontracts, if any, entered into by PCM shall be in writing and be subject to the requirements of this Agreement. Should PCM subcontract any of the goods or services required in this Agreement, PCM expressly understands and acknowledges that in entering into such subcontract(s), Client is in no manner liable to any subcontractor(s) of PCM. In no event shall this provision relieve PCM of the responsibility for ensuring that the goods or services to be performed under all subcontracts are rendered in compliance with the Agreement.

U. Each Party hereto will comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement, including but not limited to the HIPAA Requirements (as defined above).”

G. Schedule 1 of the Agreement is hereby deleted in its entirety and replaced with Schedule 1 attached to this Amendment.

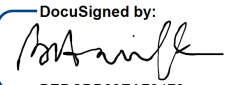

2. **Renewal**. The Agreement shall be renewed for a three-year period commencing on September 1, 2021 and ending on August 31, 2024.
3. **No Other Changes**. Except as provided in this Amendment, the Agreement remains in full force and effect.

4. **Effective Date.** This Amendment is effective as of the Amendment Effective Date.
5. **Headings.** The Headings in this Amendment are for convenience of reference only and shall not be considered in construing this Amendment.
6. **Severability.** If any provision of this Amendment is held unenforceable by a court or tribunal of competent jurisdiction because it is invalid or conflicts with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected. In such event, the Parties shall negotiate a substitute provision that, to the extent possible, accomplishes the original business purpose.
7. **Counterparts.** This Amendment may be executed in two counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. Signatures provided by electronic transmission shall be deemed to be original signatures.

[Signature Page Follows]

IN WITNESS WHEREOF, this Amendment is executed as of the Amendment Effective Date.

DS


The Texas A&M University System		Prescription Care Management	
Signature	 DocuSigned by: BILLY HAMILTON	Signature	
By:	Billy Hamilton	By:	Garret D'Antoni
Title	Executive Vice Chancellor & CFO	Title	CFO
Address	301 Tarrow Street, 5 th Floor College Station, TX 77840	Address	6121 Lakeside Drive Suite 208 Reno, Nevada 89511
E-mail		E-mail	gdantoni@pcmsavings.com
Telephone	(979) 458-6330	Telephone	
Attention	Benefits Administration	Attention	Legal Department

8/9/2021 | 08:53:24 CDT

SCHEDULE 1¹

CLIENT'S PRIVACY POLICY

See attached Notice of Privacy Practices.

¹ Any changes to this Privacy Policy shall be immediately provided to PCM and shall be attached hereto as Schedule 1(A), Schedule 1(B), et cetera.

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “**Agreement**”) by and between The Texas A&M University System (“**A&M System**”), an agency of the State of Texas (“**Covered Entity**”), and Prescription Care Management (“**Business Associate**”), shall be effective as of September 1, 2021 (the “**Effective Date**”).

WHEREAS, Covered Entity and Business Associate have entered into, are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the “**Business Arrangements**”) pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create, maintain, and use health information that is protected by state and/or federal law.

WHEREAS, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“**HIPAA**”), the U.S. Department of Health & Human Services (“**HHS**”) promulgated the Standards for Privacy of Individually Identifiable Health Information (the “**Privacy Standards**”), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (each a “**Covered Entity**”, or collectively, “**Covered Entities**”) to protect the privacy of certain Protected Health Information or PHI (as defined below).

WHEREAS, pursuant to HIPAA, HHS issued the Security Standards (the “**Security Standards**”), at 45 C.F.R. Parts 160, 162 and 164, for the protection of Electronic Protected Health Information (as defined below).

WHEREAS, in order to protect the privacy and security of PHI, including EPHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a “business associate agreement” with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or EPHI.

WHEREAS, Health Information Technology for Economic and Clinical Health Act and its implementing regulations (the “**HITECH Act**”) impose certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards.

WHEREAS, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of PHI and EPHI, including extending certain HIPAA and HITECH Act requirements directly to Business Associates.

WHEREAS, the HITECH Act requires that certain of its provisions be included in business associate agreements, and that certain requirements of the Privacy Standards be imposed contractually upon Covered Entities as well as Business Associates.

WHEREAS, the Texas Legislature has adopted certain privacy and security requirements that are more restrictive than those required by HIPAA and HITECH, and such requirements are applicable to Business Associates as “Covered Entities” as defined by Texas law.

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and the applicable Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereby agree as follows:

I. Definitions

- a. All capitalized terms used in this Agreement and not otherwise defined shall have the meanings ascribed to them in HIPAA. For the avoidance of doubt, this Agreement shall supersede and replace the HIPAA Business Associate Agreement entered into between the Covered Entity and Business Associate on September 1, 2018.
- b. **“Business Associate”** shall have the same meaning as the term “business associate” at 45 CFR Section 160.103, and in reference to the party to this Agreement, shall mean Prescription Care Management.
- c. **“Breach”** shall mean the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the HIPAA Privacy Rule that compromises the security or privacy of the Protected Health Information as defined, and subject to the exceptions set forth, in 45 CFR Section 164.402.
- d. **“Covered Entity”** shall have the same meaning as the term “covered entity” at 45 CFR Section 160.103, and in reference to the party to this Agreement, shall mean The Texas A&M University System.
- e. **“Data Aggregation Services”** shall mean the combining of PHI or EPHI by Business Associate with the PHI or EPHI received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of, payment to, and treatment of patients by the respective covered entities.
- f. **“Electronic Protected Health Information”** shall mean Protected Health Information that is transmitted or maintained in Electronic Media.
- g. **“HIPAA Breach Notification Rule”** shall mean the federal breach notification regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Part 164 (Subpart D).
- h. **“HIPAA Privacy Rule”** shall mean the federal privacy regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Parts 160 and 164 (Subparts A & E).
- i. **“HIPAA Security Rule”** shall mean the federal security regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Parts 160 and 164 (Subparts A & C).

- j. **“Protected Health Information of PHI”** shall mean Protected Health Information, as defined in 45 CFR Section 160.103, and is limited to the Protected Health Information received, maintained, created or transmitted on behalf of, Covered Entity by Business Associate in performance of the Underlying Services.
- k. **“Underlying Services”** shall mean, to the extent and only to the extent they involve the creation, maintenance, use, disclosure or transmission of Protected Health Information, the services performed by Business Associate for Covered Entity pursuant to the Underlying Services Agreement.
- l. **“Underlying Services Agreement”** shall mean the written agreement(s) (other than this Agreement) by and between the parties pursuant to which Business Associate has access to, receives, maintains, creates or transmits PHI for or on behalf of Covered Entity in connection with the provision of the services described in that agreement(s) by Business Associate to Covered Entity or in performance of Business Associate’s obligations under such agreement(s).

II. Business Associate Obligations.

Business Associate may receive from Covered Entity, or create or receive or maintain on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Privacy Standards, Security Standards, the HITECH Act, or Texas law, including without limitation the provisions of Texas Health and Safety Code Chapters 181 and 182 as amended by HB 300 (82nd Legislature), effective September 1, 2012, in each case including any implementing regulations as applicable (collectively referred to hereinafter as the **“Confidentiality Requirements”**) if the PHI were used or disclosed by Covered Entity in the same manner.

III. Use of Protected Health Information

Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. Section 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity’s benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, (ii) for Data Aggregation Services (as herein defined), and (iii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. For avoidance of doubt, under no circumstances may Business Associate sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, as amended by HB 300 (82nd Legislature), effective September 1, 2012, nor shall Business Associate use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code

Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity. To the extent not otherwise prohibited in the Business Arrangements or by applicable law, use, creation and disclosure of de-identified health information, as that term is defined in 45 CFR § 164.514, by Business Associate is permitted.

IV. Disclosure of Protected Health Information

Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Business Associate recognizes that under the HIPAA/HITECH Omnibus Final Rule, Business Associates may not disclose PHI in a way that would be prohibited if Covered Entity made such a disclosure. Any disclosures made by Business Associate shall comply with minimum necessary requirements under the Privacy Rule and related regulations.

Business Associate shall not, and shall provide that its directors, officers, employees, subcontractors, and agents do not, disclose PHI to any other person (other than members of their respective workforce), unless such disclosure is required by law or authorized by the person whose PHI is to be disclosed. Any such disclosure other than as specifically permitted in the immediately preceding sentences shall be made only if such discloser has previously signed a written agreement that:

- a.) Binds the discloser to the provisions of this Agreement pertaining to PHI, for the express benefit of Covered Entity, Business Associate and, if discloser is other than Business Associate, the discloser;
- b.) Contains reasonable assurances from discloser that the PHI will be held confidential as provided in this Agreement, and only disclosed as required by law for the purposes for which it was disclosed to discloser; and,
- c.) Obligates discloser to immediately notify Business Associate of any breaches of the confidentiality of the PHI, to the extent discloser has obtained knowledge of such breach.

Business Associate shall not disclose PHI to any member of its workforce, and shall provide that its subcontractors and agents do not disclose PHI to any member of their respective workforces, unless Business Associate or such subcontractor or agent has advised such person of Business Associate's obligations under this Agreement and of the consequences for such person and for Business Associate or such subcontractor or agent of violating them as memorialized in a business associate agreement pursuant to the HIPAA/HITECH Omnibus Final Rule. Business Associate shall take, and shall provide that each of its subcontractors and agents take, appropriate disciplinary action against any member of its respective workforce who uses or discloses PHI in contravention of this Agreement

In addition to Business Associate's obligations under Section IX of this Agreement, Business Associate agrees to mitigate, to the extent commercially practical, harmful effects that are known

to Business Associate and result from the use or disclosure of PHI by Business Associate or its subcontractors or agents in violation of this Agreement.

V. Access to and Amendment of Protected Health Information

Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Any such amendments shall be made in such a way as to record the time and date of the change, if feasible, and in accordance with any subsequent requirements promulgated by the Texas Medical Board with respect to amendment of electronic medical records. Business Associate shall respond to any request from Covered Entity for access by an individual within seven (7) days of such request and shall make any amendment requested by Covered Entity within twenty (20) days of the later of (a) such request by Covered Entity or (b) the date as of which Covered Entity has provided Business Associate with all information necessary to make such amendment. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or the fee approved by the Texas Medical Board for the production of non-electronic media copies). Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests and statements in response to denials of such requests to the Designated Record Set, as requested by Covered Entity.

VI. Accounting of Disclosures

Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR Section 164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision.

VII. Records and Audits

Business Associate shall make available to HHS or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or the requirements of any other health oversight agency, in a time and manner designated by the Secretary.

VIII. Implementation of Security Standards; Notice of Security Incidents

Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act

requires Business Associate to comply with 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act.

Furthermore, to the extent feasible, Business Associate will use commercially reasonable efforts to secure PHI through technology safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology (“NIST”) concerning the protection of identifiable data such as PHI. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify the date of the Security Incident, the scope of the Security Incident, the Business Associate’s response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known.

IX. Data Breach Notification and Mitigation

HIPAA Data Breach Notification and Mitigation. Business Associate agrees to implement reasonable systems for the discovery and prompt reporting to Covered Entity of any Breach of “unsecured PHI” (as such term is defined by 45 C.F.R. Section 164.402). A Breach is presumed to have occurred unless there is a low probability that the PHI has been compromised based on a risk assessment of at least the factors listed in 45 C.F.R. Section 164.402(2)(i)-(iv) (hereinafter a “HIPAA Breach”). The parties acknowledge and agree that 45 C.F.R. Section 164.404 governs the determination of the date of discovery of a Breach. In addition to the foregoing and notwithstanding anything to the contrary herein, Business Associate will also comply with applicable state law, including without limitation, Section 521 Texas Business and Commerce Code, as amended by HB 300 (82nd Legislature), or such other laws or regulations as may later be amended or adopted. In the event of any conflict between this section, the Confidentiality Requirements, Section 521 of the Texas Business and Commerce Code, and any other later amended or adopted laws or regulations, the most stringent requirements shall govern.

Discovery of Breach. Business Associate will, following the discovery of a Breach, notify Covered Entity without unreasonable delay and in no event later than the earlier of the maximum of time allowable under applicable law or three (3) business days after Business Associate discovers such Breach, unless Business Associate is prevented from doing so by 45 C.F.R. Section 164.412 concerning law enforcement investigations. For purposes of reporting a Breach to Covered Entity, the discovery of a Breach shall occur as of the first day on which such Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the Breach) who is an employee, officer or other agent of the Business Associate.

Reporting a Breach. Without unreasonable delay and no later than the earlier of the maximum of time allowable under applicable law or five (5) business days following a Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA breach notification requirements set forth at 45 C.F.R. Section 164.400 et seq. Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with:

- a.) contact information for individuals who were or who may have been impacted by the Breach (e.g., first and last name, mailing address, street address, phone number, email address);
- b.) a brief description of the circumstances of the Breach, including the date of the Breach and date of discovery;
- c.) a description of the types of unsecured PHI involved in the Breach (e.g., names, social security number, date of birth, addressees, account numbers of any type, disability codes, diagnostic and/or billing codes, and similar information);
- d.) a brief description of what the Business Associate has done or is doing to investigate the Breach, mitigate harm to the individual(s) impacted by the Breach, and protect against future Breaches; and,
- e.) appoint a liaison and provide contact information for same so that Covered Entity may ask questions or learn additional information concerning the Breach.

Following a Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the Breach, including but not limited to the information described above.

X. Termination

This Agreement shall commence on the Effective Date.

Upon the termination of the applicable Business Arrangement, either Party may terminate this Agreement by providing written notice to the other Party.

Upon termination of this Agreement for any reason, Business Associate agrees:

- a.) to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its subcontractors or agents. Business Associate agrees that all paper, film, or other hard copy media shall be shredded or destroyed such that it may not be reconstructed, and EPHI shall be purged or destroyed concurrent with NIST Guidelines for media sanitization at <http://www.csrc.nist.gov/>; or,

- b.) in the case of PHI which is not feasible to “return or destroy,” to extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.

XI. Miscellaneous

Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery; or (iv) facsimile with return facsimile acknowledging receipt. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

Covered Entity:
Ms. Judy Cato
Director, Benefits Administration
The Texas A&M University System
301 Tarrow, 5th Floor
College Station, Texas 77840

Business Associate:
Garret D’Antoni
CFO
Prescription Care Management
6121 Lakeside Dr. Ste 208
Reno, NV 89511

Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

Assignment. Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

Severability. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party;

provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Texas. Venue for any dispute relating to this Agreement shall be in Brazos County, Texas.

Nature of Agreement; Independent Contractor. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

COVERED ENTITY:

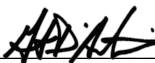
BUSINESS ASSOCIATE:

THE TEXAS A&M UNIVERSITY SYSTEM

**PRESCRIPTION CARE
MANAGEMENT**

Name:

Title:



Name: Garret D'Antoni
Title: CFO