

**BUSINESS ASSOCIATE AGREEMENT BETWEEN PROFESSIONAL RISK MANAGEMENT SERVICES, INC.
AND PROGRAM PARTICIPANT**

THIS AGREEMENT is effective June 1, 2008, between Professional Risk Management Services, Inc. (PRMS) (the "Business Associate") and the Program Participant.

Recitals

PRMS, as manager of The Neurologists' Program (the "Program"), provides professional Services to Program Participants. PRMS must use and/or disclose Protected Health Information in connection with the provision of Services to the Program Participant.

Some Program Participants are, or may be, "Covered Entities" and must comply with the regulations, including the Privacy Rule and the Security Rule, promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA").

If a Program Participant is a Covered Entity, then both parties wish to see the Program Participant comply with the Privacy Rule and the Security Rule. To that end, if a Program Participant is a Covered Entity, PRMS is a Business Associate of the Program Participant.

The Business Associate agrees as follows:

Section 1 - Definitions

- 1.1 Covered Entity:** "Covered Entity" shall mean the Program Participant, to the extent that the Program Participant is or may be a covered entity under the Privacy Rule.
- 1.2 Program Participant:** "Program Participant" shall mean a policyholder in The Neurologists' Program managed by PRMS or an applicant to that program while that application is pending.
- 1.3 Services:** "Services" means products or activities related to the management of The Program that involve the use and disclosure of Protected Health Information as defined by the Privacy Rule. These Services may include, among other things: underwriting review and services; receiving and evaluating incidents, claims, and lawsuits; quality assessment; quality improvement; loss prevention tools; outcomes evaluation; protocol and clinical guidelines development; reviewing the competence or qualifications of health care professionals; evaluating practitioner and provider performance; conducting training programs to improve the skills of health care practitioners and providers; credentialing, conducting or arranging for medical review; arranging for legal services; conducting or arranging for audits to improve compliance; resolution of internal grievances; and other functions necessary in managing a professional liability insurance program.
- 1.4 Privacy Rule:** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. parts §160 and §164, subparts A and E.
- 1.5 Security Rule:** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part §160 and §164, subpart C.
- 1.6 Definitions Generally:** The following terms, when capitalized, shall have the same meaning as those terms have in the Privacy Rule, unless otherwise defined in this Agreement:
- 1.6.1** "Data Aggregation Services"
- 1.6.2** "Designated Record Set"
- 1.6.3** "Individual"
- 1.6.4** "Protected Health Information" (PHI), which includes "Electronic Protected Health Information (Electronic PHI)"
- 1.6.5** "Required By Law"
- 1.7 Secretary:** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

Section 2 - Obligations and Activities of Business Associate

- 2.1 Scope of Agreement.** Business Associate agrees that any PHI provided by the Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is subject to this Agreement.
- 2.2 Not to Use or Disclose PHI Unless Permitted.** Business Associate agrees not to use or disclose PHI other than as described in this Agreement or as Required or allowed By Law.
- 2.3 Use Safeguards.** Business Associate agrees to use reasonable safeguards to prevent use or disclosure of PHI other than as allowed by this Agreement or as otherwise Required or allowed By Law.
- 2.4 Report Inappropriate Disclosures of PHI.** Business Associate agrees to report to Covered Entity any use or disclosure of PHI not permitted by this Agreement or by law, of which it becomes aware.
- 2.5 Compliance of Agents.** Business Associate agrees to require any agents, including subcontractors, to agree to the same restrictions and conditions that apply to Business Associate through this Agreement provided that such agents perform a service that the Business Associate agreed to perform for, or on behalf, of the Covered Entity in the management The Program, and to whom Business Associate provides PHI.
- 2.6 Access.** To the extent the Business Associate is the only holder of all or part of the Designated Record Set, Covered Entity may access the original Designated Record Set, during normal business hours, upon prior written notice to the Business Associate of at least ten business days, to enable Covered Entity to fulfill its obligations under the Privacy Rule at 45§164.524.
- 2.7 Amendments.** To the extent the Business Associate maintains the Designated Record Set, any amendment(s) to Protected Health Information in the original Designated Record Set will be governed by the Privacy Rule at 45 C.F.R. §164.526.

- 2.8 Disclosure of Practices, Books, and Records.** Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books and records available to the Covered Entity and/or the Secretary during normal business hours, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Such cooperation extends only to matters related to the use and disclosure of PHI received from the Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall have a reasonable time within which to comply with such requests and, in no case shall access be required less than ten business days after Business Associate receives a written request.
- 2.9 Accounting.** Business Associate agrees to maintain, and provide to Covered Entity upon request, documentation of any disclosures of PHI by the Business Associate, or its agents, so as to allow Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the Privacy Rule at 45 C.F.R. §164.528. Business Associate shall have a reasonable time within which to comply with such requests, but in no case shall Business Associate have less than ten business days after receipt of a written request in which to comply.

Section 3 - Permitted Uses and Disclosures by Business Associates

- 3.1 Use of PHI for Specified Purposes.** As necessary to perform its obligations in connection with The Program, the Business Associate provides the Covered Entity with Services that involve the use and disclosure of PHI. Except as otherwise specified in this Agreement, Business Associate may make any uses of PHI necessary to perform its obligations under this Agreement, in connection with the management of The Program, and other related agreements. Business Associate may disclose PHI for the purposes authorized by this Agreement: (i) to its employees, subcontractors, and agents, in accordance with paragraphs Section 3.2 through 3.3 of this section; or (ii) as otherwise permitted by the terms of this Agreement.
- 3.2 Use of PHI for Business Associate Management and Administration; Disclosure Required by Law or With Reasonable Assurances.** Business Associate may disclose and/or use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or provided that the Business Associate obtains the following reasonable assurances from the person or entity to whom the Protected Health Information is disclosed: 1) the PHI will remain confidential; 2) the PHI will be used or further disclosed only as Required By Law or for the purposes for which it was disclosed; and, 3) the person or entity will notify the Business Associate of any instances of which the person or entity is aware in which the confidentiality of the information has been breached.
- 3.3 Data Aggregation Services.** Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by the Privacy Rule.

Section 4 - Impermissible Use Requests

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. Business Associate may use or disclose PHI for data aggregation or management and administrative activities of Business Associate as is otherwise permitted by this Agreement.

Section 5 – Security Rule-Related Provisions for Electronic PHI

- 5.1 Safeguards.** Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the covered entity.
- 5.2 Agents.** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it.
- 5.3 Reporting Security Incidents.** Business Associate agrees to report to the covered entity any security incident of which it becomes aware.

Section 6 - Term and Termination

- 6.1 Term.** This Agreement shall be effective while the Covered Entity is a Program Participant and as long as the Business Associate possesses PHI and shall terminate when all of the PHI 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. If it is not feasible to return or destroy PHI, protections are extended to such information indefinitely.
- 6.2 Notice of Breach.** Upon Covered Entity's knowledge of a material breach by Business Associate of this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement if Business Associate has breached a material term of the Agreement and cure is not possible.
- 6.3 Effect of Termination.** Upon termination of Covered Entity's participation in The Program, the protections of this Agreement will remain in force and Business Associate shall make no further uses and disclosures of PHI except for the proper management and administration of its business or to carry out its legal responsibilities or as Required By Law.

Section 7 - Miscellaneous Provisions

- 7.1 Regulatory References.** A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- 7.2 Amendment.** The Business Associate may amend this Agreement due to changed requirements under the Privacy Rule, the Security Rule, and the Health Insurance Portability and Accountability Act, or for other reasons. Covered Entity will be notified of such changes.
- 7.3 Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and the Security Rule.
- 7.4 This Agreement is intended for the sole benefit of the Covered Entity and the Business Associate and does not create any third party beneficiary rights.**

Business Associate

Professional Risk Management Services, Inc.
1515 Wilson Blvd., Suite 800
Arlington, VA 22209

Questions? Call the Risk Management Consultation Service
at (800) 527-9181.