

Business Associate Agreement

Pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the HIPAA Security and Privacy Rule, 45 C.F.R. Parts 160 and 164, as amended by Section 13408 of the Health Information Technology for Economic and Clinical Health Act (hereinafter, the "HIPAA Privacy and Security Rule"), John L. Wortham & Son, L.P., d/b/a "Wortham Insurance & Risk Management," on its own behalf and on behalf of its partner and subsidiary companies, ("Business Associate,") and the undersigned, on its own behalf and on behalf of all the plans it sponsors or for which it is a fiduciary, ("Covered Entity," and together with Business Associate, the "Parties") wish to enter into a Business Associate Agreement ("Agreement") that addresses the requirements of the HIPAA Privacy and Security Rule.

WHEREAS, Business Associate has been retained to perform a function or activity on behalf of the Covered Entity that requires that the Business Associate have access to PHI.

WHEREAS, Covered Entity desires to receive satisfactory assurances from the Business Associate that it will comply with the obligations required of business associates by the HIPAA Privacy and Security Rules.

WHEREAS, the Parties wish to set forth their understandings with regard to the use and disclosure of PHI by the Business Associate in performance of its obligations.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

A. DEFINITIONS

Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. Sections 160.103 and 164.501. Capitalized terms within this Agreement are defined in the text or as follows:

1. Designated Record Set means a group of records maintained by or for the Covered Entity that is (a) medical records and billing records about individuals maintained by or for the Covered Entity, (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (c) used, in a whole or in part, by or for the Covered Entity to make decisions about individuals. As used herein the term "record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for the Covered Entity.
2. Protected Health Information ("PHI") means information that Business Associate receives from Covered Entity or that is created or received by Business Associate on behalf of Covered Entity, whether oral, written, or electronic, and that is created or received by a health care provider, health plan, employer, or health care clearinghouse, and relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present or future payment for the provision of healthcare to an individual; and (a) identifies the individual or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
3. Data Aggregation shall mean, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of the Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a Business Associate of another covered entity, to permit data analysis that relate to the health care operations of the respective covered entities.
4. Effective Date shall mean the date Business Associate first provided services to Covered Entity (unless such date was prior to March 26, 2013, in which case the Agreement is effective as of March 26, 2013).
5. Electronic Media shall mean the mode of electronic transmissions, including without limitation, the Internet, leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media.
6. Health Care Operations shall have the meaning set forth in 45 C.F.R. Section 164.501.
7. Individually Identifiable Health Information shall have the meaning set forth in 45 C.F.R. Section 160.103

B. USE AND DISCLOSURE OF PHI

Covered Entity hereby grants Business Associate permission to use PHI and to disclose PHI to and request PHI from third parties, including subcontractors and other of Covered Entity's business associates, and to do so, when Business Associate deems it necessary or expedient, in the name or on behalf of Covered Entity or an organized health care arrangement in which the Covered Entity participates or is a member, in order to:

1. Perform or assist in performing a function or activity regulated by the HIPAA Privacy and Security Rule, including, but not limited to, claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, re-pricing, renewal or replacement of a contract, conducting planning-related analysis related to managing the employee benefit plans and customer service.
2. Assist the Covered Entity's other business associates retained to provide legal advice, accounting, actuarial, consulting, data aggregation, management, administration, accreditation or financial services to the Covered Entity or to an organized health care arrangement in which the Covered Entity participates.
3. Allow Business Associate to manage and administer the Business Associate's organization, to perform its own data aggregation or to carry out the legal responsibilities of the Business Associate.
4. Perform functions, activities or services for or on behalf of Covered Entity, except as otherwise limited by this Agreement, or if such use or disclosure would violate the HIPAA Privacy or Security Rules if done by the Covered Entity.
5. If the disclosure is required by law, carry out the legal responsibilities of the Business Associate.

C. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

1. *Use and Disclosure of PHI.* Business Associate shall not use or further disclose PHI except as permitted by this Agreement or except as required by law. To the extent practicable (as determined by Business Associate), Business Associate shall limit its use or disclosure of PHI or requests for PHI to a limited data set or in accordance with the written minimum necessary policies and procedures of Covered Entity that are provided to Business Associate. To the extent Business Associate accepts in writing a delegation of any of Covered Entity's obligations required by Subpart E of 45 CFR Part 164, Business Associate shall comply with such subpart as if Business Associate were a "covered entity" under HIPAA.
2. *Safeguards.* Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement or as permitted by law. Business Associate agrees that it will implement reasonable administrative, physical and technical safeguards to protect confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits for or on behalf of the Covered Entity, in each case as required of Business Associate by Subpart C of 45 C.F.R. Part 164.
3. *Reasonable Assurances from Subcontractors of Business Associate.* Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from or created or received by Business Associate on account of the Covered Entity, agrees to similar restrictions and conditions as apply to Business Associate under this Agreement with respect to such information. However, Business Associate shall have no obligation whatsoever to coordinate policies, procedures, security protocols, accountings of disclosure, amendments or any other obligation undertaken by Business Associate under this Agreement or the HIPAA Privacy and Security Rules with Business Associate's agents, subcontractors or other business associates of Covered Entity. Covered Entity shall be solely responsible for ensuring that it has entered into appropriate business associate contracts with Covered Entity's other business associates.
4. *HIPAA Security Policies and Procedures.* Business Associate shall implement and maintain in written form reasonable and appropriate (as determined by Business Associate) policies and procedures to comply with the standards, implementation, specifications or other requirements of the HIPAA security rule applicable to Business Associate, in accordance with 45 C.F.R. Section 164.316.
5. *Security Incident and Breach Notification.*

- a. Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including Breaches of unsecured PHI as required by 45 CFR 164.410, and any Security Incident of which it becomes aware.
 - b. Business Associate shall, as soon as practicable, but not later than 60 calendar days after Business Associate becomes aware of any use or disclosure of Covered Entity's PHI not permitted by this Agreement or any Breach of Covered Entity's Unsecured PHI, notify Covered Entity of such use, disclosure or Breach. Such notice shall include (i) the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach; (ii) the PHI that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis; (iii) the identity of the person, and the entity for which such person works, who made the non-permitted use or disclosure and who received the non-permitted disclosure; (iv) the corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further Breaches; (v) the steps the Individuals who were subject to a Breach should take to protect themselves; and (vi) such other information, including a written report, as Covered Entity may reasonably request in writing from Business Associate. If a delay is requested by a law-enforcement official in accordance with 45 C.F.R. Section 164.412, Business Associate may delay notifying Covered Entity for the applicable time period.
6. *Access to Information.* Business Associate will, within 30 calendar days following Covered Entity's written request, make available to Covered Entity or, at Covered Entity's direction, to an individual (or the individual's personal representative) in the time and manner determined by Business Associate for inspection and obtaining copies Covered Entity's PHI about the individual that is in Business Associate's custody or control so that Covered Entity may meet its access obligations under 45 C.F.R. Section 164.524. Effective as of the date specified by U.S. Department of Health and Human Services, if the PHI is held in an Electronic Health Record, then the individual shall have a right to obtain from Business Associate a copy of such information in an electronic format. Business Associate shall provide such a copy to Covered Entity or, alternatively, to the individual directly, if such alternative choice is clearly, conspicuously and specifically made by the individual or Covered Entity to Business Associate.
7. *Availability of PHI for Amendment.* Business Associate will, upon receipt of written notice from Covered Entity, promptly amend or, in Business Associate's discretion, permit Covered Entity access to amend any portion of Covered Entity's PHI in the custody or control of Business Associate so that Covered Entity may meet its amendment obligations under 45 C.F.R. Section 164.526.
8. *Inspection of Books and Records.* Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Covered Entity, or at the request of the Covered Entity, to the Secretary of the U.S. Department of Health and Human Services or its designee (the "Secretary"), in a time and manner designated by Business Associate, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Privacy and Security Rules.
9. *Accounting of Disclosures.* Business Associate agrees to document its disclosures of PHI and information related to such disclosures as is necessary for Covered Entity to respond to a request for an accounting of disclosures of PHI made in accordance with 45 C.F.R. Section 164.528 of the privacy rule ("Disclosure Information"). Business Associate will maintain the Disclosure Information for at least six (6) years following the date of the accountable disclosure to which the Disclosure Information relates (three (3) years for disclosures related to an Electronic Health Record, starting with the date specified by the Secretary). Business Associate will make the Disclosure Information available to Covered Entity within sixty (60) calendar days following Covered Entity's request for such Disclosure Information to comply with an individual's request for disclosure accounting. Effective as of the date specified by the Secretary, with respect to disclosures related to an Electronic Health Record, Business Associate shall provide the accounting directly to an individual making such a disclosure request, if a direct response is requested by the individual.

10. *Sale of PHI Prohibited.* Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual unless Business Associate obtains from the Individual, in accordance with 45 C.F.R. 164.508, a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Individual.
11. *Use of Genetic Information in Underwriting Prohibited.* Business Associate shall not, and shall require its subcontractors not to, use any PHI that is "genetic information" as defined by 45 C.F.R. 160.103 for "underwriting purposes" as defined by 45 C.F.R. 164.501(a)(5)(i).

D. OBLIGATIONS OF COVERED ENTITY

1. Covered Entity shall at all times during the term of this Agreement be in compliance with the HIPAA Privacy and Security Rules in all respects. With respect to PHI that Covered Entity provides or causes to provide or authorizes be provided to Business Associate, Covered Entity represents and warrants that it has been in compliance with the HIPAA Privacy and Security Rules in all respects.
2. Covered Entity certifies, represents and warrants that it has properly adopted, and throughout the term of this Agreement will have maintained, appropriate plan amendments and erected appropriate firewalls in accordance with the requirements of the HIPAA Privacy and Security Rules.
3. Promptly after execution of this Agreement, Covered Entity shall provide Business Associate with its minimum necessary policies and procedures and the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. Section 164.520. Within five (5) business days of any changes to such policies, procedures or notices, Covered Entity shall provide Business Associate with such changes. Business Associate shall have no obligation to prepare, amend or deliver such notices unless Business Associate has contracted in writing with Covered Entity to provide such services on Covered Entity's behalf, in which case the terms of such other written agreement shall control.
4. Promptly after execution of this Agreement, Covered Entity shall provide Business Associate with its minimum necessary policies and procedures.
5. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by any individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses, disclosures or requests.
6. In no event shall Business Associate be obligated, and Covered Entity shall not request Business Associate, to use, disclose or obtain PHI in any manner that would not be permissible under applicable law, including the HIPAA Privacy and Security Rules, if done by the Covered Entity, except that Business Associate shall be permitted (in its sole discretion) to use, disclose and request PHI as set forth in this Agreement.
7. Covered Entity shall promptly, and in any case within five (5) business days, provide Business Associate written notice of:
 - a. any requests for restrictions or requests for confidential communications;
 - b. any requests that an accounting of disclosures be provided directly by Business Associate to an individual;
8. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. Section 164.522 of the privacy rule, to the extent that such restriction may reasonably affect Business Associate's use or disclosure of, or requests for, PHI.

E. INDEMNIFICATION

1. Business Associate shall indemnify and hold harmless Covered Entity from and against any and all damages, losses, liabilities, fees and costs (including, without limitation, reasonable attorneys' fees and court costs) arising out of or relating to any grossly negligent or willful breach of this Agreement or violation of the HIPAA Privacy and Security Rules by Business Associate or its officers, employees or agents; provided, however, that this right of indemnification is expressly conditioned on Covered

Entity's having first providing Business Associate meaningful notice and opportunity to cure under Section F(1) of this Agreement.

2. Covered Entity shall indemnify, defend and hold harmless Business Associate from and against any and all damages, losses, liabilities, claims fees and costs (including, without limitation, reasonable attorneys' fees and court costs) arising out of or relating to any grossly negligent or willful breach of this Agreement or violation of the HIPAA Privacy and Security Rules by Covered Entity or its officers, employees, agents, contractors (other than Business Associate) or subcontractors, or by Covered Entity's other business associates or their officers, employees, agents, contractors and subcontractors.

F. TERMINATION

The term of this Agreement shall begin on the Effective Date and shall remain in effect until terminated as follows:

1. *Termination for Cause by Covered Entity.* This Agreement may be terminated by the Covered Entity upon fifteen (15) business days written notice to the Business Associate in the event that the Business Associate materially breaches this Agreement and such breach is not cured within such fifteen (15) day period; provided, however, that in the event that cure of the breach and termination of this Agreement are not feasible, Business Associate hereby acknowledges that the Covered Entity shall have the right to report the breach to the Secretary notwithstanding any other provision of this Agreement of the contrary.
2. *Termination for Cause by Business Associate.* This Agreement may be terminated by the Business Associate upon fifteen (15) business days written notice to the Covered Entity in the event that the Covered Entity breaches this Agreement or any provision of the HIPAA Privacy and Security Rules and such breach is not cured within such fifteen (15) day period; provided, however that in the event that termination of this Agreement is not feasible, Covered Entity hereby acknowledges that the Business Associate shall have the right to report breach to the Secretary notwithstanding any other provision of this Agreement to the contrary.

G. GENERAL PROVISIONS

1. *Agency.* Covered Entity and Business Associate acknowledge and agree that Business Associate is a directed agent of Covered Entity with respect to PHI, having the power, as given elsewhere in this Agreement, to direct the PHI-related activities of Business Associate.
2. *Amendment.* This Agreement may be amended only by the mutual written agreement of the Parties. In the event of a change in the HIPAA Privacy and Security Rules following the Effective Date, the Parties agree to negotiate in good faith in order to amend this Agreement as necessary for the Covered Entity or Business Associate to comply with the requirements of HIPAA.
3. *Remedies.* The Parties acknowledge that breach of Sections C or D of this Agreement may cause irreparable harm for which there is no adequate remedy at law. In the event of a breach, or if either party has actual notice of an intended breach, such party shall be entitled to a remedy of specific performance and/or injunction enjoining the other party from violating or further violating this Agreement; provided, however, that no claim by Covered Entity for specific performance or injunction shall lie unless Covered Entity has first provided Business Associate meaningful notice and opportunity to cure under Section F(1) of this Agreement. The Parties agree the election of the party to seek injunctive relief and or specific performance of this Agreement does not foreclose or have any effect on any right such party may have to recover damages.
4. *Survival.* Business Associate's obligation to limit its use and disclosure of PHI as set out in Sections B and C survive the termination of this Agreement so long as Business Associate has in its custody or control PHI that it received during the performance of its services contemplated by this Agreement.
5. *Governing Law.* To the extent not addressed by the federal HIPAA Privacy and Security Rules, this Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

6. *Assigns.* Neither this Agreement nor any of the rights, benefits, duties or obligations provided herein may be assigned by any party to this Agreement without the prior written consent of the other party.
7. *No Third Party Beneficiaries.* No third parties are intended to be beneficiaries of this Agreement; nothing in this Agreement shall be deemed to create any rights or remedies in any third party.
8. *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Entity and/or Business Associate, as the case may be, to comply with HIPAA.
9. *Notices.* Any notice given under this Agreement must be in writing and delivered via first class mail with a means of delivery confirmation, via reputable overnight courier service or in person to the Parties' respective addresses written below or to such other address as the Parties may from time to time designate in writing.

COVERED ENTITY

BUSINESS ASSOCIATE

[name of Covered Entity]

John L. Wortham & Son, L.P.

Signed: _____

Name:
Managing Director

Printed name: _____

Title: _____

Date: _____