



BUSINESS ASSOCIATE AGREEMENT

“Customer or Covered Entity”:

Name: _____
 Address: _____
 City: _____ State: _____ Zip Code: _____
 Phone: _____ Fax: _____
 Attention: _____
 NPI: _____

“Business Associate”:

Name: RxPreferred Benefits
 Address: PO Box 396
 Mount Juliet, TN 37121
 Phone: (888) 666-7271 Fax: (615) 823-7757
 Attention: Privacy Officer

This Business Associate Agreement (“Agreement”) entered into by and between “Covered Entity”, the (“Customer”) and **RxPreferred Benefits, Inc.** (“Business Associate”), effective as of, _____ (“Effective Date”).

This contract is made with reference to the following facts:

A. Business Associate now and in the future may have relationships with Customer in which Business Associate is entrusted with confidential patient information for use in providing services or products to Customer.

B. Business Associate and Customer (each a “Party” and collectively the “Parties”) desire to meet their obligations under the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Regulation”) published by the United States Department of Health and Human Services at 45 CFR parts 160 and 164 under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and as may be applicable to the services rendered by Business Associate to the Customer, under the Gramm-Leach-Bliley Act (“GLB”) and implementing regulations.

C. Both Parties desire to make technical and procedural arrangements to assure that their business relationships meet these regulatory requirements on or before their respective compliance dates.

D. Both Parties desire to set forth the terms and conditions pursuant to which Protected Health Information that is provided by, or created or received by, the Business Associate on behalf of the Customer (“Protected Health Information”), will be handled between themselves and third parties.

E. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

F. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information act 45 CFR part 160 and part 164, subparts A and E.

G. Protected Health information. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR 164.501, limited to the information

created or received by Business Associate from or on behalf of Covered Entity. H. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR 164.501.

I. Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements addressed in this Agreement, the parties agree to the following:

TERMS AND CONDITIONS

1. Obligations and Activities of Business Associate

1.1 Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement or by Law.

1.2 Business Associate agrees to use reasonable safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

1.3 Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement after Business Associate has actual knowledge of such use or disclosure.

1.4 Business Associate agrees to include in any written agreement with any agent, including a subcontractor, to whom it provides Protected Health Information, a requirement that such agent agrees to restrictions and conditions with respect to such information that are at least as restrictive as those that apply through this Agreement to Business Associate.

1.5 Upon reasonable notice, Business Associate agrees to make Protected Health Information and books and records relating to the use and disclosure of Protected Health Information available to the Secretary at Covered Entity’s expense in a reasonable time and manner, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule.

2. Obligations of Covered Entity

2.1 Covered Entity agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement or by applicable Law.

2.2 Covered Entity agrees to use reasonable safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement.

2.3 Covered Entity shall notify Business Associate of any changes in Covered Entity's notice of privacy practices that may affect Business Associate's use or disclosure of Protected Health Information. Business Associate shall have a reasonable period of time to act on such notices.

2.4 Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures thereof. Business Associate shall have a reasonable period of time to act on such notice.

2.5 Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information prior to acceptance of such restriction by Covered Entity in accordance with 45 CFR § 164.522 so that Business Associate can determine whether it is infeasible to comply with such restriction. Once agreed to, Business Associate shall have a reasonable period of time to act on such notice.

2.6 Covered Entity represents and warrants to Business Associate that Covered Entity will not disclose any Protected Health Information to Business Associate unless Covered Entity has obtained any consents and authorizations that may be required by Law or otherwise necessary for such disclosure.

2.7 Covered Entity shall have access to Business Associate's information pursuant to the terms and conditions of this Agreement. The information shall remain confidential and proprietary information. The information shall not be disclosed to any third person, business, or corporation, including any person who serves as Covered Entity's agent, except as otherwise agreed to in writing by Business Associate. Nothing in this Agreement shall be construed as granting Covered Entity any rights by license or any other intellectual property rights to the information.

2.8 Safeguard. 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, including establishing procedures that limit access to PHI within its organization to those employees with a need to know the information. Business Associate agrees that it will implement reasonable administrative, physical, and technical safeguards to protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity

2.9 Effective February 17, 2010, the requirements of 45 C.F.R. Sections 164.308, 164.310 and 164.312 applicable to such administrative, physical and technical safeguards shall apply to Business Associate in the same manner that such sections apply to Covered Entity. Further, effective February 17, 2010, Business Associate shall implement, and maintain in written form, reasonable and appropriate policies and procedures to comply with the standards, implementation specifications or other requirements of the HIPAA Security Rule, in accordance with 45 C.F.R. Section 164.316, which shall apply to Business Associate in the same manner that such sections apply to Covered Entity.

2.10 Unauthorized Disclosure of PHI. Business Associate shall, within ten (10) business days of becoming aware of a disclosure of PHI in violation of this Agreement by Business Associate, its officers, directors, employees, contractors, or agents or by third party to which Business Associate disclosed PHI, report to Covered Entity any such disclosures. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of the unauthorized disclosure.

2.11 Security Incidents. Business Associate shall promptly report to Covered Entity any Security Incident of which it becomes aware, in accordance with the HIPAA Security Rule.

2.12 Agreements with Third Parties. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or received by Business Associate on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

2.13 Access to Information. Within ten (10) business days of a request by the Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained in a Designated Record Set. In the event any individual requests access to PHI directly from the Business Associate, Business Associate shall respond to the request for PHI within ten (10) business days. Any denials of access to the PHI requested shall be the responsibility of the Business Associate.

2.14 Availability of PHI for Amendment. Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to CFR 164.526 at the request of the Covered Entity or an individual, and in the time and manner designated by Covered Entity.

2.15 Inspection of Books and Records. Business Associate agrees to maintain and make available to the Covered Entity an accounting of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual made in accordance with CFR 164.528. Business Associate shall provide an accounting of disclosures made during the six (6) years prior to the date on which the accounting is requested (or during the three (3) years prior to the date the accounting is requested for PHI maintained in an electronic health record, beginning on the applicable effective date pursuant to the American Recovery and Reinvestment Act of 2009. At a minimum, the accounting of disclosure shall include the following information:

- a. Date of disclosure
- b. The name of the person or entity who received the PHI, and if known, the address of such entity or person
- c. A brief description of the PHI disclosed
- d. A brief statement of the purpose of such disclosure which includes an explanation of the basis of such disclosure.

2.16 In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall respond to the request within ten (10) business days. Any denials of the request for an accounting shall be the responsibility of the Business Associate. Business Associate agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section.

3. Permitted Uses and Disclosures by Business Associate

3.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information (i) as is reasonably necessary to perform functions, activities, or services for, or on behalf of Covered Entity as specified in this Agreement; (ii) for the proper management and administration of the Business Associate; (iii) as may otherwise be required by Law; and, (iv) except as provided otherwise in this Agreement, as may be permitted by Law, provided that Business Associate obtains reasonable assurances from any person to whom the information is disclosed that (A) such information 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 (B) that the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3.2 Business Associate shall refer to Covered Entity all requests by Individuals for information about or accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

3.3 Business Associate agrees to document disclosures of Protected Health Information, other than for treatment, payment or healthcare operations or disclosures that are incidental to another

permissible disclosure, to the extent 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 CFR § 164.528.

3.4 (i) Business Associate agrees to provide to Covered Entity, in time and manner designated, information collected in accordance with Section C to the extent required 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 CFR § 164.528. (ii) Covered Entity shall provide to Business Associate within 60 days of the effective date of this Agreement, a written explanation of Covered Entity's requirements under this Section 3.4 in sufficient detail to enable Business Associate to comply with such requirements. (iii) Covered Entity agrees to respond promptly to requests from Business Associate for clarification of such requirements, and Business Associate may rely on such responses. (iv) The parties agree to work together in good faith to resolve any disagreement over the requirements of 45 CFR § 164.528.

3.5 Business Associate 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.

3.6 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.

3.7 Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR § 164.502(j)(1).

4. Permissible Requests by Covered Entity

Covered Entity warrants that it shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under applicable Law if done by Covered Entity.

5. Term and Termination

5.1 Term. This Agreement shall be in effect beginning on effective date of this document, and shall continue for as long as Protected Health Information is being exchanged by Covered Entity and Business Associate.

5.2 Termination for Cause. Either party may terminate this Agreement for a material breach by the other party if such breach is not cured within thirty (30) days of receipt of written notice thereof.

5.3 Effect of Termination. If infeasible for Business Associate to return or destroy Protected Health Information upon termination of this Agreement, Business Associate will maintain the protection required under this Agreement of that Protected Health Information for the period of time required under applicable Law, or in accordance with Business Associate's internal record retention schedule as in effect from time to time, whichever is longer, at which time Business Associate shall destroy the Protected Health Information in accordance with procedures accepted in the financial services industry for destruction of financial records.

6. General Provisions

6.1 A specific waiver by either party of any provision of this Agreement on any particular occasion and for any reason will not be deemed to be a basis for any automatic waiver of the same or any other provision in the future.

6.2 Any approvals required by either party to this Agreement, shall not be unreasonably withheld.

6.3 It is mutually agreed that neither party shall be responsible for damage caused by delay or failure to perform hereunder, when such delay or failure is due to government regulation, war, terrorism, Act of God, fire, flood, disaster, civil disorder, strike, or labor disruption or other cause that is beyond the control of either of the parties to this Agreement, that makes it illegal or impossible to perform this Agreement or any of its terms.

6.4 All modifications to this Agreement shall be in writing and signed by both parties.

6.5 This Agreement is intended to bind only the parties hereto and their corporate successors, and may not be otherwise assigned by either party without the express written consent of the other.

6.6 This Agreement constitutes the entire Agreement between the parties concerning the subject herein, and supersedes all prior oral or written agreements between the parties on same.

6.7 Neither party shall be responsible for consequential, incidental or special damages even if advised of the possibility of same.

6.8 The parties agree that there shall be no incidental or intended third-party beneficiaries under this agreement. Nor shall any other person or entity have rights arising from the same.

7. OTHER TERMS

7.1 Entire Agreement. This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter hereof. No agreement or other understanding in any way modifying the terms hereof will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

7.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is

necessary for Customer to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

7.3 Survival. The respective rights and obligations under Section 8 and this Section 7.3 of this Agreement shall survive the termination of this Agreement. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Section 1, 2, and 5.3, solely with respect to Protected Health Information, Business Associate retains in accordance with Section 5.3 because it is not feasible to return or destroy such Protected health Information, shall survive termination of this agreement for so long as such information is retained.

7.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Customer to comply with the Privacy Rule.

7.5 Waiver. A waiver of a breach of any term in this Agreement will not be considered (1) a waiver of a further breach of the same term, or (2) a waiver of a breach of any other term, or (3) a waiver of Business Associate's right to declare an immediate or a subsequent default.

7.6 Applicable Law. The Laws of the State of Texas shall govern this Agreement.

7.7 Jurisdiction and Venue. Any lawsuit arising directly or indirectly out of this Agreement will be litigated in the Circuit Court for

Grayson County, Texas, or, if original jurisdiction can be established, in the United States District Court for the 15th, 59th, or 336th District of Texas.

7.8 Notices. All required notices must be in writing and will be considered given when delivered (1) personally, or (2) by registered or certified mail, return receipt requested, addressed as given above, and/or via facsimile to the facsimile telephone numbers listed above. Each Party may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

7.9 Counterparts; Facsimiles; This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

8. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf effective as of the Effective date.

Covered Entity

By: _____
Print Name: _____
Print Title: _____
Date: _____

RxPreferred Benefits, Inc.

By: _____
Print Name: _____
Print Title: _____
Date: _____