

## BUSINESS ASSOCIATE AGREEMENT

### THE COMPANIES:

CareOregon, Inc.  
Health Plan of CareOregon, Inc. dba CareOregon Advantage  
Columbia Pacific CCO, LLC  
Jackson County CCO, LLC dba Jackson Care Connect  
Housecall Providers Services, LLC  
Housecall Providers, PC

### BUSINESS ASSOCIATE:

XTM International, Inc.

This Business Associate Agreement (“BAA”) is between the Companies and Business Associate. Business Associate and the Companies have entered into a Contract Addendum (“Agreement”) and this BAA is incorporated by reference in the Agreement. The Parties’ activities pursuant to the Agreement sometimes may involve (i) the disclosure of PHI by the Companies (or another business associate of the Companies) to Business Associate, (ii) the use or disclosure by Business Associate of PHI received from the Companies and (iii) the transmission by Electronic Media or the maintenance in Electronic Media of Individually Identifiable Health Information by Business Associate. Accordingly, the relationship between the Companies and Business Associate is subject to provisions of the HIPAA Rules. The Companies and Business Associate intend to protect the privacy of PHI and the security of electronic PHI held by Business Associate in connection with the Agreement in compliance with this BAA, the HIPAA Rules and other applicable laws.

### 1. Definitions

Capitalized terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Rules.

- a) “Agent” means an agent as used and defined under the HIPAA Rules and federal common law.
- b) “Breach” has the same meaning as in 45.C.F.R. § 164.402.
- c) “Designated Record Set” has the same meaning as in 45 C.F.R. 164.501.
- d) “Discovery” means the first day on which a Breach is known, or reasonably should have been known, to Business Associate (including any person, other than the individual committing the Breach, who is an employee or officer of Business Associate) or any Agent or Subcontractor of Business Associate.
- e) “Effective Date” means the date first written above.
- f) “Electronic Media” means the same as in 45 C.F.R. § 160.103.
- g) “Electronic Protected Health Information” or “EPHI” means the same as in 45 C.F.R. § 160.103, limited for purposes of this BAA to EPHI received by Business Associate from, or received or created by Business Associate on behalf of, the Companies.
- h) “Electronic Transactions Rules” means 45 CFR Part 162.
- i) “Fundraising” means raising funds for the Business Associate’s own benefit as governed by 45 CFR § 164.514.
- j) “HIPAA Rules” means the Privacy Rules, the Security Rules, and the Electronic Transactions Rules.
- k) “Individual” means a person to which specific PHI applies.
- l) “Marketing” means the same as in 45 CFR § 164.501.
- m) “PHI” or “Protected Health Information” means the same as in 45 CFR § 160.103, limited for purposes of this BAA to PHI received by Business Associate or its Agent or Subcontractor from, or received or created by Business Associate, its Agent or Subcontractor on behalf of, the Companies.

- n) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.
- o) "Required by Law" means the same as in 45 C.F.R. § 164.103.
- p) "Secretary" means the Secretary of the United States Department of Health and Human Services or the Secretary's designee.
- q) "Security Incident" means the same as in 45 CFR § 164.304.
- r) "Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information in 45 CFR Part 164, Subpart C.
- s) "Subcontractor" means the same as in 45 C.F.R. § 160.103.
- t) "Unsecured PHI" means the same as the term "unsecured protected health information" in 45 C.F.R. § 164.402.

**2. Obligations and Activities of Business Associate**

- a) Business Associate agrees to not use or disclose PHI other than as permitted or required by this BAA or as required by Law.
- b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BAA.
- c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or a Subcontractor or Agent of Business Associate in violation of the requirements of this BAA.
- d) Business Associate agrees to report to the Companies any use or disclosure of PHI by Business Associate or a Subcontractor or Agent of Business Associate not permitted under this BAA within five business days after Business Associate becomes aware of such disclosure.
- e) Business Associate agrees to report to the Companies any Security Incident, Breach of Unsecured PHI or any use or disclosure of PHI that is not authorized by this BAA of which Business Associate becomes aware.
- f) Business Associate will ensure that any Subcontractor or Agent of Business Associate using or disclosing PHI has executed a Business Associate Agreement containing substantially the same terms as this BAA, including the same restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI. Business Associate will ensure that any Agent to whom Business Associate provides PHI received from, or created or received by Business Associate on behalf of, the Companies has executed an agreement containing substantially the same restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI. Business Associate will provide, upon written request by the Companies, a list of any such Subcontractors of Business Associate and any Agents of Business Associate using or disclosing PHI.
- g) Business Associate will ensure that any permitted disclosure will be only as minimally necessary for the purpose of the disclosure.
- h) Business Associate agrees to provide access, at the reasonable request of, and in the time and manner designated by, the Companies to PHI in a Designated Record Set, to the Companies or, as directed by the Companies, to an Individual in order to meet the requirements under 45 CFR § 164.524. If the Companies request an electronic copy of PHI that is maintained electronically in a Designated Record Set in Business Associate's custody or control or the custody or control of a Subcontractor or Agent of Business Associate, Business Associate will provide such PHI in the electronic format requested by the Companies unless the PHI is not readily produced in such format, in which case Business Associate will provide another reasonable electronic format as agreed to by the Parties and the Individual requesting such PHI.
- i) Within 30 days of receiving a request by the Companies, Business Associate will document disclosures of PHI and information related to such disclosures in such form as would be required for the Companies to respond to a request by an Individual for an accounting of disclosures in accordance with 45 C.F.R. § 164.528.

- j) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Companies pursuant to 45 CFR § 164.526, at the request of the Companies or of the Individual concerned.
- k) Business Associate agrees to make 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, the Companies available to the Companies or, at the request of the Companies, to the Secretary or other regulatory official as directed by the Companies, in a time and manner requested by the Companies or such official for the purpose of determining the Companies' or Business Associate's compliance with the HIPAA Regulations.
- l) Business Associate agrees to implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it receives from, or creates or receives on behalf of, the Companies as required by the Security Rule. Business Associate will ensure that any Agent or Subcontractor to whom Business Associate provides EPHI agrees to implement reasonable and appropriate administrative, physical and technical safeguards to reasonably and appropriately protect the confidentiality, integrity and availability of such EPHI. Business Associate agrees to comply with Sections 164.306, 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations with respect to all EPHI.
- m) In conducting any electronic transaction that is subject to the Electronic Transactions Rule on behalf of the Companies, Business Associate agrees to comply with all requirements of the Electronic Transactions Rule that would apply to the Companies if the Companies were conducting the transaction itself. Business Associate agrees to ensure that any Agent or Subcontractor of Business Associate that conducts standard transactions with PHI of the Companies will comply with all of the requirements of the Electronic Transactions Rule that would apply to the Companies if the Companies were conducting the transaction itself.
- n) Business Associate shall not disclose PHI to any member of its workforce unless Business Associate has advised such person of Business Associate's privacy and security obligations under this BAA, including the consequences for violation of such obligations. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violation of this BAA or applicable law.
- o) Business Associate shall notify the Companies of any Breach without unreasonable delay, and in no case later than five business days after Discovery of the Breach. Business Associate will require its Subcontractors and Agents to notify the Companies of a Discovery of a Breach at the same time its Subcontractors and Agents notify the Business Associate, and the following shall apply:
  - 1. Notice to the Companies shall include, to the extent possible: (i) the names of the Individual(s) affected by the Breach; (ii) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known; (iii) a description of the types of Unsecured PHI that were involved in the Breach; (iv) any steps affected Individuals should take to protect themselves from potential harm resulting from the Breach; (v) a description of what Business Associate is doing to investigate the Breach, to mitigate harm to the affected Individual(s), and to protect against further Breaches; (vi) any notice Business Associate has given pursuant to 45 CFR § 164.404 and (vii) any other information that the Companies reasonably requests.
  - 2. After receipt of notice, from any source, of a Breach involving PHI used, disclosed, maintained, or otherwise possessed by Business Associate or any Subcontractor or Agent of Business Associate, the Companies may: (i) require Business Associate, at Business Associate's sole expense, to use a mutually agreed upon written notice to notify, on the Companies' behalf, the affected Individual(s), in accordance with the notification requirements set forth in 45 CFR § 164.404, without unreasonable delay, but in no case later than sixty (60) days after discovery of the Breach; or (ii) elect to itself provide such notice. Business Associate shall indemnify, hold harmless, and defend the Companies

from and against any and all costs (including mailing, labor, administrative costs, vendor charges, and any other costs determined to be reasonable by the Companies), losses, penalties, fines, and liabilities arising from or associated with the Breach, including without limitation, the costs of the Companies' actions taken to: (i) notify the affected Individual(s) of and to respond to the Breach; (ii) mitigate harm to the affected Individual(s); (iii) respond to questions or requests for information about the Breach; and (iv) fines, damages or penalties assessed against the Companies on account of the Breach of Unsecured PHI.

- p) Business Associate shall not use or disclose PHI that is genetic information, or sell (or directly or indirectly receive remuneration in exchange for), any PHI in violation of 45 CFR §164.502(a)(5).
- q) Business Associate shall not use or disclose PHI for Marketing or Fundraising purposes without prior written consent from the Companies, subject to any conditions of such consent.

**3. Permitted Uses and Disclosures by Business Associate**

- a) Subject to this BAA and applicable law, Business Associate may use or disclose PHI in connection with functions, activities or services for, or on behalf of, the Companies under the Agreement, provided that such use or disclosure would not violate the HIPAA Rules or the Companies' own policies and procedures concerning compliance with the "minimum necessary" standard under 45 CFR § 164.502(b) if performed by the Companies.
- b) Business Associate may use and disclose PHI for the proper management and administration of Business Associate or to carry out the legal obligations of Business Associate, but only if:
  - 1. The disclosure is required by Law; or
  - 2. Business Associate receives reasonable assurances from any party to whom the PHI is disclosed that: (i) the PHI will be held confidentially by that party; (ii) the PHI will be used or further disclosed by that party only as required by Law or for the purpose for which it was disclosed to that party; and (iii) the party agrees to notify Business Associate of any Breaches of which the party becomes aware.

**4. Obligations of the Companies**

- a) The Companies shall provide Business Associate with its notice of privacy practices produced in accordance with 45 CFR § 164.520 and any changes to such notice while this BAA is in effect.
- b) The Companies shall provide Business Associate with any changes in or revocation of permission by any Individual for use or disclosure of PHI if such change or revocation affects Business Associate's permitted or required uses and disclosures of the PHI.
- c) The Companies shall notify Business Associate of any restrictions on the use or disclosure of PHI that the Companies have agreed to in accordance with 45 CFR § 164.522 to the extent that such restrictions affect Business Associate's use or disclosure of PHI.

**5. Term and Termination**

- a) This BAA shall be effective as of the Effective Date and shall terminate when all PHI provided is destroyed or returned to the Companies, or, if it is infeasible to return or destroy PHI, as long as protections are extended to such PHI in accordance with (c)(2).
- b) Upon the Companies obtaining knowledge of a material breach or violation of this BAA by Business Associate, the Companies shall take one of the following actions:
  - 1. If the Companies determine that the breach or violation is curable, the Companies shall provide an opportunity for Business Associate to cure the breach or end the violation within a reasonable time period set by the Companies, which shall not exceed 90 days. If the breach or violation is not cured or ended within the time set by the Companies, the Companies may: (i) immediately terminate this BAA and the Agreement; or (ii) suspend performance by the Companies under the Agreement until such breach or violation is cured.
  - 2. If the Companies determine that the breach or violation is not curable, The Companies may

- immediately terminate this BAA and the Agreement.
3. If the Companies determine that neither a termination of this BAA and the Agreement nor a cure of a breach or violation is feasible, the Companies may take such other appropriate actions to remedy, correct, or mitigate the Breach or violation as the Companies shall determine.
  4. In addition to the foregoing, the Companies may immediately terminate this BAA and the Agreement if the Companies determine that Business Associate has violated a material term of this BAA concerning the Security Rule.
- c) Effect of Termination.
1. Except as provided in paragraph (c) (2), upon termination of this BAA for any reason, Business Associate shall return or destroy all PHI in possession of Business Associate, its Agents or Subcontractors. Business Associate, its Agents and Subcontractors shall retain no copies of the PHI.
  2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to the Companies notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI (including PHI held by Agents or Subcontractors of Business Associate) 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, its Agents or Subcontractors maintain such PHI.

## **6. Indemnification**

Notwithstanding any other agreement between Business Associate and Companies, Business Associate agrees to indemnify and hold harmless the Companies from direct losses and damages suffered as a result of Business Associate's breach of its obligations under this BAA, including but not limited to direct losses and damages relating to third-party claims. The obligations under this Section 6 regarding indemnification will survive any expiration or termination of this BAA.

## **7. Miscellaneous**

- a) A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.
- b) The Parties agree to take such action as is necessary to amend this BAA from time to time for the Companies to comply with the requirements of the HIPAA Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, as amended.
- c) The respective rights and obligations of Business Associate under Section 5 of this BAA shall survive the termination of this BAA.
- d) Any ambiguity in this BAA shall be resolved in favor of a meaning that permits the Companies to comply with the HIPAA Rules and other applicable law. The section and paragraph headings of this BAA are for the convenience of the reader only, and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves.
- e) Subject to the following, this BAA shall not be assigned or otherwise transferred by a party without the prior written consent of the other party, which consent shall not be unreasonably withheld. However, no such consent shall be required for either party's assignment or transfer of this BAA in connection with a merger, sale or transfer of all or substantially all of the business or assets of the assigning party.
- f) The invalidity of any term or provision of this BAA will not affect the validity of any other provision. Waiver by any party of strict performance of any provision of this BAA will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision on the same or any other occasion.
- g) Any notices permitted or required by this BAA will be addressed to the receiving party at the

address shown at the top of this BAA or at such other address as either party may provide to the other.

- h) This BAA may be executed in multiple counterparts, all of which together will constitute one agreement, even though all parties do not sign the same counterpart.
- i) To the extent of any inconsistency between any other agreement between the Parties and this BAA, the provisions of this BAA shall prevail.
- j) This BAA supersedes any other Business Associate Agreement in effect among or between the Parties to this BAA.

IN WITNESS WHEREOF, the Parties have caused this Business Associate Agreement to be executed on their behalf by their duly authorized representatives' signatures as of the dates set forth below.

XTM International, Inc.

The Companies

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Amy Dowd  
Chief Operations Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name / Title (Printed)

SAMPLE