



CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this “Agreement”), effective as of _____, 2022 (the “Effective Date”) is entered into by and between Southeast Texas Regional Advisory Council (“Discloser”), and _____ (“Recipient”).

RECITALS

Discloser is a regional advisory council that engages in certain system performance activities as required by 25 Tex. Admin. Code § 157.123 et seq. There are one or more committees recognized by Discloser’s Bylaws (each, a “Recognized Committee”, and collectively, the “Recognized Committees”) that perform these system performance activities, and the records and proceedings of such Recognized Committees are confidential and not subject to disclosure pursuant to Tex. Health and Safety Code § 773.091 et seq. and Tex. Occ. Code § 160.007 et seq.

Recipient directly or indirectly provides assistance to the Recognized Committees. Due to this, Recipient will receive certain information, including Protected Health Information (“PHI”), from Discloser, for the purpose of assisting Discloser with its system performance improvement activities (the “Purpose”).

The HIPAA Rules require Discloser to protect and secure Protected Health Information and to ensure that others with whom it may share PHI also comply with the HIPAA Rules for protecting and securing PHI.

NOW THEREFORE, the parties agree as follows.

DEFINITIONS

All capitalized terms not defined below shall have the same meaning as defined in (i) the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, (ii) the Privacy, Security, Breach Notification and Enforcement Regulations set forth at 45 C.F.R. Parts 160 and 164, and (iii) the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (collectively, the “HIPAA Rules”), which definitions are incorporated herein by reference. In the event of any inconsistency between the definitions set forth in this Agreement and the HIPAA Rules, the definitions in the HIPAA Rules shall control.

1. OBLIGATIONS AND ACTIVITIES OF RECIPIENT

1.1 General Limitation on Use. Recipient agrees not to use or disclose PHI except as permitted or required by this Agreement, the Purpose, or as Required by Law (the “Permitted Use”).

1.2 Appropriate Safeguards. Recipient agrees to use appropriate safeguards and comply with the applicable requirements of the HIPAA Rules, including 45 C.F.R. Subpart C with respect to electronic Protected Health Information (“ePHI”) and 45 C.F.R. Subpart E with respect to all PHI. This shall include, without limitation, using appropriate Security Measures and developing, implementing, maintaining and using appropriate and reasonable Administrative, Physical, and Technical Safeguards to insure the Integrity, Confidentiality and Availability of, and to prevent non-permitted uses and disclosures of PHI. Recipient acknowledges and agrees that it will implement and document its Security Measures and will comply with 45 C.F.R. §§ 164.306 (Security Standards), 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.314 (Organizational Safeguards), and 164.316 (Policy and Procedures and documentation requirements), and all other applicable requirements of the HIPAA Rules.

1.3 Minimum Necessary. Recipient shall only request, use and disclose the minimum amount of PHI necessary to accomplish the Permitted Use in accordance with the minimum necessary policies and procedures of Discloser and the HIPAA Rules.

1.4 Mitigation of Harm. Recipient agrees to take prompt action to mitigate, to the extent practicable, any harmful effect that is known to Recipient of any access, use, disclosure, modification or destruction of PHI by Recipient, its agents or Subcontractors in violation of the requirements of this Agreement.

1.5 Report of Breach, Security Incident and Unauthorized Use or Disclosure of PHI. Recipient agrees to (a) promptly investigate and notify Discloser of any Breach, Security Incident or unauthorized access, use,



disclosure, modification or destruction of PHI of which Recipient discovers that is in violation of the requirements of this Agreement or the HIPAA Rules, (b) to provide Discloser or its designee such information as may be reasonably requested by Discloser to investigate the violation, and (c) to reasonably cooperate with Discloser in investigating and resolving the violation and complying with the Breach Notification Regulations. Notification of such Breach, Security Incident or unauthorized use, disclosure, modification or destruction of PHI must be made to Discloser without unreasonable delay following Discovery.

Recipient agrees to provide a report in writing to Discloser which shall, to the extent known, include the following:

- (i) A brief description of what happened, including the date of any Breach, Security Incident or unauthorized access, use, disclosure, modification or destruction, and, if known, the date of Discovery, the number of individuals affected, the time period involved, and the nature and extent of any harm resulting from the violation;
- (ii) A description of the type(s) of PHI and Identifiers involved (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, and other types of information were involved);
- (iii) Information regarding whether and to what extent the PHI was Unsecured PHI, Encrypted, or was rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary;
- (iv) A description of the manner in which the PHI could be identified or, if unknown, how and whether the PHI could be re-identified;
- (v) To the extent known, the name of each Individual whose PHI has been, or is reasonably believed to have been accessed, used, disclosed, modified or destroyed;
- (vi) To the extent known, the name of the unauthorized person and entity who used the PHI or to whom the disclosure was made;
- (vii) To the extent known, whether the unauthorized person or entity is another covered entity, business associate, employee of a Recipient, Subcontractor or entity affiliated with Recipient;
- (viii) Whether any opportunity existed for an unauthorized person to acquire, view, transfer or otherwise compromise the PHI;
- (ix) Whether the PHI was actually acquired, viewed, transferred or otherwise compromised by an unauthorized person;
- (x) Any steps Individuals should take to protect themselves from potential harm resulting from the unauthorized access, use, disclosure, modification or destruction of PHI; and
- (xi) A description of what the Recipient is doing to investigate, mitigate harm to Individuals, and protect against any further unauthorized access, use, disclosure, modification or destruction of PHI.

1.6 Agreements with Subcontractors. Recipient shall require any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Recipient or Discloser to enter into in an enforceable agreement requiring that the Subcontractor agree to the same restrictions, conditions and requirement that apply to Recipient with respect to PHI. If Recipient becomes aware of a pattern of activity or practice of a Subcontractor that constitutes a material breach of their written agreement, Recipient shall take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the contract.

1.7 Compliance with Discloser's Obligations. To the extent Recipient carries out any obligations of Discloser under Subpart E of 45 C.F.R. Part 164, it must comply with the requirements of the Privacy Regulations that apply to Discloser in carrying out such obligations.

1.8 Notification of Request for PHI. To the extent permitted by law, Recipient agrees that if it has a



legal obligation to disclose any PHI, it will notify Discloser as soon as reasonably practicable after it learns of such obligation, if possible sufficiently in advance of the proposed release date such that the rights of Discloser and the Individual to whom the PHI relates will not be prejudiced. If Discloser or the Individual objects to the release of such PHI, Recipient will allow Discloser and/or the Individual to exercise any legal rights or remedies Discloser and/or the Individual might have to object to the release of the PHI, and Recipient agrees to provide such assistance as Discloser or the Individual may reasonably request in connection therewith.

1.9 Additional Obligations.

(i) Recipient agrees to participate in all trainings that Discloser provides related to protecting and safeguarding the privacy and security of Protected Health Information and any other confidential or proprietary information.

(ii) Recipient agrees to safeguard and to not disclose any confidential or proprietary information that Recipient receives from Discloser including, without limitation, any information of any kind that Recipient receives related to the Purpose.

(iii) Recipient agrees to contact the SETRAC CEO via phone at (281) 822-4450 or via email at lori.upton@setrac.org regarding any questions that Recipient has pertaining to confidentiality issues or Recipient's obligations pursuant to this Agreement.

2. TERM AND TERMINATION

2.1 Term. The term of this Agreement shall be effective as of the Effective Date and shall terminate after the exercise of any of the termination provisions set forth below.

2.2 Termination by Discloser. Discloser may terminate this Agreement if Discloser makes the determination that Recipient has breached a material term of this Agreement and Recipient does not cure the breach or end the violation within the time specified by Discloser in writing, not to exceed thirty (30) days.

2.3 Termination by Mutual Agreement. The parties may terminate this Agreement by mutual agreement.

2.4 Effect of Termination. Upon termination of this Agreement for any reason, Recipient shall (a) return to Discloser (or, if agreed by Discloser, destroy) all PHI received from Discloser, or created, maintained or received by Recipient or any Subcontractor or agent of Recipient on behalf of Discloser, that Recipient or its Subcontractors or agents maintain in any form and (b) not retain any copies of the PHI.

3. MISCELLANEOUS

3.1 Survival. The respective rights and obligations of each party under this Agreement shall survive the termination of this Agreement.

3.2 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Discloser and Recipient to comply with the applicable requirements of the HIPAA Rules and related statutory provisions and regulations.

3.3 Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be delivered to the addresses set forth under the signature pages.

3.4 Assignment. No party may assign or transfer any rights or obligations under this Agreement to a third party without the other party's written consent.

3.5 Choice of Law. This Agreement shall be governed and construed by applicable federal law and by the laws of the State of Texas.



IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first above written.

Disclosure

Recipient

Southeast Texas Regional Advisory Council

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____