

## **BUSINESS ASSOCIATE AGREEMENT**

This **Business Associate Agreement** (“Agreement”), effective January 1, 2024 (“Effective Date”), is entered into by and between Williamson County EMS (“Covered Entity”) and **Capital Area of Texas Regional Advisory Council**, a Texas 501(c)(3) non-profit organization the “CATRAC”), (each a “Party” and collectively the “Parties”).

The Parties have entered into a **Memorandum of Agreement** dated January 1, 2024 (the "Underlying Agreement") under which the CATRAC uses and/or discloses Protected Health Information (“PHI,” which, for purposes of this Agreement, includes both Electronic PHI and PHI that is not Electronic PHI) in its performance of the Services described below. The Parties are committed to complying with applicable state law and the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). This Agreement, in conjunction with applicable law, sets forth the terms and conditions pursuant to which PHI (electronic and non-electronic) that is created, received, maintained, or transmitted by, the CATRAC from or on behalf of Covered Entity, will be handled between the CATRAC and Covered Entity and with third parties during the term of their Underlying Agreement and after its termination.

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Privacy Rule, Protected Health Information, Required By Law, Secretary, Security Incident, Security Rule, Subcontractor, Unsecured Protected Health Information, and Use.

### **Specific Definitions:**

**HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

**Electronic Protected Health Information or Electronic PHI.** Electronic PHI which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

A reference in this Agreement to a section in the **HIPAA Rules** means the section as in effect or as amended.

The Parties agree as follows:

## **1. PERMITTED USES AND DISCLOSURES OF PHI**

1.1 Services. Pursuant to the Underlying Agreement, CATRAC provides or may provide services (“Services”) for Covered Entity that involve the use and disclosure of PHI. Except as otherwise specified herein, the CATRAC may make any and all uses of PHI necessary to perform its obligations for the Covered Entity under the Underlying Agreement. All other uses not authorized by this Agreement are prohibited. Moreover, CATRAC may disclose PHI for the purposes authorized by this Agreement only to its employees, subcontractors and agents, in accordance with Section 2.1.4. and 2.1.5., or as otherwise permitted by or as required by applicable law, but only for the purpose of performing services for Covered Entity.

1.2. Business Activities of the CATRAC. Unless otherwise limited herein and if such use or disclosure of PHI would not violate the Privacy or Security Rules if done by the Covered Entity, the CATRAC may:

1.2.1. Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the CATRAC to the Covered Entity provided that such uses are permitted under state and federal confidentiality laws.

1.2.2. Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the CATRAC to the Covered Entity, provided that the CATRAC represents to Covered Entity, in writing, that (i) the disclosures are required by law, as provided for in 45 C.F.R. § 103 or (ii) the CATRAC has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 C.F.R. § 164.504(e)(4) and § 164.314, and the third party notifies the CATRAC of any instances of which it is aware in which the confidentiality of the information has been breached.

1.2.3. Provide data aggregation services relating to the health care operations of the Covered Entity, for the Covered Entity.

## **2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

2.1 Responsibilities of the CATRAC. With regard to its use and/or disclosure of PHI, the CATRAC hereby agrees to do the following:

- 2.1.1. Not use or disclose PHI other than as permitted or required by this Agreement or the Underlying Agreement or as required by law;
- 2.1.2. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement or the Underlying Agreement;
- 2.1.3. Report, in writing, to Covered Entity within five (5) business days any use or disclosure of PHI not provided for by this Agreement or the

Underlying Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware, and cooperate with the Covered Entity in any mitigation or breach reporting efforts;

- 2.1.4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the CATRAC agree pursuant to a written agreement to the same restrictions, conditions, and requirements that apply to the CATRAC with respect to such information;
- 2.1.5. Ensure that any agent or subcontractor to whom the CATRAC provides PHI, as well as CATRAC, not export PHI beyond the borders of the United States of America;
- 2.1.6. Within five (5) business days of a request by Covered Entity, make available PHI in a designated record set, if applicable, to Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
- 2.1.7. Within five (5) business days, make any amendment(s) to PHI, if applicable, in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526.
- 2.1.8. As applicable, maintain and make available the information required to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.
- 2.1.9. To the extent the CATRAC is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- 2.1.10. Make its internal practices, books, and records available to the Secretary and to the Covered Entity for purposes of determining compliance with the HIPAA Rules.
- 2.1.11. Comply with minimum necessary requirements under the HIPAA Rules.

2.2 Responsibilities of Covered Entity. With regard to the use and/or disclosure of PHI by the CATRAC, Covered Entity hereby agrees to do the following:

- 2.2.1 Inform the CATRAC of any limitations in the form of Notice of Privacy Practices that Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520, to the extent that such limitation may affect CATRAC's use or disclosure of PHI.
- 2.2.2 Inform the CATRAC of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent that such limitation may affect CATRAC's use or disclosure of PHI.

- 2.2.3 Notify the CATRAC, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by the CATRAC under this Agreement or the Underlying Agreement, except if the CATRAC will use or disclose PHI for data aggregation or management if provided for by the Underlying Agreement; administration and/or legal responsibilities of the CATRAC.
- 2.2.4 Not request CATRAC to use or disclose PHI in any manner that would not be permissible under HIPAA and other applicable laws if done by the Covered Entity.

### 3 **TERMS AND TERMINATION**

- 3.2 Termination by Covered Entity: Covered Entity may immediately terminate this Agreement and any related agreements, if any, if Covered Entity makes the determination that CATRAC has breached a material term. Alternatively, Covered Entity may choose to provide CATRAC with thirty (30) days written notice of the existence of any alleged material breach; and afford CATRAC an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within ten (10) days, CATRAC must cure said breach to the satisfaction of Covered Entity within thirty (30) days after the written notice described above. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Agreement.
- 3.3 Termination by CATRAC: If CATRAC makes the determination that a material condition of performance has changed under this Agreement or that Covered Entity has breached a material term of this Agreement, CATRAC may provide thirty (30) days notice of its intention to terminate this Agreement. CATRAC agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating this Agreement.
- 3.4 Effect of Termination: Upon the event of termination pursuant to Section 3 of this Agreement, CATRAC will promptly return or destroy, in accordance with standards approved by the Department of Health and Human Services, all PHI, in whatever format, maintained by CATRAC and/or its subcontractors. CATRAC will provide written assurance to Covered Entity that all PHI maintained by CATRAC and/or its subcontractors has been destroyed in accordance with standards approved by the Department of Health and Human Services, or returned to Covered Entity.
- 3.4.3 In the alternative, CATRAC agrees to assess the feasibility of returning and/or destroying all PHI in light of applicable law and reasonable business practices

and standards. CATRAC will also assess the feasibility of recovering any PHI in the possession of its subcontractors or agents.

3.4.4 If it is not feasible for CATRAC to return and/or destroy said PHI, CATRAC will notify Covered Entity in writing within thirty (30) days from the date of termination. Said notification shall include a statement that CATRAC has determined that it is infeasible to return and/or destroy the PHI in its possession, and the specific reasons for such determination.

3.4.5 CATRAC further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement to all PHI retained by CATRAC after the termination of this Agreement, and to limit any further Uses and/or Disclosures of PHI to the purposes that make the return and/or destruction of the PHI infeasible for so long as CATRAC maintains the PHI.

3.4.6 If it is infeasible for CATRAC to obtain, from a subcontractor or agent, any PHI in the possession of the subcontractor or agent, CATRAC will also provide a written explanation to Covered Entity. Further, CATRAC will require its subcontractors and agents to agree to extend any and all protections, limitations, and restrictions contained in this Agreement to all PHI retained by the subcontractors and/or agents after the termination of this Agreement, and to limit any further Uses and/or Disclosures to the purposes that make the return and/or destruction of the PHI infeasible for so long as the subcontractors and/or agents maintain the PHI.

3.4.7 Notwithstanding any provision of the Underlying Agreement, the Underlying Agreement shall terminate immediately upon the termination of this Agreement regardless of the reason for the termination of this Agreement.

4 **INJUNCTIVE RELIEF.** Notwithstanding any rights or remedies provided for in this Agreement or the Underlying Agreement, Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI by CATRAC or by any agent or subcontractor of CATRAC or by any third party that received or otherwise obtained PHI from CATRAC.

5 **AMENDMENT.** In the event there is a change to, or amendment of, HIPAA (or a change in the interpretation of HIPAA) that necessitates a change to this Agreement, Covered Entity may amend this Agreement by providing thirty (30) days advance written notice of any amendment to CATRAC by letter or amendment. Such letter or amendment is deemed to have been received by CATRAC on the "Date of Receipt", a date that is five (5) business days after the date Covered Entity has deposited such letter or amendment in the U.S. Mail, first class with postage prepaid, to CATRAC at the address listed on the signature page. Any changes to this Agreement set forth in such letter or amendment will be deemed accepted by CATRAC if no written response expressly rejecting such amendment is received by Covered Entity (at the address indicated in such letter or amendment) from CATRAC within thirty (30) days of the Date of Receipt. If CATRAC responds in writing within such thirty (30) day time frame that it does not accept such changes, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to such revised obligations. If the Parties are unable to agree to such amendment(s) within thirty

(30) days prior to the effective date of the amendment of HIPAA (or within ninety (90) days after the publication of the change in interpretation of HIPAA), then either Party may terminate this Agreement consistent with its terms.

- 6 **FURTHER ASSURANCES.** Each Party shall in good faith execute, acknowledge or verify, and deliver any and all documents which may from time to time be reasonably requested by the other party to carry out the purpose and intent of this Agreement.
- 7 **CONFLICTS.** The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, including any subsequent amendments or interpretations.
- 8 **INDEMNIFICATION.** Notwithstanding any provisions to the contrary in this Agreement, CATRAC will indemnify, defend, and hold harmless Covered Entity, its officers, directors, employees, and agents from any and all damages, claims, actions, liability, and expenses (including the cost of investigation, notification, mitigation, Civil Monetary Penalties, judgments, settlements, court costs, and attorney's fees) relating to or resulting from (i) CATRAC's default or breach of this Agreement; and (ii) any Use, Disclosure or Breach of Unsecured Protected Health Information by CATRAC or any subcontractor, agent, person or other entity to whom CATRAC disclosed PHI.
- 9 **PROPERTY RIGHTS.** As between Covered Entity and CATRAC, PHI shall be and remain the property of Covered Entity regardless of CATRAC's Use, creation, possession and/or control of such PHI. CATRAC agrees that it acquires no title or rights to PHI, or to Limited Data Sets or De-Identified Information constructed from PHI, as a result of this Agreement or the Underlying Agreement.
- 10 **NO THIRD PARTY BENEFICIARIES OR AGENCY.** Nothing express or implied in this Agreement shall confer upon any person, other than CATRAC and Covered Entity and their respective successors or permitted assigns, any rights, remedies, obligations or liabilities whatsoever. It is the intent and agreement of the Parties that in performing this Agreement, CATRAC is an independent contractor of Covered Entity, and not an agent of Covered Entity.
- 11 **GOOD FAITH.** The Parties agree to exercise good faith in the performance of this Agreement.
- 12 **WAIVER.** Neither the failure nor any delay by Covered Entity to exercise a right, remedy or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or

partial exercise by Covered Entity of a right, remedy or privilege preclude any further exercise of the same.

- 13 **NOTICE.** Any notice to be given to Covered Entity pursuant to this Agreement shall be given in writing to Covered Entity's representative signing below, with a copy to Capital Area of Texas Regional Advisory Council, 1120 Toro Grande Blvd. Suite 208, Cedar Park TX 78613. Any notice to be given to CATRAC pursuant to this Agreement shall be given in writing to CATRAC's representative signing below at the address provided below (or, if no address is provided below, to any address Covered Entity reasonably believes will reach CATRAC). Any party desiring to change its listed address must give written notice in the foregoing manner to the other party.

**IN WITNESS WHEREOF**, Covered Entity and CATRAC have duly executed this Agreement as of the dates set out beneath their respective signatures.

Capital Area of Texas Regional Advisory Council ("CATRAC")

By:  \_\_\_\_\_

Name: Douglas Havron

Title: Executive Director / CEO

Date: 11/09/2023

Address: 1120 Toro Grande Blvd. Ste 208; Cedar Park, TX 78613

Williamson County EMS ("Covered Entity")

By:  \_\_\_\_\_

Name: Valerie Covey

Title: Presiding Officer Williamson County

Date: 1/9/2024

Address: 3189 SE Inner Loop Ste A, Georgetown, TX 78626