

## McLAREN PHYSICIAN HOSPITAL ORGANIZATION

### HEALTH CARE PROFESSIONAL PARTICIPATION AGREEMENT

**THIS HEALTH CARE PROFESSIONAL PARTICIPATION AGREEMENT** (hereinafter “the Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, a person duly licensed or authorized to practice as a health care professional (defined below) in the State of Michigan (hereinafter “HCP”), and North Oaks Health System, d/b/a McLaren Physician Hospital Organization, a Michigan nonprofit corporation (hereinafter “MPHO”).

#### RECITALS

**A.** MPHO is a health care delivery network which arranges for the provision of health care services through its members and other providers which MPHO has engaged;

**B.** MPHO will pursue contracts with third party payors to arrange for the delivery of health care services by its Participating Providers (defined below);

**C.** HCP desires to become a Participating Provider (defined below) and to participate in arrangements entered into by MPHO on HCP’s behalf with certain third party payors;

#### **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

#### **1. DEFINITIONS**

For the purpose of this Agreement and each Product Description, the following terms shall have the meanings specified unless defined otherwise in the Product Description.

**1.1 “Covered Person”** means any person who has entered into, or on whose behalf there has been entered into, an agreement with a Payor or MPHO, for the provision to such person of Covered Services.

**1.2 “Covered Services”** means those health care services Covered Persons are entitled to receive and which shall be identified in the Payor Contract.

**1.3 “Health Care Professional”** means a person that meets licensure or registration requirements in the State of Michigan for the practice of a health profession, but is not licensed as a doctor of medicine or osteopathy.

**1.4 “Non-Risk Product”** means a Product under which Participating Providers are reimbursed on a discounted fee-for-service or other basis that does not place the providers and/or MPHO financially at risk for adverse claims experience or the cost of services in the provision of health care services.

**1.5** “**Participating Health Care Professional**” means any Health Care Professional who has been engaged by MPH O to provide Covered Services to Covered Persons.

**1.6** “**Participating Hospital**” means (i) each hospital owned or operated by McLaren Health Care Corporation; and (ii) any other hospital that has been engaged by MPH O to provide Covered Services to Covered Persons.

**1.7** “**Participating Physician**” means a primary care or specialist physician who has been engaged by MPH O to provide Covered Services to Covered Persons.

**1.8** “**Participating Provider**” means a Participating Health Care Professional, Participating Physician, Participating Hospital, or other health care professional or facility engaged in the delivery of health care which has been engaged by MPH O to provide Covered Services to Covered Persons.

**1.9** “**Payor**” means any third party payor or combination of third party payors, including but not limited to, Blue Cross Blue Shield of Michigan, an insurance company, self-funded employer, HMO, PPO, multiple employer trust, or union trust, that has entered into a Payor Contract with MPH O. The term "Payor" shall also include federal, state and local governments in connection with health care services to individuals covered by governmental health programs such as Medicare and Medicaid.

**1.10** “**Payor Contract**” means the written agreement entered into between MPH O and a Payor which identifies the terms of the arrangement under which: (i) MPH O will arrange for the provision of Covered Services to Covered Persons by Participating Providers; and (ii) the Payor will reimburse or pay MPH O and/or Participating Providers for providing such Covered Services.

**1.11** “**Product**” means a program offered and financed by MPH O or Payor which utilizes Participating Providers to render Covered Services to Covered Persons under terms and conditions described in the applicable Product Description.

**1.12** “**Product Description**” means the written description of a Product which may be made available for HCP’s participation in MPH O’s sole discretion. Product Descriptions include the relevant terms and conditions of the applicable Payor Contract pursuant to which Participating Providers will provide Covered Services to Covered Persons enrolled in that Product and includes, without limitation, a description of any risk sharing arrangement agreed upon in the applicable Payor Contract.

**1.13** “**Risk Product**” means a Product under which the Payor shifts, in whole or in part, the financial or underwriting risk for the cost of providing health services to Covered Persons and adverse claims experience to MPH O and Participating Providers or that otherwise permits MPH O to be deemed economically or clinically integrated under the applicable antitrust laws.

## **2. RELATIONSHIP AMONG MPH0, HCP, AND COVERED PERSONS**

**2.1 HCP's Authorized Agent for Limited Purposes.** HCP hereby authorizes MPH0 to market HCP's services to Payors and to contract with Payors on HCP's behalf subject to the terms and conditions set forth in this Agreement. MPH0 may furnish Product Descriptions to only those Participating Health Care Providers who have been deemed by the prospective Payor or MPH0 to be appropriate for inclusion in the provider panel for a particular Product. Where HCP has been selected by Payor to be offered the terms of a particular Product, MPH0 shall furnish a Product Description which sets forth a summary of the terms proposed by the Payor.

**2.1.1 Financial Provisions.** HCP authorizes MPH0 to negotiate on HCP's behalf payment and risk sharing terms with respect to Risk Products only. With respect to Non-Risk Products, MPH0 is not authorized to negotiate, and MPH0 shall not negotiate, payment terms on behalf of HCP. MPH0 may facilitate communications between HCP and Payors by obtaining, clarifying and conveying to HCP and Payors information regarding the proposed Payor Contract. HCP may individually communicate with Payors regarding all payment terms for Non-Risk Products. In connection with the negotiation of Payor Contracts, the parties agree to adhere to the Antitrust Guidelines of MPH0, as the same may exist from time to time. A current copy of the MPH0 Antitrust Guidelines is set forth as Exhibit A. With respect to terms other than those relating to payment, HCP authorizes MPH0 to negotiate those terms on HCP's behalf in connection with Risk Products and Non-Risk Products.

### **2.1.2 Payor Contracts.**

**(a) Fee Schedules Offered by Payors.** MPH0 shall furnish HCP with reasonable notice of Payor Contracts in which HCP has been selected to participate through the issuance of Product Descriptions. All material terms shall be described fully in the Product Description prepared by MPH0 for the particular Product. HCP shall be permitted to accept or reject any Product Description which MPH0 has forwarded to HCP. Rejection shall be valid only if in writing and received by MPH0 within twenty-one (21) days. Failure on the part of HCP to affirmatively reject the Product Description within the applicable time period shall be deemed acceptance of the participation in the Payor Contract by HCP.

**(b) HCP's Standing Fee Schedule.** HCP acknowledges that certain prospective Payors in the market may desire to review provider fee schedule proposals as the basis for constructing a fee schedule for a Product or otherwise entering into an arrangement with MPH0. If requested by MPH0, HCP shall furnish to MPH0, in advance, a fee schedule or conversion factor (e.g., a percentage of the Medicare Resource Based Relative Value Scale) that represents the minimum payment that HCP will accept from a Payor offering a Non-Risk or Risk Product arrangement (the "Standing Fee Schedule"). MPH0 shall not release or otherwise disclose HCP's Standing Fee Schedule to any third party other than a prospective Payor that has entered into negotiations with MPH0 for a Non-Risk or Risk Product. By furnishing such fee schedule to MPH0, HCP hereby authorizes MPH0 to bind HCP to participate in those arrangements between MPH0 and a Payor whereby Payor accepts the terms of HCP's fee schedule proposal or offers more favorable terms. A prospective Payor shall be entitled to submit a proposal to HCP which is lower or less favorable than the fee/rates proposed by HCP pursuant to his/her Standing Fee Schedule.

**2.2 Non-Exclusivity.** This Agreement and the limited agency authority it confers upon MPH0 is non-exclusive, and HCP may contract with other physician-hospital organizations, preferred provider organizations, health maintenance organizations, and other managed care organizations and arrangements.

**2.3 Termination of Existing Contracts.** In the event HCP has an existing contract with a Payor (either directly or through another health care delivery network), HCP agrees to cooperate with MPH0 concerning the continuation or termination of HCP's existing contract if (i) MPH0 and the Payor have entered into a Payor Contract; and (ii) HCP is to be a Participating Provider under such Payor Contract pursuant to Sections 2.1 above. Nothing herein shall be deemed to require HCP to take any action which is not permitted to be taken under his/her existing contract with the Payor.

**2.4 Independent Contractors.** HCP and MPH0 are independent legal entities. Except as otherwise set forth in Section 2.1 of this Agreement, nothing in this Agreement shall be construed or deemed to create between them any relationship of employer and employee, principal and agent, partnership, joint venture, or any relationship other than that of independent parties. No party hereto, nor the respective agents or employees of such party, shall be required to assume or bear any responsibility for the acts or omissions, or any consequences thereof of the other party under this Agreement. No party hereto, nor the respective agents or employees of any party, shall be liable to other persons for any act or omission of the other party in performance of their respective responsibilities under this Agreement.

**2.5 Professional Relationship.** It shall be the sole right and responsibility of HCP to create and maintain a professional relationship, as required of HCP in the health profession which HCP is licensed or authorized, with each Covered Person that HCP treats, and HCP shall be solely responsible for all aspects of medical care and treatment of each Covered Person within the scope of HCP's professional competence and license, including the quality and levels of such care and treatment. HCP acknowledges that he/she has an independent responsibility to provide medical care to Covered Persons and that any action by MPH0 or a Payor, in no way absolves HCP of the responsibility to provide appropriate medical care to Covered Persons.

**2.6 Use of MPH0 Member Physicians and Hospitals.** Subject to the requirements under any Payor Contract, HCP agrees to make referrals and admissions of Covered Persons only to Participating Providers, except in cases of an emergency. HCP shall admit Covered Persons to Participating Hospitals or other Participating Providers for treatment only when such admissions are certified in advance by the Payor or its designee (which may be the MPH0), except in cases of an emergency or where the Medical Director of Payor or its designee has approved such admission.

### **3. HCP COVENANTS RELATING TO PARTICIPATION IN MPH0**

**3.1 Provision of Services.** HCP agrees to provide to Covered Persons those Covered Services that HCP is licensed and credentialed to provide and which HCP normally provides to Covered Persons. HCP further agrees to ensure that continuous health care coverage is available to Covered Persons on a twenty-four (24) hour per day, seven (7) day per week basis; provided, however, HCP shall not be required to open his/her office except during regular business hours and HCP may provide such continuous health care coverage through coverage arrangements consistent

with this Agreement. HCP agrees to comply with all referral and admission protocols set forth by MPH0 or in the applicable Payor Contract.

**3.2 Compliance with Laws and Programs Generally.** HCP shall comply with applicable federal, state and local laws, rules and regulations regarding the provision of Covered Services. HCP agrees to comply fully with and to participate in the implementation of policies and programs applicable to any Product, which are established by MPH0 and/or Payor to promote quality medical care and to control the cost and utilization of medical services. Policies and procedures include without limitation those relating to (i) quality assurance; (ii) credentialing; (iii) utilization review and medical management, (iv) claims payment review including electronic submission of claims; and (v) Covered Person grievances. HCP agrees to abide by the determination of MPH0 or the applicable Payor, as appropriate, on all such matters arising from his/her performance or non-performance under this Agreement. HCP further agrees to cooperate with MPH0 and/or Payor, as appropriate, in conducting on-site office reviews of HCP's practice, including medical record inspections.

**3.3 Performance Standards.** MPH0 may adopt criteria to measure clinical quality, as well as resource utilization and cost effectiveness. HCP agrees to comply with such performance standards as MPH0 shall from time to time establish.

**3.4 Standard of Practice.** HCP agrees to conduct his/her practice in accordance with recognized standards in the health care community, and to ensure that health care services are provided in accordance with MPH0's objectives of comprehensive, quality care, cost containment, and effective utilization of inpatient, ambulatory, and emergency services. HCP agrees to provide Covered Services to Covered Persons in a dignified and nondiscriminatory manner consistent with the treatment HCP provides to his/her patients who are not Covered Persons under this Agreement.

**3.5 Network Roster and Marketing.** HCP authorizes MPH0 and/or any Payor to include HCP's name, address, telephone number, medical specialty, medical education information, Participating Hospital affiliations, and other similar information in its provider directory or other similar material approved by MPH0, which may be included in various marketing materials. HCP agrees to afford MPH0 and any Payor the same opportunity to display brochures, signs, or advertisements in HCP's office(s) as HCP affords any third party. HCP agrees not to use MPH0's name and HCP's status under this Agreement in any form of advertisement or publication without prior written permission of MPH0.

**3.6 Participation Fee.** MPH0 acknowledges receipt from HCP of a participation fee submitted either with this Agreement or with a prior participation agreement. The participation fee is nonrefundable and, subject to the Bylaws and policies of MPH0, entitles HCP to be a Participating Provider of MPH0 and to participate in health service arrangements, made available through MPH0. HCP agrees to pay any additional participation fees or other fees as may be reasonably determined by MPH0 as necessary to maintain it as a self-sustaining entity. In the event such a fee is established, MPH0 shall invoice HCP for the amount of such fee. Failure on the part of HCP to remit payment to MPH0 within thirty (30) days of receipt of invoice shall constitute a material breach of this Agreement. In the event HCP fails to pay his or her participation fee or any other administrative fee established by MPH0, MPH0 may, in addition

to such other rights and remedies that may exist under the law or this Agreement, offset future payments due to HCP under Payor Contracts or otherwise.

**3.7 Insurance.** HCP shall secure and maintain, at his or her expense, throughout the term of this Agreement, such commercially available policies of general commercial liability insurance and professional liability insurance with limits of occurrence and aggregate amounts as are normal and customary in the HCP's medical practice area and geographical area. Upon request by MPH0, HCP shall provide MPH0 with copies of such policies or other evidence of compliance with the foregoing insurance requirements acceptable to MPH0. If any such insurance policies required by this Agreement are terminated, HCP shall immediately notify MPH0 and, if such insurance provided "claims made" coverage, HCP shall immediately purchase "tail" coverage necessary to continue such insurance coverage, which meets all of the requirements of this Section 3.7.

**3.8 Additional Agreements.** HCP shall take any additional actions and shall execute any additional agreements reasonably requested by MPH0 or Payors. HCP acknowledges that some Payors may require HCP to execute separate participation agreements with such Payors. HCP agrees to execute such separate participation agreements so long as the terms of such agreements have been reviewed and approved by MPH0 and are consistent with the Payor Contract.

#### **4. HCP COMPENSATION**

##### **4.1 Reimbursement Generally and Release.**

**4.1.1 Reimbursement.** HCP agrees to accept as payment in full for Covered Services the fees or rates set forth in the applicable Payor Contract.

**4.1.2 Release.** Unless the Payor Contract provides otherwise, HCP understands and agrees that MPH0 is not responsible for compensation or reimbursement due under any Payor Contract, and HCP will look solely to Payor for payment. In the event the Payor Contract results in payment being made to MPH0 for the purpose of paying Participating Providers, MPH0 shall make payment to Participating Providers in accordance with the methodology or distributions approved by the MPH0 Board of Trustees.

**4.1.3 Risk and Incentive Program Sharing.** HCP agrees that, with respect to Risk Products and incentive programs associated with Non-Risk Products, MPH0 may establish risk sharing methodologies and allocations of surpluses and deficits (collectively, the "Incentive Model") aside from, and/or in addition to, whatever risk sharing or incentive arrangement has been agreed upon in the applicable Payor Contract. MPH0 Board of Trustees shall approve any Incentive Model. HCP agrees to accept his or her distribution under the Incentive Model as payment in full and shall not look to MPH0 or any other party for payment. HCP further agrees to accept his or her share of financial responsibility under the Incentive Model. In the event HCP fails to pay his or her share of any financial responsibility, MPH0 may, in addition to such other rights and remedies that may exist under the law or this Agreement, offset future payments to HCP under (a) the Payor Contract to which the Incentive Model relates, (b) any other Payor Contract, (c) any distribution under any other Incentive Model; or (d) otherwise.

**4.2 Covered Person Hold Harmless.** Unless the requirement is expressly waived in the applicable Payor Contract, HCP hereby agrees that in no event, including but not limited to, nonpayment, the applicable Payor's insolvency, or breach of this Agreement, shall HCP bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement for Covered Services from, or have any recourse against, a Covered Person or any person who may be acting on a Covered Person's behalf other than the applicable Payor. This provision shall not prohibit collection of supplemental charges or copayments or deductibles made in accordance with the terms of an applicable Product Description. HCP further agrees that (i) the hold harmless provision in this Section 4.2 shall survive the termination of this Agreement regardless of the cause, if any, giving rise to the termination and shall be construed to be for the benefit of Covered Persons and that (ii) the hold harmless provision in this Section 4.2 supersedes any oral or written contrary agreement now or hereafter entered into between HCP and any Covered Person or Persons acting on his/her behalf

## **5. RECORDS AND CONFIDENTIAL INFORMATION**

**5.1 Inspection of Records.** HCP agrees that MPHO and Payors shall have the right, upon request and, with respect to medical records, upon presentation of a patient release (the release on the Payor's Enrollment form to be sufficient), to inspect at all reasonable times and have copied, any accounting, administrative, and medical records maintained by HCP pertaining to the Covered Person's enrollment or to HCP's participation under this Agreement. HCP further agrees to cooperate with MPHO and any state agency or federal agency making available, and in arranging or allowing inspection of, such records as may be required under state or federal law. Subject to applicable confidentiality requirements, HCP will make Covered Persons' medical records available to Payors for the purpose of assessing quality of care and medical necessity and for purposes of risk adjustment. Notwithstanding termination of this Agreement, the access to records granted hereunder shall survive the termination of this Agreement.

**5.2 Confidential Information.** HCP agrees that all Confidential Information, except medical records of Covered Persons, is the exclusive property of MPHO and that HCP has no right, title, or interest in the same. HCP further agrees to protect against the unauthorized disclosure of Confidential Information. As used in this Section 5.2, the term "Confidential Information" refers to proprietary business information of MPHO or any member or Participating Provider of MPHO, including without limitation, trade secrets, information pertaining to costs or charges with respect to any MPHO member or Participating Provider and such other information relating to MPHO or any member or Participating Provider that is not of public record or within the public domain. Nothing in this provision should be construed as prohibiting HCP from sharing information with a patient regarding his/her medical care or treatment, including the provision of health care services which may or may not be a covered benefit.

**5.3 Protected Health information/Business Associate Relationship.** It is in the intention of the parties that the use and disclosure of protected health information by and among HCP, MPHO and Payors be consistent with the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations (collectively, "HIPAA"). In furtherance of the foregoing and not by limitation, HCP and MPHO shall adhere to the terms applicable to business associates, a summary of which is set forth in Exhibit B. Exhibit B may be amended from time to time by HCP or MPHO as necessary to ensure compliance with HIPAA.

## **6. TERM AND TERMINATION**

**6.1 Term and Renewal.** This Agreement will be effective as of the date first written above and shall continue in effect for an initial term of one (1) year. Thereafter, this Agreement shall be renewed automatically on the terms contained herein for successive one-year terms unless sooner terminated pursuant to this Section 6.

### **6.2 Termination of this Agreement.**

**6.2.1 Termination for Cause.** Either party may terminate this Agreement for cause upon at least thirty (30) days prior written notice, which notice shall set forth grounds for termination; provided, however, that if such cause is cured within such thirty (30) day period, then such notice of termination shall be of no force or effect. For all purposes herein, "cause" shall consist of a material breach of this Agreement.

**6.2.2 Termination Without Cause.** This Agreement may be terminated by either party at any time without cause upon at least ninety (90) days prior written notice to the other party. MPH O agrees that HCP shall not be subject to the terms and conditions of any Payor Contract entered into by MPH O following the provision of notice of termination by either party under this Section 6.2.2.

**6.2.3 Immediate Termination.** Notwithstanding any other provision of this Agreement, MPH O may terminate this Agreement with respect to HCP immediately upon the suspension, revocation or cancellation of HCP's license or right to participate in the Medicare or Medicaid programs or HCP's failure to maintain liability insurance in accordance with Section 3.7. Additionally, MPH O may terminate this Agreement with respect to HCP immediately upon HCP's conviction of a felony or death or disability, or if HCP's actions or omissions in the reasonable judgment of MPH O represent a threat to the health, welfare or safety of Members or Participating Providers.

**6.2.4 Payor Contract.** The termination of a Payor Contract shall not affect the term of this Agreement.

**6.3 Obligations upon Termination.** In the event of termination of this Agreement, the rights and obligations of each party hereunder shall cease unless otherwise provided by this Agreement; provided, however, that HCP shall continue to provide and be compensated for Covered Services to Covered Persons until provision has been made by MPH O or Payors for the reassignment of such Covered Persons to other providers or until HCP's participation under the Payor Contract may be properly terminated as described in Section 6.3.1 below. In the event of termination of this Agreement for any reason, HCP will use its best efforts to cooperate with the transition of Covered Persons to ensure continuity of care.

**6.3.1 Payor Contract.** Termination of this Agreement shall have no effect upon the continuation of HCP's obligations under the Payor Contracts which may have been executed prior to termination of this Agreement. HCP acknowledges that a Payor Contract may have a longer term than this Agreement. HCP's obligations under this Agreement with respect to Payor



Contracts shall continue until such time as HCP's participation under the Payor Contracts may be properly terminated pursuant to terms of the Payor Contracts.

**6.4 Termination With Regard to a Product.** Subject to the requirements of the applicable Payor Contract including, without limitation, any requirements with regards to termination of participation and continuity of care, either party, at any time, without cause and upon at least ninety (90) days prior written notice to the other party, may terminate HCP's participation with respect to any particular Product. Termination of HCP's participation with respect to a particular Product shall not affect the rights and obligations of the parties with respect to any other Product or Payor Contract, or otherwise under this Agreement. Upon termination of HCP's participation with regard to any Product, HCP shall use his/her best efforts to cooperate with the transition of affected Covered Persons to ensure continuity of care.

## **7. AMENDMENTS**

**7.1 Amendments.** This Agreement may be amended at any time during the term of this Agreement by MPH0 upon sixty (60) days prior written notice of such amendment provided that such amendment is applied generally with respect to Participating Health Care Providers.

## **8. GENERAL PROVISIONS**

**8.1 Assignment.** This Agreement, being intended to secure the services of HCP, shall not be, in any manner, assigned, delegated, or transferred by HCP.

**8.2 Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or a different provision. No waiver of any obligation under this Agreement shall be valid unless in writing and signed by the party against whom such waiver is charged.

**8.3 Notices.** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified mail, return receipt requested or by hand delivery with acknowledgement of receipt, to the parties at the addresses set forth on the execution page of this Agreement or such other address as communicated in writing by either party. Such notice shall be effective upon mailing if sent certified mail and upon receipt if dispatched by hand delivery. This Section 8.3 shall not apply to routine communications among the parties and communications of Product Descriptions or fee schedule proposals by MPH0 or MPH0's designated agent.

**8.4 Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan.

**8.5 Construction.** Each Payor Agreement is enforceable under the terms and conditions therein and in the event of a conflict between the language of this Agreement and any Payor Agreement, the language of the Payor Agreement shall prevail with respect to the terms applicable to that Product.

**8.6 Entire Agreement.** This Agreement and amendments thereto constitutes the entire understanding and agreement of the parties hereto and supersedes any prior written or oral agreement pertaining to the subject matter hereof.

**8.7 Limited Enforcement.** This Agreement will be enforceable only by the parties to this Agreement, and their successors in interest by virtue of an assignment which is not prohibited under the terms of this Agreement. No other person will have the right to enforce any of the provisions contained herein, including without limitation, any patient of HCP or a Payor; and this Agreement shall not be used by any such person or entity to impose any obligation, duty or standard of care or practice different from or in addition to whatever obligations, duties and standards may exist separate and apart from this Agreement.

**IN WITNESS WHEREOF,** HCP and MPHO have entered into this Agreement to be effective as of the date first written above.

**McLaren Physician Hospital Organization**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By: Gary T. Wentzloff

\_\_\_\_\_  
Print Name

Its: Chief Executive Officer

\_\_\_\_\_  
Address

Dated:\_\_\_\_\_

Dated:\_\_\_\_\_

## **EXHIBIT A**

### **ANTITRUST GUIDELINES**

1. HCP shall not share information about proposed fees or fee-related terms offered to Payors (including, without limitation, information relating to Standing Fee Schedules) with any other Participating Provider.
2. HCP shall make independent, unilateral decisions with respect to setting fees or fee related terms offered to payors, with respect to, setting any Standing Fee Schedule submitted to MPH0, and with respect to whether or not to participate in any plan with any Payor through MPH0.
3. HCP shall not attempt to collectively negotiate (along with any other Participating Provider) fees or fee-related terms with Payors with respect to Non-Risk Products.
4. HCP shall not share with MPH0 or any Participating Provider any fee or fee related terms such Provider proposes to offer to any Payor outside of MPH0.
5. HCP shall not share with any other Participating Provider its views or intentions with respect to any proposed Payor Contract.
6. HCP shall not agree with or attempt to agree with any other Participating Provider not to deal with any Payor.
7. HCP shall not request MPH0 to negotiate fee or fee-related terms with Payors with respect to Non-Risk Products.
8. HCP shall not agree or attempt to agree with any other Participating provider to restrict in any way the services provided, geographic areas covered, persons treated, or participation with any Payor.

These Guidelines are only a summary of the most common issues under federal or state antitrust laws and do not encompass all of HCP's obligations under federal or state antitrust laws.

**EXHIBIT B**  
**BUSINESS ASSOCIATE AGREEMENT**

**Obligations of MPHO**

Pursuant to the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”), and the Security Standards for the Protection of Electronic Protected Health Information (the “Security Rule”) issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act, which is part of the American Recovery and Reinvestment Act of 2009, and any implementing regulations and guidance with respect thereto (“HITECH”), MPHO shall:

1. Not use or further disclose protected health information, as defined by the Privacy Rule, and specifically including protected health information that is transmitted by an electronic medium such as Internet (wide-open), Extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically removed from one location to another using magnetic tape, disk or compact disk media (“Electronic Protected Health Information”, collectively “PHI”), other than
  - a. For the proper management and administration of MPHO and to carry out the legal responsibilities of MPHO, provided in each case that the disclosure is required by law, or reasonable assurances are obtained from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to such person and that the person notifies MPHO of any instances of which it is aware in which the confidentiality of the information has been breached;
  - b. To provide data aggregation services relating to the health care operations of HCP; and
  - c. As required by applicable law.

MPHO shall not use or disclose PHI in a way that would violate the Privacy Rule or Security Rule, as amended by HITECH or otherwise, and any guidance issued with respect to the foregoing.

To the extent practicable, MPHO shall use a Limited Data Set (as defined in the Privacy Rule) with respect to PHI of the HCP. If not practicable, MPHO shall use the least amount of PHI necessary to achieve the intended purpose, and shall document why such amount of PHI is necessary. MPHO shall comply with any guidance issued by the Secretary of the United States Department of Health and Human Service (the “Secretary”) regarding the minimal necessary use and disclosure of PHI.

MPHO shall not sell, nor directly or indirectly receive remuneration for the use and disclosure of, PHI, except as otherwise authorized by the applicable individual(s) or otherwise permitted by HITECH.

2. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. MPHO shall undertake and implement all appropriate and/or necessary administrative, physical, technical and all other required safeguards as set forth in the Security Rule which are necessary to protect all PHI, including Electronic Protected Health Information, whether received from, created, maintained, transmitted or otherwise used by or on behalf of the HCP.
3. Report to the HCP who provided such PHI any use or disclosure of PHI not provided for by this Agreement of which MPHO becomes aware, including any security incident as described in the Security Rule.

MPHO agrees to cooperate with the HCP as it determines whether any such impermissible use or disclosure of PHI constitutes a breach of PHI for purposes of HITECH and its implementing regulations, and whether such breach requires notification by the HCP to individuals, the media, and/or the Secretary.

In furtherance of the foregoing, in the event MPHO discovers a breach of PHI, MPHO agrees:

- i. To provide the HCP with relevant information, including without limitation, a brief description of the incident, the date of the incident, the individuals potentially affected, the date of discovery, the type of PHI involved, any recommendations that should be made to individuals for their protection, a description of how MPHO is and proposes to mitigate any harm to individuals, a description of how MPHO is and will prevent future incidents, and any other information reasonably requested by the HCP so that it may comply with its obligations under HITECH.
  - ii. To cooperate and coordinate with the HCP to further investigate any breach incident, to assist in making notifications to individuals as necessary, to mitigate any harm resulting or that may result from a breach incident, and to take any other actions that the HCP deems necessary to comply with HITECH.
4. Ensure that any of its agents or subcontractors to which MPHO provides PHI received from or created or received on behalf of the HCP agrees to the same restrictions and conditions that apply through this Agreement to MPHO with respect to PHI
  5. To the extent MPHO maintains PHI in a designated record set (as defined by the Privacy Rule) or in an electronic health record (as defined by HITECH) and at the

request of the HCP, make such PHI or electronic health record available for access to the HCP except for:

- a. PHI or an electronic health record maintained by MPHO which is a copy of PHI or an electronic health record held by the HCP; or
  - b. Information that is protected by the Privacy Rule or other applicable law from disclosure.
6. To the extent MPHO maintains PHI in a designated record set (as defined by the Privacy Rule) and at the request of the HCP, make available to the HCP such PHI for amendment and incorporate any amendments to PHI provided by the HCP.
7. At the request of the HCP, provide documentation of disclosures of PHI or electronic health records made by MPHO and provide the following information related to each such disclosure for purposes of enabling the HCP to provide an accounting of disclosures of PHI or electronic health records as required under the Privacy Rule, as amended by HITECH or otherwise:
- a. The date of the disclosure;
  - b. The name of the entity or person who received PHI or electronic health record and, if known, the address of such entity or person;
  - c. A brief description of PHI or electronic health record disclosed; and
  - d. A brief statement of the purpose of the disclosure that reasonably informs the HCP of the basis for the disclosure.

The foregoing is subject to all of the exceptions to an accounting of disclosures of PHI provided in the Privacy Rule (*e.g.*, no accounting is required for disclosures of PHI made in connection with health care operations as defined by the Privacy Rule); provided however, that all disclosures of electronic health records for purposes of treatment, payment activities, and health care operations shall be documented for purposes of providing individuals with an accounting of such disclosures.

8. Make its internal practices, books, and records relating to the use and disclosure of PHI received from or by MPHO on behalf of the HCP available to the Secretary for purposes of determining the HCP's compliance with the Privacy Rule and the Security Rule, as amended by HITECH or otherwise, and any guidance issued with respect to the foregoing.

## **Obligations of HCP**

The HCP shall:

1. Not request MPHO to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule, as amended by HITECH or otherwise, if done by the HCP.
2. Notify MPHO of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect MPHO's use or disclosure of PHI.
3. Notify MPHO of any limitations in or changes to its Notice of Privacy Practices to the extent that such limitation or change may affect MPHO's use or disclosure of PHI.
4. Notify MPHO of any restriction on the use or disclosure of PHI that it has agreed to in accordance with the Privacy Rule or is required to make pursuant to HITECH to the extent that such restriction may affect MPHO's use or disclosure of PHI.

## **Material Breach Involving PHI**

Upon the HCP's knowledge of a material breach by MPHO of the provisions of this Agreement involving the use or disclosure of PHI, the HCP shall provide MPHO with written notice of such breach, including a description of the manner in which the circumstances leading to such breach can be cured. The HCP shall provide MPHO with an opportunity to cure by taking steps to change such circumstances within the sixty-day period following the notice. If the breach is not cured within such sixty-day period, the HCP may terminate this Agreement, if feasible. MPHO acknowledges that if termination under those circumstances is not feasible, the HCP is obligated to report the violation to the Secretary of the United States Department of Health and Human Services.

In the event MPHO learns of a pattern of activity or practice by the HCP of material breach or violations of the terms and conditions set forth herein, if the HCP fails to cure or end such breach or violations, MPHO shall have the right to terminate this Agreement, or if termination is not feasible, report the material breach or violations to the Secretary.

## **Effect of Termination or Cancellation**

MPHO and the HCP acknowledge that PHI will be needed by MPHO following the termination or cancellation of the Agreement for purposes described herein, and that it therefore is not feasible for MPHO to return or destroy all PHI received from or on behalf of the HCP. Therefore, MPHO shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return infeasible for so long as MPHO maintains such PHI. These provisions shall survive termination of this Agreement.