



*The Department of Services  
for Children, Youth and  
Their Families*

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*Division of Management Support Services*

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Attention DSCYF Provider:

As a DSCYF service provider the attached document is being provided to you for your records. The document is referred to as a “Business Associate Addendum”. It is a requirement by the federal government related to the confidentiality of protected health information of clients. By reference in Article I, Section B.4 of the Statement of Agreement included in every contract, the addendum becomes part of the contract. *Please keep this document for your records.*

If DSCYF determines that you meet the definition for Business Associate as that term is defined in the Health Insurance Portability and Accountability Act (HIPAA) of 1996, you will be subject to certain HIPAA requirements as outlined in the attached addendum.

If you have concerns or questions, please contact your DSCYF contract manager.

Thank you,

H. Ryan Bolles, Jr.  
DSCYF – Contract Administrator  
302-892-4557

## BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (hereinafter “Addendum”) supplements and is made a part of the Contract (“Contract”) between the Contractor (hereinafter “Contractor”, “Business Associate” or “Associate”) and the Department (hereinafter “Department” or “Covered Entity”) and applies to the Contractor if the Contractor is a “Business Associate” of the Department as that term is defined in 45 CFR Section 160.103.

The purpose of this Addendum is to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information (“PHI”) and Business Associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as “HIPAA”).

### §1. **Definitions.**

- a. **Business Associate** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.
- b. **Covered Entity** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.
- c. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
- d. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
- e. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 CFR Parts 160 and 164.
- f. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
- g. **Protected Information** shall mean PHI provided by Covered Entity to Associate or created or received by Associate on Covered Entity’s behalf.

§2. **HIPAA Compliance; Agents.** Business Associate agrees that to the extent it has access to PHI, Business Associate will fully comply with the requirements of HIPAA and this Addendum with respect to such PHI, and Associate acknowledges that this Addendum does not in any manner grant Associate any greater rights than Covered Entity enjoys, nor shall this Addendum be deemed to permit or authorize Business Associate to use or further disclose PHI in a manner that would otherwise violate the requirements of HIPAA if done by Covered Entity; and further, Associate agrees that every agent, subcontractor, employee, subsidiary, and affiliate of Business

Associate to whom it provides PHI received from, created or received by Business Associate on behalf of Covered Entity, will be required to fully comply with HIPAA and will be bound by written agreement to the same restrictions and terms and conditions as set forth in this Addendum.

§3. **Required or Permitted Use.** Associate shall not use Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under the Contract and this Addendum, provided that such use would not violate the Privacy Rule if so used by the Covered Entity, except that Associate may also use Protected Information (i) for the proper management and administration of Associate, (ii) to carry out the legal responsibilities of Associate, or (iii) for Data Aggregation purposes for Covered Entity.

§4. **Required or Permitted Disclosure.** Associate shall not disclose Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under the Contract and this Addendum, or in any manner that would constitute a violation of the Privacy Rule if disclosed by the Covered Entity, except that Associate may disclose Protected Information (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate (iii) as required by law, or (iv) for Data Aggregation purposes for the Covered Entity.

If the disclosures are not required by law, then to the extent that Associate discloses Protected Information to a third party, Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach.

§5. **Safeguards; Location.** Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by this Contract and Addendum. Business Associate agrees to notify Covered Entity of the location of any PHI disclosed by Covered Entity or created by Business Associate on behalf of Covered Entity and held by or under the control of Business Associate or those to whom Business Associate has disclosed such PHI.

§6. **Audits and Inspection; Enforcement.** Associate and its agents or subcontractors shall allow Covered Entity, at any time during normal business hours, and without prior notice, to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that Covered Entity shall protect the confidentiality of all confidential and proprietary information of Associate to which Covered Entity has access during the course of such inspection. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under this Contract.

§7. **Certification.** To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security

practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.

§8. **Assistance with Investigations.** Business Associate agrees to fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of HIPAA and any investigation of Covered Entity regarding compliance with HIPAA conducted by the U.S. Department of Health and Human Services ("DHHS"), Office of Civil Rights ("OCR"), or any other administrative or judicial body with jurisdiction.

§9. **Minimum Necessary.** Business Associate must limit any use, disclosure, or request for use or disclosure to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of HIPAA. Associate represents that all uses, disclosures, and requests it will make shall be the minimum necessary in accordance with HIPAA requirements. Covered Entity may, pursuant to HIPAA, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate. Associate acknowledges that if Business Associate is also a covered entity, as defined by HIPAA, Business Associate is required, independent of Business Associate's obligations under this Addendum, to comply with the HIPAA minimum necessary requirements when making any request for PHI from Covered Entity.

§10. **Records and Requests for PHI; Cooperation.** Business Associate shall maintain such records of PHI received from, or created or received on behalf of, Covered Entity and shall document subsequent uses and disclosures of such information by Business Associate as may be deemed necessary and appropriate in the sole discretion of Covered Entity. Associate agrees to notify the Covered Entity within five (5) business days of the Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Associate shall cooperate fully with the Covered Entity in such challenge. Business Associate shall provide the Covered Entity with reasonable access to examine and copy such records and documents of Business Associate during normal business hours.

§11. **Government Access to Books, Records, and Other Information.** Business Associate shall make available to the Secretary of the U.S. Department of Health and Human Services, Office of Civil Rights or any other administrative or judicial body with jurisdiction, its 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 Covered Entity as required to determine the Covered Entity's or Business Associate's compliance with HIPAA. Associate shall concurrently also provide to Covered Entity a copy of any Protected Information that Associate provides to others under this section.

§12. **Designated Record Set; Access.** Business Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to the Covered Entity, or otherwise as directed by Covered Entity, available to an individual, for inspection and copying at any time within normal business hours to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, an individual's right to access their PHI under 45 CFR Section 164.524.

§13. **Accounting of Disclosures.** Business Associate shall make available PHI or any other information required to provide, or assist in preparing, an accounting of disclosures in accordance with 45 CFR Section 164.528. At a minimum, the Business Associate shall, upon request from the Covered Entity, provide the Covered Entity with the following information: (i) the date of the disclosure (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose or basis for such disclosure.

§14. **Report of Improper Use or Disclosure; Action.** During the term of this Contract, Associate shall notify the Covered Entity within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

§15. **Amendment of PHI; Notification.** Within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify the Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Associate or its agents or subcontractors shall be the responsibility of the Covered Entity.

Business Associate shall make reasonable efforts to notify and provide the amendment to persons, organizations, or other entities, including other business associates, known by Business Associate to have received the Protected Information that is the subject of the amendment and who may have relied, or could foreseeably rely, on such information to the detriment of the individual who is the subject of the PHI.

§16. **Additional Termination Rights.** A breach by Associate of any provision of this Addendum, as determined by Covered Entity, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract by the Covered Entity pursuant to Article IV of the Contract.

§17. **Breach or Violation; Knowledge.** If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Addendum, Covered Entity shall take any steps reasonably necessary to cure such breach or end such violation, and, if such steps are unsuccessful, shall either (a) terminate the Contract, if feasible, or (b) if termination is not feasible, report the breach or violation to DHHS.

§18. **Return of Protected Information.** Business Associate agrees that upon termination of the Contract, Business Associate shall, at the option of Covered Entity, return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information. If Covered Entity elects destruction of the PHI, Associate shall certify in writing to Covered Entity that such PHI has been destroyed. If such return or destruction is not feasible,

Associate agrees to extend the protection of this Addendum to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

§19. **Disclaimer.** Covered Entity makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

§20. **Effect on Contract.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.

§21. **Interpretation.** This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

§22. **Amendment.** The Business Associate and the Covered Entity agree to amend this Addendum to the extent necessary to allow either party to comply with HIPAA.