

## **HIPAA Business Associate Addendum**

1. **BACKGROUND AND PURPOSE.** The Parties have entered into, and may in the future enter into, one or more written agreements, that require Contractor to be provided with, to have access to, and/or to create Protected Health Information (the “Underlying Contract(s)”), that is subject to the federal regulations issued pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) and codified at 45 C.F.R. parts 160 and 164 (“HIPAA Regulations”). This Addendum shall supplement and/or amend each of the Underlying Contract(s) only with respect to Contractor’s receipt, Use, Disclosure, and creation of PHI under the Underlying Contract(s) to allow Agency to comply with sections 164.502(e) and 164.314(a)(2)(i) of the HIPAA Regulations. Except as so supplemented and/or amended, the terms of the Underlying Contract(s) shall continue unchanged and shall apply with full force and effect to govern the matters addressed in this Addendum and in each of the Underlying Contract(s).
  
2. **DEFINITIONS.** Unless otherwise defined in this Addendum, all capitalized terms used in this Addendum have the meanings ascribed in the HIPAA Regulations, provided, however, that “PHI” and “E PHI” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. §160.103, limited to the information Contractor received from or created or received on behalf of Agency as Agency’s Business Associate. “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards” in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Contractor’s workforce, not Agency’s workforce, in relation to the protection of that information.
  
3. **OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI.**
  - 3.1. **Obligations of Contractor.** With regard to its Use and/or Disclosure of PHI, Contractor agrees to:
    - a. not Use or Disclose PHI other than as permitted or required by this Addendum or as Required By Law. [§164.504 (e)(2)(ii)(A)]
    - b. use appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this Addendum. [§164.504 (e)(2)(ii)(B)]
    - c. report to Agency any Use or Disclosure of PHI not provided for by this Addendum of which Contractor becomes aware. [§164.504 (e)(2)(ii)(C)]
    - d. ensure that any agents and subcontractors to whom it provides PHI received from, or created or received by Contractor on behalf of Agency agree to the same restrictions and conditions set forth in the business associate provisions of the HIPAA Regulations that apply through this Addendum to Contractor with respect to such information. [§164.504 (e)(2)(ii)(D)]
    - e. within twenty (20) days of receiving a written request from Agency, make available to the Agency PHI necessary for Agency to respond to Individuals’ requests for access to PHI about them in the event that the PHI in Contractor’s possession constitutes a Designated Record Set. [§164.504 (e)(2)(ii)(E)]

- f. within forty (40) days of receiving a written request from Agency, make available to the Agency PHI for amendment and incorporate any amendments to the PHI in accordance with 45 C.F.R. Part 164 Subpart E (“Privacy Rule”) in the event that the PHI in Contractor’s possession constitutes a Designated Record Set. [§164.504 (e)(2)(ii)(F)]
- g. within forty (40) days of receiving a written request from Agency, make available to the Agency the information required for the Agency to provide an accounting of disclosures of PHI as required by the Privacy Rule. [§164.504 (e)(2)(ii)(G)]
- h. make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary of HHS for purposes of determining Agency's compliance with the Privacy Rule. [§164.504 (e)(2)(ii)(H)]
- i. upon the expiration or termination of an Underlying Contract, return to Agency or destroy all PHI, including such information in possession of Contractor’s subcontractors, as a result of the Underlying Contract at issue and retain no copies, if it is feasible to do so. If return or destruction is infeasible, Contractor agrees to extend all protections, limitations and restrictions contained in this Addendum to Contractor’s Use and/or Disclosure of any retained PHI, and to limit further Uses and/or Disclosures to the purposes that make the return or destruction of the PHI infeasible. This provision shall survive the termination or expiration of this Addendum and/or any Underlying Contract. [§164.504 (e)(2)(ii)(I)]
- j. use reasonable commercial efforts to mitigate any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Addendum.
- k. implement Administrative Safeguards, Physical Safeguards, and Technical Safeguards (“Safeguards”) that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of ePHI as required by 45 C.F.R. Part 164 Subpart C (“Security Rule”). [§164.314 (a)(2)(i)(A)]
- l. ensure that any agent and subcontractor to whom Contractor provides ePHI agrees to implement reasonable and appropriate safeguards to protect ePHI. [§164.314 (a)(2)(i)(B)]
- m. report promptly to Agency any successful Security Incident of which Contractor becomes aware [§164.314 (a)(2)(i)(C)]; provided, however, that with respect to attempted unauthorized access, Use, Disclosure, modification, or destruction of information or interference with system operations in an information system affecting ePHI, such report to Agency will be made available upon written request.
- n. make its policies, procedures and documentation required by the Security Rule relating to the Safeguards available to the Secretary of HHS for purposes of determining Agency's compliance with the Security Rule. [68 Fed. Reg. 8334, 8359]

**3.2. Permitted Uses and Disclosures of PHI.** Except as otherwise specified in this Addendum, Contractor may make any and all Uses and Disclosures of PHI necessary to perform its obligations under the Underlying Contracts. Unless otherwise limited herein, Contractor may:

- a. Use the PHI in its possession for its proper management and administration and to carry out the legal responsibilities of Contractor [§164.504 (e)(4)(i)];

- b. Disclose the PHI in its possession to a third party for the purpose of Contractor's proper management and administration or to carry out the legal responsibilities of Contractor, provided that the Disclosures are Required By Law or Contractor obtains reasonable assurances from the third party regarding the confidential handling of such PHI as required under the Privacy Rule [§164.504 (e)(4)(ii)];
- c. provide Data Aggregation services relating to the Health Care Operations of the Agency [§164.504 (e)(2)(i)(B)]; and
- d. de-identify any and all PHI obtained by Contractor under this Addendum, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule. [§164.502 (d)(1)]

### **3.3. Obligations of Agency.**

- a. Agency agrees to timely notify Contractor, in writing, of any arrangements between Agency and the Individual that is the subject of PHI that may impact in any manner the Use and/or Disclosure of that PHI by Contractor under this Addendum.
- b. Covered entities are required to notify clients whose PHI has been - or is reasonably believed by the covered entity to have been - accessed, acquired or disclosed as a result of a breach. Agency will evaluate and determine based on HIPAA regulations if client notification is required. If so, Agency will follow regulations for client notification.

- 4. TERMINATION BY AGENCY.** Should Agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this Addendum by Contractor, the Agency shall provide Contractor with written notice of such breach in sufficient detail to enable Contractor to understand the specific nature of the breach. Agency shall be entitled to terminate the Underlying Contract associated with such breach if, after Agency provides the notice to Contractor, Contractor fails to cure the breach within a reasonable time period not less than thirty (30) days specified by Agency in such notice; provided, however, that such time period specified by Agency shall be based on the nature of the breach involved. [§§164.504 (e)(1)(ii)(A),(B) & 164.314 (a)(2)(i)(D)].

## **5. ADDITIONAL HITECH REQUIREMENTS**

**5.1. HITECH Act.** The Health Information Technology for Economic and Clinical Health Act ("HITECH"), an act of the American Recovery and Reinvestment Act, imposes additional security and privacy requirements on Covered Entities and their Business Associates, and the Parties acknowledge that under HITECH, Contractor is directly subject to all of the privacy and security provisions of HITECH applicable to Business Associates.

**5.2. HITECH Compliance.** Contractor agrees at all times to comply with all applicable requirements of HITECH as the same relate to Business Associates.

**5.3. HITECH Breach Notifications.** As it relates to the activities Contractor is performing on behalf of Agency under the Underlying Contract(s), Contractor agrees to issue any notifications required to be given by a Business Associate to a Agency related to a Breach of any Unsecured PHI or ePHI discovered by Contractor. [§164.410(a)] Contractor shall notify Agency promptly, and in no event later than 60-days after discovering that such a Breach has occurred. [§164.410(b)]

**6. MISCELLANEOUS.**

**6.1. Interpretation.** The terms of this Addendum shall prevail in the case of any conflict with the terms of any Underlying Contract to the extent necessary to allow Agency to comply with HITECH and the HIPAA Regulations. The bracketed citations to the HIPAA Regulations in several paragraphs of this Addendum are for reference only and shall not be relevant in interpreting any provision of this Addendum.

**6.2. No Third Party Beneficiaries.** Nothing in this Addendum shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

**6.3. Amendment.** To the extent that any relevant provision of HITECH or the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Addendum to give effect to these revised obligations.

IN WITNESS WHEREOF, each of the undersigned has caused this Addendum to be duly executed in its name and on its behalf.

COMMUNITY HEALTH AND COUNSELING SERVICES

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

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

Print Name: Bernard Angst

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

Print Title: CFO

Print Title: Foster Parent

Date: \_\_\_\_\_

Date: \_\_\_\_\_