

**BUSINESS ASSOCIATE ADDENDUM**  
**TO STANDARD AGREEMENT/CONTRACT**

This Business Associate Addendum, effective, \_\_\_\_\_, 201\_\_ (“Effective Date”), is entered into by and between \_\_\_\_\_ (the “Business Associate”), and the Jefferson County Board of Health (the “Board” or the “Covered Entity”) for the purposes of complying with the privacy and security regulations issued by the United States Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and the privacy, security and security breach notification provisions applicable to a Business Associate under the HIPAA Rules as defined herein.

**Definitions**

Catch-all definition:

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, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- (a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean [**Insert Name of Business Associate**].
- (b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the **Jefferson County Board of Health**.
- (c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

**Permitted Uses and Disclosures by Business Associate**

- (a) Business associate may only use or disclose protected health information as follows.

Business Associate shall not use Protected Information except for the purpose of performing Business Associate’s obligations under the Agreement and as permitted under the Agreement and Addendum. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity.

To the extent allowed by law and not prohibited in the Agreement, Business Associate may use and disclose Protected Health Information created, received, maintained or transmitted by or on behalf of the Board in the following ways:

- As needed to perform functions, activities or services for, or on behalf of, the Board, in accordance with the contractual or other arrangements between the Board and Business Associate;
- As needed for the proper management and administration of Business Associate
- As required to carry out the legal responsibilities of Business Associate;
- If specifically provided for in the Agreement, this Addendum or other arrangement between the Board and Business Associate, to provide data aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i).

In the case of Business Associate's disclosure of Protected Health Information for management, administrative or legal purposes, Business Associate must first obtain reasonable written assurances from the person or entity to whom the Protected Health Information is disclosed that the Protected Health Information will be kept confidentially and used only as required by law or for the purpose in which it is disclosed and that Business Associate will be notified in the event of a confidentiality breach.

- (b) Business associate may use or disclose protected health information as required by law.
- (c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.
- (d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity.

### **Obligations and Activities of Business Associate**

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

- (c) Report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware, including, without limitation thereto, the following.
- **Reporting of Improper Access, Use or Disclosure.** In addition to any other duty to report a Breach, Business Associate will immediately (i.e. within ten (10) business days) report in writing to the Board any improper access, use or disclosure, of which Business Associate becomes aware, of any Protected Health Information created, received, maintained, or transmitted by or on behalf of the Board that is inconsistent with applicable law and/or the provisions of the Agreement or this Addendum.
  - **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. § 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity’s obligations under the Agreement or Addendum or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity’s obligations under the Agreement or Addendum or other arrangement within five (5) business days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
  - **Reporting of Security Incidents.** In addition to the reporting of improper access, disclosure or use as otherwise required, Business Associate further agrees to promptly report to the Board in writing, any security incident of which it becomes aware. This does not include trivial incidents that occur on a daily basis, such as scans, “pings,” or unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate.
- (d) 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 protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy covered entity’s obligations under 45 CFR 164.524;

- (f) Make any amendment(s) to protected health information 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;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the [Choose either "covered entity" or "individual"] as necessary to satisfy covered entity's obligations under 45 CFR 164.528;
- (h) To the extent the business associate 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); and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **Term and Termination**

- (a) Term. The Term of this Agreement shall be effective as of [Insert effective date], and shall terminate on [Insert termination date or event] or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- (b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement and business associate has not cured the breach or ended the violation within the time specified by covered entity.
- (c) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, business associate shall return to covered entity or, if agreed to by covered entity, destroy all protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, that the business associate still maintains in any form. Business associate shall retain no copies of the protected health information. If return or destruction of the protected health information is not feasible, the protections and the limitations on the use of the protected health information remain in effect upon termination, and disclosure and use of such protected health information is limited solely to those functions that are legally permissible and that make the return or destruction of the protected health information infeasible.
- (d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

## No Agency

- (a) Business Associate agrees that in performing its services under the contract to which this Business Associate Agreement is an addendum, and in complying with the requirements of this Business Associate Agreement, it acts as an independent contractor and is not an agent of the Covered Entity.
- (b) Business Associate agrees that neither this Business Associate Agreement nor the contract to which it is an addendum gives the Covered Entity such control over the operational activities of the Business Associate so as to make the Business Associate or any subcontractor of the Business Associate an agent of the Covered Entity.

## Insurance and Risk

- (a) Business Associate agrees that during the term of this Agreement it will maintain appropriate and sufficient insurance to cover HIPAA violations it may commit.
- (b) Business Associate agrees to defend and indemnify the Covered Entity for violations of HIPAA by the Business Associate.
- (c) Business Associate agrees to require its subcontractors to maintain appropriate and sufficient insurance to cover Covered Entity and Business Associate form HIPAA violations committed by each respective subcontractor.
- (d) Business Associate agrees to require its subcontractors to defend and indemnify the Covered Entity and the Business Associate for violations of HIPAA by each respective subcontractor.

## Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- (c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum Effective Date.

**Covered Entity:** Jefferson County Board of Health

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

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

**Title:** \_\_\_\_\_

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

**Business Associate:** \_\_\_\_\_

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

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

**Title:** \_\_\_\_\_

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