

APPENDIX H

**HIPAA Business Associate Agreement**

**Federal Health Insurance Portability and Accountability Act (HIPAA)**

I. Definitions:

- (a) A "Business Associate" shall mean: \_\_\_\_\_
- (b) The "Covered Program," shall mean: New York State Office of the Medicaid Inspector General
- (c) Other terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations, including those at 45 CFR Parts 160 and 164.
- (d) "This Agreement" shall mean this Business Associate appendix as well as all other provisions pertaining to confidentiality in the agreement to which it is attached.

II. Obligations and Activities of the Business Associate:

- (a) The Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- (b) The Business Associate agrees to use the appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information that it creates receives, maintains or transmits on behalf of the Covered Entity pursuant to this Agreement.
- (c) The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Agreement.
- (d) The Business Associate agrees to report to the Covered Program, any use or disclosure of the Protected Health Information not provided for by this Agreement, as soon as reasonably practicable. The Business Associate also agrees to report to the Covered Entity any security incident of which it becomes aware.
- (e) The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Program, agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information.
- (f) The Business Associate agrees to provide access, at the request of the Covered Program and in the time and manner designated by the Covered Program to Protected Health Information in a Designated Record Set, to the Covered Program or, as directed by the Covered Program to an Individual in order to meet the requirements under 45 CFR 164.524, if the Business Associate has Protected Health Information in a designated record set.
- (g) The Business Associate agrees to make amendment(s) to Protected Health Information in a designated record set that the Covered Program directs or agrees to pursuant to 45 CFR 164.526 at the request of the Covered Program or an Individual, and in the time and manner designated by Covered Program, if the Business Associate has Protected Health Information in a designated record set.

## APPENDIX H

- (h) The Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate on behalf of, the Covered Program available to the Covered Program, or to the Secretary of Health and Human Services, in a time and manner designated by the Covered Program or the Secretary, for purposes of the Secretary determining the Covered Program's compliance with the Privacy Rule.
- (i) The Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) No disclosures shall be made without the prior written permission of the Covered Program.
- (k) The Business Associate agrees to provide to the Covered Program or an Individual, in time and manner designated by Covered Program, information collected in accordance with this Agreement, to permit Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

### III. Permitted Uses and Disclosures by Business Associate

#### (a) General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Program as specified in the Agreement to which this is an addendum, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Program.

#### (b) Specific Use and Disclosure Provisions:

- (1) Except as otherwise limited in this Agreement, the Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (2) The Business Associate may use Protected Health Information to report violations of law to appropriate federal and State authorities, consistent with 45 CFR '164.502(j)(1).

### IV. Obligations of Covered Program(s)

#### Provisions for the Covered Program to Inform the Business Associate of Privacy Practices and Restrictions

- (a) The Covered Program shall notify the Business Associate of any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information.
- (b) The Covered Program shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information.

## APPENDIX H

- (c) The Covered Program shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Program has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.

### V. Permissible Requests by Covered Program

The Covered Program shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Program

### VI. Term and Termination

- (a) **Term.** Effective April 21, 2005 in the event of termination for any reason, all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Agreement.
- (b) **Termination for Cause.** Upon the Covered Program's knowledge of a material breach by Business Associate, the Covered Program in a contractual relationship with the Business Associate may provide an opportunity for the Business Associate to cure the breach and end the violation or may terminate this Agreement and the contract if the Business Associate does not cure the breach and end the violation within the time specified by that Covered Program, or the Covered Program, may immediately terminate this Agreement and contract if the Business Associate has breached a material term of this Agreement and cure is not possible.
- (c) **Effect of Termination.**
  - (1) Except as provided in paragraph (c)(2) below, upon termination of this Agreement, for any reason, the Business Associate shall return or destroy all Protected Health Information received from the Covered Program, or created or received by the Business Associate on behalf of the Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate.
  - (2) In the event that returning or destroying the Protected Health Information is infeasible, the Business Associate shall provide to the Covered Program, notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, the Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such Protected Health Information.

### VII. Violations

- (a) It is further agreed that any violation of this Agreement may cause irreparable harm to the Covered Program; therefore the Covered Program may seek any other remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- (b) The Business Associate shall indemnify and hold the Covered Program harmless against all claims and costs resulting from acts/omissions of the Business Associate in connection with the Business Associate's obligations under this agreement. This provision shall survive the expiration or termination of this agreement.

APPENDIX H

**Miscellaneous**

- (a) **Regulatory References.** A reference in this Agreement to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- (b) **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Program to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (c) **Survival.** The respective rights and obligations of the Business Associate under Section VI and VII of this Agreement shall survive the term termination of this Agreement.
- (d) **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Program to comply with the HIPAA Privacy Rule.
- (e) If anything in this agreement conflicts with a provision of any other agreement on this matter, this agreement is controlling.
- (f) **HIV/AIDS.** If HIV/AIDS information is to be disclosed under this agreement, the Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.

<b>Contractor</b>	
Signature	Date
Print Name	Title

<b>Agency</b>	
<b>Office of the Medicaid Inspector General</b>	
Signature	Date
Print Name	Title