

Arizona Department Child Safety  
 Health Insurance Portability & Accountability Act of 1996 – HIPAA  
 and Health Information Technology for Economic and Clinical Health Act of  
 2009 - HITECH  
 Business Associate Agreement

The Arizona Department of Child Safety (DCS) and undersigned Business Associate hereby enter into this Business Associate Agreement (“BAA” or “Agreement”).

This BAA has the same effective date as the Contract, Intergovernmental Agreement, Memorandum of Understanding or Interagency Service Agreement to which it is appended (“Related Contract” or “Contract”), or the date of the last signature, whichever is later. If there is no Related Contract, the effective date of this BAA is the date of the last signature to this Agreement. This Agreement supplements any Contract between DCS and the Business Associate which involves the disclosure of Protected Health Information (“PHI”) and Electronic Protected Health Information (EPHI) as defined in HIPAA. In the event of conflicting terms or conditions, this Agreement’s terms shall supersede the provisions of the Related Contract to which it is appended.

DCS and the Business Associate agree to comply with applicable Privacy and Security Standards of HIPAA and HITECH, and with other applicable federal and state laws, in order to protect the privacy of PHI in any form and to safeguard the confidentiality, integrity, and availability of any Electronic PHI (“ePHI”) related to this Agreement.

- 1.0. DEFINITIONS.** Capitalized terms not otherwise defined in this Agreement shall have the same meanings as those terms in the Privacy Rule and HITECH.
- 1.1 **Breach** shall have the meaning given to such term under the HITECH Act (42 U.S.C. § 17921).
- 1.2 **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act (45 C.F.R. § 160.103 and 42 U.S.C. §17938).
- 1.3 **Data Aggregation** shall have the meaning given to such term under the Privacy Rule (45 C.F.R. §164.501).
- 1.4 **Designated Record Set** shall have the meaning given to such term under the Privacy Rule (45 C.F.R. §164.501).
- 1.5 **Electronic Health Record** shall have the meaning given to such term in the HITECH Act (42 C.F.R. § 17921).
- 1.6 **Electronic Protected Health Information** shall have the meaning given to such term under the Privacy Rule (45 CFR §134.501and §106.103)
- 1.7 **Health Care Operations** shall have the meaning given to such term under the Privacy Rule (45 C.F.R. §164.501).
- 1.8 **Individual** shall have the meaning given to such term under the Privacy Rule (45 C.F.R. §160.103) and shall include a person who qualifies as a personal representative (45 C.F.R. §164.502(g)).

- 1.9 **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- 1.10 **Protected Health Information** shall have the meaning given to such term under the Privacy Rule (45 C.F.R. §164.501). Protected Health Information includes Electronic Protected Health Information (C.F.R. §160.103 and §164.501).
- 1.11 **Protected Information** shall have the meaning given to such term under the Privacy Rule (45 C.F.R. §164.501). Protected Information includes Electronic Protected Information (C.F.R. §160.103 and §164.501).
- 1.12 **Required By Law** shall have the meaning given to such term under the Privacy Rule (45 C.F.R. §164.512).
- 1.13 **Secretary** shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.
- 1.14 **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- 1.15 **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act ( 42 U.S.C. §17932(h)).

**2.0 PERMITTED USES AND DISCLOSURES OF PHI.** The Business Associate will use and disclose PHI only for those purposes necessary to perform functions, activities, or services for, or on behalf of, DCS as specified in the underlying Contract, this BAA , or as Required By Law. Any use or disclosure by the Business Associate shall not violate applicable Privacy Rule provisions, the terms of this BAA, or DCS policies and procedures for using or disclosing only the Minimum Necessary PHI.

**2.1 Prohibited Use and Disclosures.** The Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. The Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested a restriction and has paid out of pocket in full for health care items or services to which the PHI solely related as described in 42 U.S.C. §17935(a). The Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of DCS and as permitted by the HITECH Act, 42 U.S.C. §17935(d)(2); however, this prohibition shall not affect payment by DCS to the Business Associate for services provided pursuant to the Contract. Disclosure for research is prohibited without DCS's permission prior to such disclosure.

**2.2 Business Activities of Business Associate.** The Business Associate may use PHI for the necessary management and administration of the Business Associate, or to carry out the legal responsibilities of the Business Associate if:

- 1. The disclosure is Required By Law; or
- 2. The Business Associate obtains reasonable written assurances from a third party receiving the PHI that the third party will:
  - i. Maintain the confidentiality of the PHI;

- ii. Use or disclose the PHI only as Required By Law or for the purpose for which the PHI was disclosed to the person;
- iii. Notify the Business Associate within 1 business day of any discovered breach of confidentiality of the Protected Information (42 U.S.C. §17932; 45 C.F.R. §164.504(e)(2)(ii)(D)) and comply in writing with paragraphs 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6; and
- iv. Ensure that any third party to whom it provides Protected Information receives from, or created or received by the Business Associate on behalf of DCS, agrees to the same restrictions and conditions that apply to the Business Associate with respect to such information (45 C.F.R. §164.504 (e)(2)(ii)(D)).

2.3 **Aggregation of PHI.** The Business Associate shall provide data aggregation services with regard to PHI created or received from or on behalf of DCS, if requested to do so by DCS. (45 C.F.R. §164.504(e)(2)(i)(B)).

2.4 **De-Identification of PHI.** Under 45 C.F.R. §164.502(d) (2), de-identified information does not constitute PHI and is not subject to the terms of this Agreement. The Business Associate may de-identify any and all PHI, provided

- 1. The de-identification conforms to the requirements of 45 C.F.R. §164.514(b),
- 2. The Business Associate maintains the documentation required by 45 C.F.R. §164.514(b), and
- 3. The Business Associate gives written assurance to DCS that the Business Associate appropriately maintains the documentation required by 45 C.F.R. §164.514(b).

### 3.0 **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.**

3.1 **Safeguards.** The Business Associate shall implement appropriate safeguards as are necessary to ensure the use or disclosure of protected information is permitted under HIPAA by the Contract and the Business Associate Agreement, including, but not limited to, administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R §164.308, §164.310, §164.312 and §164.316. The Business Associate shall comply with all the policies, procedures, and documentation requirements of the HIPAA Rule.

3.2 **Reporting Impermissible Use or Disclosure and Security Incidents.** The Business Associate agrees to report to DCS in writing of any access, use or disclosure of Protected Information not permitted by the contract or the Business Associate Agreement, and any breach of Unsecured PHI of which it becomes aware of as described in 42 U.S.C. §17921 and 45 C.F.R. §134.308(b) and §164.504(e)(2)(ii)(C), within 1 business day after discovery. The Business Associate shall:

- 1. Promptly take corrective action to secure any such deficiencies; and
- 2. Contact the DCS Privacy Officer within 1 business day after discovery of incident; and
- 3. Grant prompt and immediate access to DCS or the State of Arizona authorized by DCS to participate in the incident investigation, mitigation, resolution, or breach notification; and

4. Secure and preserve all records pertinent to the incident; and
5. Promptly require within 1 business day of incident discovery applicable subcontractors and agents to secure and preserve all records pertinent to the incident; and
6. Take any action pertaining to such unauthorized disclosure required by applicable federal and state statutes and regulations.

3.3 **Mitigation.** The Business Associate agrees to mitigate any harmful effects that are known to result in a use or disclosure of PHI by the Business Associate or its agents or subcontractors in violation of the requirements of this Agreement (45 C.F.R §164.530(f)).

3.4 **Agents and Subcontractors.** The Business Associate agrees to the following:

1. Ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by the Business Associate on behalf of DCS, agrees in writing to the same restrictions and conditions that apply to the Business Associate through this Agreement with respect to such PHI and implementing the safeguards required by paragraph 2.1 above with respect to Protected Information (45 C.F.R. §164.308(b) and §164.504(e)(2)(ii)(D)).
2. It shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violations as described in 45 C.F.R. §164.530(e)(l) and 164.530(f).

3.5 **Personnel.** The Business Associate shall appropriately inform all of its employees, agents, representatives, and members of its workforce ("Personnel"), whose services may be used to satisfy the Business Associate's obligations under this Agreement and the Related Contract, of the terms of this Agreement. The Business Associate represents and warrants that the Personnel are under sufficient legal obligations to the Business Associate for the Business Associate to fully comply with the provisions of this Agreement. The Business Associate agrees to train its workforce on the HIPAA Rule and keep appropriate records of the training as prescribed in 45 C.F.R. §164.530(b)(1)(2).

3.6. **Access to Protected Information.** The Business Associate shall make Protected Information maintained by the Business Associate or its agents or subcontractors in Designated Record Sets available to DCS for inspection and copying within 10 business days of a request by DCS to enable DCS to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. §164.524. If the Business Associate maintains an Electronic Health Record, the Business Associate shall provide such information in electronic format to enable DCS to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. §17935(e).

3.7 **Individual Access to PHI.** If an Individual requests direct access to PHI in possession of the Business Associate which is maintained under its contract with DCS, the Business Associate will identify the records maintained, collected, used or disseminated by their employees that will become the "Designated Record Set" and shall be considered the only protected health information records that individuals shall have the right to request access to under HIPAA. The Business Associate will provide the

records within 30 days. If the Business Associate denies the request, communication in writing to the DCS Privacy Officer will occur prior to the denial to the individual is made.

- 3.8 **Amendment of PHI.** The Business Associate agrees to allow Individuals the right to request an amendment of their designated record set being maintained on behalf of DCS. Any denial of the amendment will be communicated in writing to the DCS Privacy Officer prior to being provided to the individual. The Business Associate agrees to make any amendment(s) to a Designated Record Set within 5 business days after the Business Associate receives instructions from DCS to amend the records. The Business Associate shall promptly incorporate into the Individual's Designated Record Set, any statements of disagreement and/or rebuttals supplied by the Individual, as required by 45 C.F.R. § 164.526.
- 3.9 **Disclosure of PHI to the Arizona Attorney General.** The Office of the Arizona Attorney General provided legal representation to DCS and as such is a Business Associate to DCS. A request from the Office of the Arizona Attorney General for records created and maintained by the Business Associate on behalf of DCS is to be treated the same as a request from DCS. The records shall be provided in a prompt and complete manner.
- 3.10 **Documentation of Disclosure.** The Business Associate agrees to document all disclosures of PHI made by the Business Associate and information related to such disclosures as would be required by DSC to respond to a request by an Individual for an accounting of disclosures of PHI according to 45 C.F.R. §164.528. At a minimum, the documentation related to the Business Associate's disclosure of PHI shall include:
1. The date of disclosure;
  2. The name of the PHI recipient and, if known, the address of the PHI recipient;
  3. A brief description of the PHI disclosed; and
  4. A brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or instead of such statement, a copy of the written request for disclosure by the Secretary or under 45 C.F.R. §164.512.
- 3.11. **Accounting of Disclosures.** Within 10 business days after receipt of notice from DCS to the Business Associate that DCS has received a request for an accounting of disclosures of an Individual's PHI, the Business Associate agrees to provide DCS with the disclosure information requested by the Individual and as required in paragraph 3.10 above. If an individual requests an accounting of disclosures directly from the Business Associate, the Business Associate shall, within thirty (30) business days, provide or deny an accounting according to 45 C.F.R §164.528. Unless otherwise directed by DCS, the Business Associate shall notify DCS of the action it has taken and shall do so in writing within five (5) business days after the action. The accounting of disclosure shall include all PHI disclosures for the time period the Individual requested, but not for a date earlier than six years prior to the date of creation or last entry, which ever occurred last. If the Business Associate is unable to provide the accounting of disclosure within the allowed time frame, the Business Associate shall provide DCS with a written statement of the reason for delay and the date the Business Associate will provide the accounting.
- 3.12 **Government Access to Records.** For the purpose of determining DCS compliance with the Privacy Rule, as well as the Business Associate's compliance with this BAA,

the Business Associate agrees to make available to DCS or its authorized agent, or to the Secretary, in the time and manner designated:

1. The Business Associate's internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of DCS; and
2. All PHI received by the Business Associate from DCS or created or received by the Business Associate on behalf of DCS.

3.13 **Minimum Necessary.** The Business Associate and its agents and subcontractors shall request, use, and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure as described in 42 U.S.C. § 17935(b); 45 C. F. R. § 164.502(b)(1) and 164.514(d).

3.14 **Data Ownership.** The Business Associate acknowledges that the Business Associate has no ownership rights with respect to the Protected Information.

3.15 **Transaction Standards Regulation.** If the Business Associate conducts in whole or part Standard Transactions for or on behalf of DCS, the Business Associate agrees to comply with the Electronic Data Transaction Standards and Code Sets, 45 C.F.R. Part 162 (I – R). The Business Associate agrees to require any subcontractor or agent involved in conducting Standard Transactions for or on behalf of DCS to comply with the Transaction Standards and Code Sets. The Business Associate and its subcontractors or agents shall not engage in any practice or enter into any agreement related to conducting in whole or in part Standard Transactions for or on behalf of DCS that:

1. Changes the definition, Data Condition, or use of a Data Element or Segment in a Standard Transaction;
2. Adds a Data Element or Segments to the maximum defined Data Set;
3. Uses any code or Data Element that is marked "not used" in the Standard Transaction's implementation specification or that is not in the Standard Transaction's implementation specification; or
4. Changes the meaning or intent of the Standard transaction implementation specification.

3.16 **Retention of Records.** All records containing PHI created or received by the Business Associate from or on behalf of DCS will be retained for six years from the date of creation (e.g., PHI) or the date when it last was in effect (e.g., a policy or form), whichever is later.

3.17 **Violations of Law.** The Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j).

3.18 **Audits, Inspection and Enforcement.**

1. Within 10 business days of a written request by DCS, the Business Associate and its agents or subcontractors shall allow DCS to conduct a reasonable inspection of the facilities, systems, books, records, agreements, and policies and procedures relating to the use, acquisition, or disclosure of Protected Information pursuant to this Agreement for the purpose of determining whether the Business Associate has complied with this Agreement; provided, however that:

- i. The Business Associate and DCS shall mutually agree in advance upon the scope, timing and location of such inspection. If an agreement can not be concluded, then DCS will decide; and
  - ii. To the extent allowed by law, DCS shall safeguard all trade secret information of the Business Associate to which DCS has access during the course of such inspection; and
2. The fact that DCS inspects, fails to inspect, or has the right to inspect the Business Associate's facilities, systems, books, records, agreements, and policies and procedures does not relieve the Business Associate of its responsibilities to comply with this Agreement. The following acts by DCS do not constitute acceptance of such practices or waive DCS enforcement rights under the contract or Agreement.
- i. Failure to detect; or
  - ii. Detection, but failure to notify the Business Associate; or
  - iii. Requiring the Business Associate to correct any unsatisfactory practices.
3. The Business Associate shall notify DCS in writing within 1 business day of learning that the Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.
4. Notwithstanding paragraph 3.18.1, pursuant to paragraphs 3.1 through 3.4 and in compliance with 42 U.S.C. §17921 and 45 C.F.R. §164.308(b) and §164.504(e)(2)(ii)(C), Business Associate, its subcontractors and agents shall permit prompt and immediate access to DCS to all physical locations and business records, including electronic records and all relevant data files, under the control or maintained by the Business Associate, its subcontractors and agents on behalf of DCS, for the purpose of mitigating a data breach, conducting a risk analysis and obtaining information which will identify individuals affected.

#### **4.0 OBLIGATIONS OF DCS**

- 4.1. **Notice of Privacy Practices.** DCS shall notify the Business Associate of any changes or limitation(s) in DCS Notice of Privacy Practices according to 45 C.F.R. §164.520, to the extent that such changes or limitation(s) may effect the Business Associate's use or disclosure of PHI.
- 4.2 **Changes in Permission by Individual.** DCS shall notify the Business Associate of any changes in, or revocation of, an Individual's permission to use or disclose PHI, to the extent that such changes may affect the Business Associate's use or disclosure of PHI.
- 4.3 **Restriction on PHI.** DCS shall notify the Business Associate of any restriction on PHI uses and disclosures that DCS has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- 4.4 **Permissible Requests by DCS.** DCS shall not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by DCS.

## 5.0 **TERM AND TERMINATION**

5.1 **Term.** The term of this Agreement is specified on page one (1) of this Agreement or in the Contract to which it is appended and shall terminate when all PHI provided by DCS to the Business Associate, or created or received by the Business Associate on behalf of DCS, is destroyed or returned to DCS. If it is not feasible for the Business Associate to return to DCS or destroy all PHI when this Agreement terminates under the Contract or is terminated early, protections agreed to by the Business Associate are extended to such information, whether PHI is held or controlled by the Business Associate or its agents or subcontractors.

### 5.2 **Effect of Termination.**

1. Except as provided in subparagraph 3 of this paragraph, upon termination of this Agreement for any reason, the Business Associate shall return or destroy all PHI received from DCS, or created or received by the Business Associate on behalf of DCS. No copies or data repositories can be retained as to this information.
2. This provision shall apply to PHI in the possession or under the control of subcontractors or agents of the Business Associate. The Business Associate and its subcontractors and agents shall retain no copies or data repositories of any type of returned or destroyed PHI unless ordered to do so by a court of law.
3. If the Business Associate determines that returning or destroying PHI is not feasible, the Business Associate shall provide to DCS written notification of the conditions making the return or destruction not feasible. The Business Associate shall extend the protections of this Agreement to the PHI and shall limit further uses and disclosures of the PHI to the purpose that make the return or destruction not feasible, for so long as the Business Associate maintains the PHI. If it is not feasible for the Business Associate to recover from a subcontractor or agent any PHI, the Business Associate shall provide a written explanation to DCS. The Business Associate shall require the subcontractor or agent to agree:
  - i. To extend the protections of this Agreement to the PHI in the possession of the subcontractor or agent; and
  - ii. To limit further uses or disclosures of the PHI to the purpose that makes the return or destruction not feasible, for so long as the subcontractor or agent maintains the PHI.

### 5.3 **Termination for Cause.**

1. **Breach of Contract.** Upon DCS's knowledge of a material breach by the Business Associate of the terms of this Agreement, DCS shall take one or more of the following actions:
  - i. Provide an opportunity for the Business Associate to cure the breach within a specified timeframe;
  - ii. Terminate this Agreement and the underlying Contract if the Business Associate does not cure the breach or end the violation within the time specified by DCS, or if a cure of the breach is not possible;
  - iii. Immediately terminate this Agreement and the underlying contract; or
  - iv. Report the violation to the Secretary, if neither termination nor cure is feasible.
2. **Judicial or Administrative Proceedings.** DCS may terminate the Agreement if;



- i. The Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws; or
- ii. There is a governmental agency or tribunal finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA regulations or other security or privacy laws.

## 6.0 **MISCELLANEOUS**

- 6.1 **HIPAA Reference.** A reference in this Agreement to HIPAA or the Privacy Rule means the regulation including the HITECH Act of 2009, as in effect on the effective date or as subsequently amended, and for which compliance is required. (45 C.F.R. § 160, §162, and §164 and 42 U.S.C. §17938).
- 6.2. **Amendment.** The parties agree to take the action necessary to amend this Agreement from time to time so that DCS may comply with the requirements of HIPAA, HITECH, court decisions and any regulatory changes.
- 6.3 **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit DCS to comply with the HIPAA and HITECH Rules.

<p>Contractor hereby acknowledges receipt and acceptance of this HIPAA Business Associate Agreement and that a signed copy must be filed with the DCS Procurement Office.</p>	<p>The above referenced HIPAA Business Associate Agreement</p> <p>is hereby executed this _____ day of _____ 201__ by the Department of Child Safety.</p>
<p>_____ Signature Date</p>	
<p>_____ Printed Name</p>	<p>_____ DCS Procurement Manager</p>
<p>_____ Title</p>	
<p>_____ Name of Contractor</p>	<p>_____ Printed Name</p>

