

**COMMONWEALTH OF VIRGINIA**  
**STANDARD CONTRACT**  
**CONTRACT NUMBER 720C-04257-10R00**  
**ACCREDITATION CONTRACT**

**THIS ACCREDITATION CONTRACT**, effective **01/01/2011** ("Accreditation Contract"), by and between **Commonwealth of Virginia**, Department of Behavioral Health and Developmental Services, including the following facilities and their assigned HCO ID#: Commonwealth Center for Children and Adolescents (H00000917), Catawba Hospital (H000001115), Western State Hospital (H000001142), Eastern State Hospital (H000001219), Southwestern Virginia Mental Health Institute (H000001220), Central State Hospital and Southside Virginia Training Center (H000001299), Hiram W. Davis Medical Center (H000004527), Northern Virginia Mental Health Institute (H000003145), Southern Virginia Mental Health Institute (H000003196) and Piedmont Geriatric Hospital (H000003241), hereinafter called "DBHDS" and the Joint Commission on Accreditation of Healthcare Organizations, hereinafter called "the Joint Commission", a nonprofit corporation classified as tax exempt under section 501 (c) (3) of the Internal Revenue Code.

**WHEREAS**, the Joint Commission's mission is to continuously improve the safety and quality of care provided to the public through the provision of accreditation and related services that support performance improvement in health care organizations.

**WHEREAS**, DBHDS wishes to purchase certain products and services related to the accreditation process to advance its own quality improvement initiatives and thereby improve the quality and safety of care provided.

**NOW, THEREFORE**, in consideration of the mutual promises in this Accreditation Contract and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereby agree to the following terms and conditions:

**SECTION 1. Scope of Services.** The Joint Commission will develop and maintain state-of-the-art standards and National Patient Safety Goals that are appropriate to each type of health care organization accredited and will promulgate these standards and goals through its accreditation manuals, Frequently Asked Questions as posted on the Extranet, and *Perspectives*, a monthly newsletter provided to DBHDS. The Joint Commission's standards and goals will specify the requirements necessary to help ensure that high quality patient care is provided in a safe manner and in a secure environment. The Joint Commission will develop its standards and goals in consultation with health care experts, providers, practitioners, and researchers, as well as measurement experts, purchasers and consumers. The Joint Commission will publish any new standards requirements at least six months in advance of their effective date, unless it determines that delaying the implementation of the standard could have an adverse effect on patient health or safety. The Joint Commission will provide DBHDS with one complimentary copy of the Accreditation Manual for each of DBHDS' services seeking Joint Commission accreditation.

The Joint Commission will staff on-site accreditation surveys with the appropriate number and type of surveyors as determined by the application of consistent scheduling rules that are based upon volume, site and service data submitted by DBHDS. The surveyors will be employees of the Joint Commission who have field experience and have been formally trained, precepted, and certified as surveyors by the Joint Commission. The Joint Commission will provide ongoing education and supervision to its surveyors to ensure that the surveyors' skills are appropriately maintained.

The Joint Commission will assign DBHDS an account representative who will serve as the primary point of contact with the Joint Commission. The account representative will assist DBHDS in responding to Joint Commission inquiries, as well as provide support in accessing and utilizing the Joint Commission's electronic Extranet-based services and communications.

The Joint Commission will provide DBHDS with access to a team of knowledgeable health care professionals, known as the Standards Interpretation Group, to assist DBHDS in understanding standards requirements. The Joint Commission also agrees to provide DBHDS with various resources for organizational improvement, such as *Sentinel Event Alert*, continuous electronic access to the Periodic Performance Review (PPR) assessment product for each program for which the PPR is available, and a periodic review of the PPR and any required Plans of Action by the Standards Interpretation Group.

The Joint Commission will provide DBHDS with a secure, organization-specific Web site via the Extranet, which will serve as the electronic access point for all communications, survey reports, and performance improvement services used in the accreditation process. The Joint Commission will issue DBHDS an initial password to access the site, as well as a security screen to enable DBHDS to issue access to other individuals within DBHDS who are involved in the accreditation process.

The Joint Commission will provide the public and health care professionals with relevant and useful information about the quality and safety of Joint Commission accredited organizations in Quality Check<sup>®</sup>, which is posted on the Joint Commission's website. If DBHDS becomes accredited, the Joint Commission will allow DBHDS to display the Joint Commission's Gold Seal of Approval<sup>™</sup> to publicize DBHDS' achievement of accreditation.

The Joint Commission will develop and/or implement performance measures for accredited health care organizations in collaboration with other national entities in order to achieve consistency in measures and minimize data collection effort.

The Joint Commission will launch periodic Speak Up<sup>™</sup> patient safety campaigns, which are aimed at encouraging patients to become active and informed members of the health care team, and make relevant Speak Up<sup>™</sup> materials available to DBHDS. The Joint Commission will also provide DBHDS with program-specific newsletters, and periodic complimentary Web or audio programs on topics of mutual interest to health care organizations and the Joint Commission.

The Joint Commission will periodically conduct public policy initiatives by bringing together relevant health care experts, providers, practitioners, and other parties of interest to discuss critical issues affecting the quality and safety of health care and to aid in the identification of achievable solutions to these issues.

**SECTION 2. Adherence to Joint Commission Standards, Policies, Procedures, Eligibility Requirements, Participation Requirements, and National Patient Safety Goals.** DBHDS agrees, if accredited, that it is responsible for knowledge of the information, including new and revised standards, policies, procedures, eligibility requirements, accreditation participation requirements, and national patient safety goals provided in *Perspectives*, or in Joint Commission accreditation manuals as periodically revised, that are relevant to its programs. DBHDS further agrees that it will be bound by any such new or revised standards, policies, procedures, eligibility requirements, accreditation participation requirements, or national patient safety goals and will take any steps needed to come into compliance with them in a reasonable period of time, and understands that failure to do so can result in loss of accreditation.

DBHDS agrees to adhere at all times to all policies and procedures and other requirements of the Joint Commission, including those set out in the Joint Commission's accreditation manuals and *Perspectives*. Such policies and procedures and other requirements specifically include those set out in the following sections of Joint Commission accreditation manuals: Accreditation Policies and Procedures, Accreditation Participation Requirements, Sentinel Events and National Patient Safety Goals.

DBHDS agrees to engage in good faith and frank participation in the accreditation process and never provide any falsified information or fail to provide relevant information that may be used by the Joint Commission to determine DBHDS's compliance with Joint Commission requirements. In this regard, DBHDS will furnish any reasonable certifications required about the information it supplies to the Joint Commission.

**SECTION 3. Submission/Release of Information.** DBHDS agrees to provide information requested by the Joint Commission that is relevant to the accreditation process (including for example, all official records and reports of public licensing, examining, reviewing or planning bodies), and grants permission to the state licensing authority, federal agencies, and any other relevant examining or review agency, to release to the Joint Commission any information concerning DBHDS and any related entities included in DBHDS' accreditation process.

If DBHDS intends to request any surveyor, ATTACHMENT "A" BUSINESS ASSOCIATE AGREEMENT and ATTACHMENT "B" AMENDMENT TO BUSINESS ASSOCIATE AGREEMENT and ATTACHMENT "C" **THE JOINT COMMISSION HITECH AMENDMENT TO ADDENDUM (BUSINESS ASSOCIATE AGREEMENT)**, shall apply and be considered as part of the submission of its E-Update/Application for Accreditation. DBHDS agrees that it is responsible for obtaining any necessary authorizations to permit Joint Commission access to confidential health record information.

**SECTION 4. Acceptance of a Survey.** The Joint Commission schedules surveys based on information provided in DBHDS' Application for Accreditation and/or E- Updates. Using the information provided, the Joint Commission determines DBHDS' services, programs, and related entities that are included in the scope of the survey, the number of days required for a survey and the composition of the survey team. Inaccurate or incomplete information in the Application for Accreditation and/or E-Update may necessitate an additional survey, which may delay the Joint Commission's survey report and accreditation decision. DBHDS may also incur additional survey charges in such circumstances.

Most Joint Commission accreditation surveys will be unannounced. DBHDS' failure to permit an unannounced survey is grounds for denial of accreditation.

**SECTION 5. Confidential Information.** DBHDS and the Joint Commission acknowledge and agree that it is their intent to work together in the accreditation process as part of a peer review, self-evaluation, and medical study designed to improve the quality and safety of health care. The confidentiality of documents utilized in the accreditation process must be maintained in order to preserve the integrity of the accreditation process and the protections afforded such peer review, self-evaluation, and medical studies.

Accordingly, subject to the limitations described below, the Joint Commission confirms that it keeps confidential the following information received or developed during the accreditation process ("Confidential Information"), unless its release is required by a government agency (see Data Release to Government Agencies section in the Public Information Policy):

- The Official Accreditation Report unless its release is required by a government agency.
- Information learned from DBHDS that is used to determine compliance with specific accreditation standards.
- An organization's root cause analysis and related action plan prepared in response to a sentinel event or in response to other circumstances specified by the joint Commission.
- The algorithms used in the Priority Focus Process.
- The Priority Focus Process information used in an organization's survey.
- DBHDS' Periodic Performance Review results and related action plan and measures of success.
- All other materials that may contribute to the accreditation decision.

The Joint Commission will not disclose Confidential Information except as expressly provided herein and under the terms of the policies of the Joint Commission from time to time in effect, including those set out in the Joint Commission's Public Information Policy and other portions of Joint Commission accreditation manuals or *Perspectives*. DBHDS acknowledges that the Joint Commission may disclose Confidential Information when required by law or court order.

Notwithstanding any contemplated or actual disclosure of Confidential Information as described herein, DBHDS and the Joint Commission acknowledge and agree that it is their intention that any privilege applicable to such Confidential Information not be waived by such disclosure or other circumstance.

**SECTION 6. Publicly Available Information.** DBHDS agrees in furtherance of the Joint Commission's commitment to make relevant and accurate information about surveyed health care organizations available to interested parties, as described in the Joint Commission's Public Information Policy (see Accreditation Policies and Procedures section of the accreditation manuals), to permit the Joint Commission to publish/release Quality Reports on individual accredited Organizations as well as aggregate performance data about DBHDS; to make available to federal, state, local or other government certification or licensing agencies specific accreditation-related information; and to publicly disclose certain information in response to requests. DBHDS acknowledges that, in accordance with the Public Information Policy, the Joint Commission releases certain information on organization-specific standards compliance and the reason(s) for adverse accreditation decisions.

**SECTION 7. Prohibition on the Use of Surveyors as Consultants.** DBHDS agrees that it will adhere to the Joint Commission's prohibition on the use of its surveyors as consultants. DBHDS specifically acknowledges that it is not permitted to use Joint Commission full-time, part-time, or intermittent surveyors to provide any accreditation-related consulting services. Examples of such services include helping an organization to meet Joint Commission standards, helping an organization to complete its Periodic Performance Review, helping an organization to remedy areas of performance identified in its Periodic Performance Review as needing improvement, conducting mock surveys for an organization, and providing consultation to an organization to address Priority Focus Process information.

**SECTION 8. Accreditation Certificate Display and Use.** The Joint Commission provides DBHDS with one certificate of accreditation for each organization, service, or related entity included in the scope of the survey and accreditation process. Additional copies may be purchased. The certificate and all copies remain the Joint Commission's property. They must be returned if DBHDS is issued a new certificate reflecting a name change, or if DBHDS' accreditation status is changed, withdrawn, or denied for any reason. DBHDS will reimburse the Joint Commission for any costs the Joint Commission incurs in recovering its certificate if DBHDS does not promptly and voluntarily return any certificate in accordance with this paragraph.

DBHDS agrees not to suggest that it has the status of an accredited organization unless such representation is accurate, and further agrees, if it is accredited, not to misrepresent the nature of that accreditation. A single accreditation award applies to all of the services, programs and related entities included in the scope of DBHDS' survey and accreditation process

**SECTION 9. Review and Appeal Procedures.** Following any Preliminary Denial of Accreditation decision, DBHDS has the right to a review and appeal of that decision before it becomes the final decision of the Joint Commission. (See Accreditation Policies and Procedures section of the accreditation manuals.)

SECTION 10. **Fees.** \* The Joint Commission determines fees annually and bases those fees on the need to secure sufficient resources to cover the costs of its operations. The Joint Commission generally bases individual organization fees on the volume and type of services provided and the sites to be included in DBHDS' accreditation survey process. Beginning in 2006, the Joint Commission's fee structure will include an annual fee, which recognizes the provision of substantial accreditation-related services on a more continuous basis between on-site surveys, and a separate fee to cover the costs of actual on-site surveys when these occur. The Joint Commission levies separate charges for add-on services such as specialist surveyors. These are invoiced after the survey is completed. All usual fees shall be listed in Attachment "D" CURRENT FEE SCHEDULE, which shall be changed January 1 of each renewal period. For services for which fees are not listed in Attachment "D", the fees shall be at the Joint Commission's published fee rate at the time the services are performed. The next year's fee structure shall be provided by the Joint Commission to BHDDS prior to the next year's contract renewal which takes effect on January 1<sup>st</sup> of that renewal period. The Joint Commission shall submit a copy of each invoice, submitted to the facilities, to the designated BDHDS Contract Administrator:

Marion Greenfield, Contract Administrator  
DBHDS  
Quality Management & Development  
P.O. Box 1797  
Richmond, VA 23218-1797  
Marion.Greenfield@dbhds.virginia.gov

Annual fees are non-refundable, are billed as of January 1<sup>st</sup> of each year. On-site survey fees are billed upon completion of the survey and are due in accordance with the Commonwealth of Virginia's Prompt Payment Act. Failure to provide timely payment of either annual fees or on-site survey fees can result in loss of accreditation.

This process does not apply to fees that are funded directly by a government agency, such as the Center for Substance Abuse Treatment (CSAT) for opioid treatment centers and the Bureau of Primary Health Care (BPHC) for community health centers.

SECTION 11. **Warranty of Compliance.** DBHDS agrees that Joint Commission accreditation does not constitute a warranty of compliance with the accreditation standards and further that accreditation is not a substitute for self-monitoring and assessment of the services and the quality and safety of care provided by DBHDS.

SECTION 12. **Notices.** Any notice required by this Accreditation Contract to be given to DBHDS shall be addressed to DBHDS at its post office address as shown in Joint Commission records and shall be sent to DBHDS Contract Administrator, (address listed in Section 10 above), by certified mail or by a recognized package delivery service. Any notice required to be given to the Joint Commission by DBHDS shall be sent by DBHDS in the same manner and shall be addressed to DBHDS' account representative, Joint Commission on Accreditation of Healthcare Organizations, One Renaissance Boulevard, Oakbrook Terrace, IL 60181.

SECTION 13. **Entire Agreement.** This is the entire Accreditation Contract between the parties and supersedes any other agreement or oral understanding the parties may have had prior to the effective date of this Accreditation Contract. Any E-Update or Application for Accreditation that includes Terms of Agreement that is submitted after the effective date of this Accreditation Contract shall be null and void.

By signing this Accreditation Contract, the parties have caused the Contract to be duly executed as of the date first above written.

**SECTION 14. Term and Termination.** The term of this Accreditation Contract is initially for a period of 5-1/2 months beginning on the effective date, to be renewed automatically for continuous new one (1) year terms, unless either party notifies the other of its intent not to renew ninety (90) days prior to the annual renewal date. Either Party may terminate this Accreditation Contract if it determines that the other Party has breached a material term of the Accreditation Contract.

Nothing express or implied in this Accreditation Contract is intended to confer, nor shall anything herein confer, upon any person other than the parties any rights, remedies, obligations or liabilities whatsoever.

**SECTION 15. Survival.** Provisions that involve the following topics shall survive the termination of this accreditation contract: Confidential Information, Publicly Available Information, Award Display & Use, Fees (to the extent due but not paid), and Notices.

**The Joint Commission**

Signature: Harold J. Bressler

Print Name: Harold Bressler

Title: General Counsel

Date: 12/29/10

**Commonwealth of Virginia, Department of Behavioral Health and Developmental Services HCO IDs: 917, 1142, 1219, 1220, 1299, 3145, 3196, 3241 and 4527**

Signature: Joy S. Lazarus

Print Name: Joy S. Lazarus

Title: Administrative Svcs. Dir.

Date: 1/18/11

## ATTACHMENT A

### BUSINESS ASSOCIATE AGREEMENT

THIS ADDENDUM supplements and is made a part of the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO") Accreditation Contract (hereinafter, the "Underlying Agreement") submitted to JCAHO by HCO IDs: 917, 1115, 1142, 1219, 1220, 1299, 3145, 3196, 3241 and 4527 for The Commonwealth of Virginia ("DBHDS"). The Underlying Agreement, when accepted by JCAHO, establishes the terms of the relationship between JCAHO and DBHDS.

**Whereas**, JCAHO and DBHDS are parties to the Underlying Agreement pursuant to which JCAHO provides certain accreditation and related services to DBHDS and, in connection with the provision of those services, DBHDS discloses to JCAHO certain Protected Health Information ("PHI", as defined in 45 C.F.R. §164.501) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

**Whereas**, DBHDS is a "Covered Entity" as that term is defined in the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule"); and 45 C.F.R. Part 164, Subpart C, the Security Standards for the Protection of Electronic Protected Health Information ("Security Rule");

**Whereas**, JCAHO, as a recipient of PHI from DBHDS, is a "Business Associate" as that term is defined in the Privacy Rule;

**Whereas**, pursuant to the Privacy Rule and the Security Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

**Whereas**, the purpose of this Addendum is to comply with the requirements of the Privacy Rule and the Security Rule, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §§164.314(a), 164.502(e), §164.504(e), and as may be amended.

**NOW, THEREFORE** in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.** Unless otherwise provided in this Addendum, capitalized terms have the same meanings as set forth in the Privacy Rule or the Security Rule.
2. **Scope of Use and Disclosure by JCAHO of Protected Health Information**
  - a. JCAHO shall be permitted to Use and Disclose PHI that is disclosed to it by DBHDS as necessary to perform its obligations under the Underlying Agreement.
  - b. Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this Addendum or Required by Law, JCAHO may:
    - i. Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of JCAHO;

- ii. Disclose the PHI in its possession to a third party for the purpose of JCAHO's proper management and administration or to fulfill any legal responsibilities of JCAHO; provided, however, that the Disclosures are Required by Law or JCAHO has received from the third party written assurances that (a) the information will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party; and (b) the third party will notify JCAHO of any instances of which it becomes aware in which the confidentiality of the information has been breached;
  - iii. Aggregate the PHI with that of other Organizations for the purpose of providing DBHDS with data analyses relating to the Health Care Operations of the Organization. JCAHO may not Disclose the PHI of BDHDS to another Organization without the written authorization of DBHDS;  
and
  - iv. De-identify any and all PHI created or received by JCAHO under this Addendum; provided, that the de-identification conforms to the requirements of the Privacy Rule.
3. **Obligations of JCAHO.** In connection with its Use and Disclosure of PHI, JCAHO agrees that it will:
- a. Use or further Disclose PHI only as permitted or required by this Addendum or as Required by Law.
  - b. Use reasonable and appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this Addendum.
  - c. To the extent practicable, mitigate any harmful effect that is known to JCAHO of a Use or Disclosure of PHI by JCAHO in violation of this Addendum.
  - d. Report to DBHDS any Use or Disclosure of PHI not provided for by this Addendum of which JCAHO becomes aware.
  - e. Require contractors or agents to whom JCAHO provides PHI to agree to the same restrictions and conditions that apply to JCAHO pursuant to this Addendum.
  - f. Make available to the Secretary of Health and Human Services JCAHO's internal practices, books and records relating to the Use and Disclosure of PHI for purposes of determining DBHDS' compliance with the Privacy Rule, subject to any applicable legal privileges.
  - g. Within (15) days of receiving a request from DBHDS, make available the information necessary for DBHDS to make an accounting of Disclosures of PHI about an individual.
  - h. Within ten (10) days of receiving a written request from DBHDS, make available PHI necessary for DBHDS to respond to Individuals' requests for access to PHI about them in the event that the PHI in JCAHO's possession constitutes a Designated Record Set.



- i. Within fifteen (15) days of receiving a written request from DBHDS incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in JCAHO's possession constitutes a Designated Record Set.
  - j. Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of DBHDS, and make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary of HHS for purposes of determining the Organization's compliance with the Security Rule;
  - k. Ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect that Electronic PHI; and
  - l. Promptly report to DBHDS any Security Incident with respect to Electronic PHI of which it becomes aware.
4. **Obligations of DBHDS.** DBHDS agrees that it:
- a. Has included, and will include, in DBHDS' Notice of Privacy Practices required by the Privacy Rule that DBHDS may Disclose PHI for Health Care Operations purposes.
  - b. Has obtained, and will obtain, from Individuals' consents, authorizations and other permissions necessary or Required by Laws applicable to DBHDS for JCAHO and DBHDS to fulfill their obligations under the Underlying Agreement and this Addendum.
  - c. Will promptly notify JCAHO in writing of any restrictions on the Use and Disclosure of PHI about Individuals that DBHDS has agreed to that may affect JCAHO's ability to perform its obligations under the Underlying Agreement or this Addendum.
  - d. Will promptly notify JCAHO in writing of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if such changes or revocation may affect JCAHO's ability to perform its obligations under the Underlying Agreement or this Addendum.
5. **Termination.**
- a. **Termination for Breach.** DBHDS may terminate this Addendum if DBHDS determines that JCAHO has breached a material term of this Addendum. Alternatively, DBHDS may choose to provide JCAHO with notice of the existence of an alleged material breach and afford JCAHO an opportunity to cure the alleged material breach. In the event JCAHO fails to cure the breach to the satisfaction of DBHDS, DBHDS may immediately thereafter terminate this Addendum.
  - b. **Automatic Termination.** This Addendum will automatically terminate upon the termination of the Underlying Agreement.

c. **Effect of Termination.**

- i. Termination of this Addendum will result in termination of the Underlying Agreement.
- ii. Upon termination of this Addendum or the Underlying Agreement, JCAHO will return or destroy all PHI received from DBHDS or created or received by JCAHO on behalf of DBHDS that JCAHO still maintains and retain no copies of such PHI; provided that if such return or destruction is not feasible, JCAHO will extend the protections of this Addendum to the PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

6. **Amendment.** JCAHO and DBHDS agree to take such action as is necessary to amend this Addendum from time to time as is necessary for DBHDS to comply with the requirements of the Privacy Rule and the Security Rule.

7. **Survival.** The obligations of JCAHO under section 5.c (ii) of this Addendum shall survive any termination of this Addendum.

8. **No Third Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

## ATTACHMENT B

### AMENDMENT TO BUSINESS ASSOCIATE AGREEMENT

This Amendment ("Amendment") is made by and between Commonwealth of Virginia, Department of Behavioral Health and Developmental Services, HCO IDs: 917, 1115, 1142, 1219, 1220, 1299, 3145, 3196, 3241 and 4527 and Joint Commission on Accreditation of Healthcare Organizations ("JCAHO").

**WHEREAS**, the parties previously entered into a Business Associate Agreement (ATTACHMENT A) incorporating terms and requirements pursuant to the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §164.502 (e) and § 164.504 (e);

**WHEREAS**, the parties now desire to amend their Business Associate Agreement to incorporate the requirements of 45 C.F.R. Part 164, Subpart C, the HIPAA Security Standards for the Protection of Electronic Protected Health Information ("Security Rule"), including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §164.314(a);

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. To amend Section 1 Definitions to provide:

Unless otherwise provided in this Addendum, capitalized terms shall have the same meanings as set forth in the Privacy Rule or the Security Rule.

2. To amend Section 3 Obligations of JCAHO to add the following:
  - a. Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of the Surveyed Organization, and make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary of HHS for purposes of determining the Surveyed Organization's compliance with the Security Rule;
  - b. Ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect that Electronic PHI; and
  - c. Promptly report to the Surveyed Organization any security incident with respect to Electronic PHI of which it becomes aware.

**ATTACHMENT C**  
**THE JOINT COMMISSION**  
**HITECH AMENDMENT**  
**TO**  
**ADDENDUM (BUSINESS ASSOCIATE AGREEMENT)**

This Amendment (this "Amendment") is entered into with respect to the BA Addendum (defined below) between The Joint Commission and the entity identified in the BA Addendum as Commonwealth of Virginia, Department of Behavioral Health and Developmental Services, HCO IDs: 917, 1115, 1142, 1219, 1220, 1299, 3145, 3196, 3241 and 4527 ("DBHDS"). The Joint Commission was formerly known as the Joint Commission on Accreditation of Healthcare Organizations and may have been referred to in the BA Addendum as "JCAHO." Defined terms used herein without definition shall have the respective meanings assigned to such terms in the BA Addendum.

**WHEREAS**, The Joint Commission and DBHDS are parties to an Addendum (the "BA Addendum") that supplements the Accreditation Contract and/or the Certification Contract between them and constitutes a business associate agreement for purposes of the Privacy Rule and the Security Rule;

**WHEREAS**, the Health Information Technology for Economic and Clinical Health Act ("HITECH") was adopted as part of the American Recovery and Reinvestment Act of 2009 and imposes certain requirements on business associates;

**WHEREAS**, whether HITECH amends all business associate agreements by operation of law or requires separate amendments is not entirely clear so, in the absence of clarifying regulations, The Joint Commission is providing this Amendment in order to facilitate compliance with HITECH in an efficient manner for itself and for the more than 10,000 covered entities with which The Joint Commission has business associate agreements prior to the general effective date of HITECH; and

**WHEREAS**, DBHDS has agreed in the Accreditation Contract and/ or Certification Contract and related standards to comply with applicable law and the BA Addendum contemplates that it will be amended from time to time to continue to comply with HIPAA, the Privacy Rule and/or the Security Rule and this Amendment is consistent with those commitments.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the sufficiency of which is hereby acknowledged, this Amendment is entered into to supplement the BA Addendum as follows:

1. HITECH imposes certain requirements on Business Associates with respect to privacy, security and breach notification and contemplates that such requirements shall be implemented by regulations to be adopted by the Department of Health and Human Services. Such provisions of HITECH and the regulations adopted thereunder applicable to Business Associates may be referred to collectively herein as the "HITECH BA Provisions". Each of the HITECH BA Provisions apply commencing on February 16, 2010 or on such other respective dates as may be specified in each of the HITECH BA Provisions (the "Applicable Effective Dates").
2. The Joint Commission shall be subject to each of the HITECH BA Provisions with respect to The Joint Commission's role as a Business Associate of DBHDS commencing on the respective Applicable Effective Date of each HITECH BA Provision.
3. The provisions of HITECH that apply to business associates and are required to be incorporated by reference in a business associate agreement are hereby incorporated into the BA Addendum as of the respective Applicable Effective Dates including, without limitation, those referenced in Section 13401(a) and Section 13404(a) of HITECH.

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4. Without limitation of the foregoing, as of the respective Applicable Effective Dates:

(a) Pursuant to Section 13401(a) of HITECH, the following sections of the Security Rule shall apply to The Joint Commission in the same manner as they apply to DBHDS:

- Section 164.308 – Administrative safeguards;
- Section 164.310 – Physical safeguards;
- Section 164.312 – Technical safeguards; and
- Section 164.316 – Policies and procedures and documentation requirements.

(b) Pursuant to Section 13404(a) of HITECH, The Joint Commission may use or disclose PHI that it obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirement of Section 164.504(e) of the Privacy Rule.

(c) Pursuant to Section 13404(b) of HITECH, Section 164.504(e)(1)(ii) of the Privacy Rule shall apply to The Joint Commission with respect to compliance with such subsection, in the same manner that such section applies to DBHDS, with respect to compliance with the standards in sections 164.502(e) and 164.504(e) of the Privacy Rule, except that in applying such Section 164.504(e)(1)(ii) each reference to The Joint Commission, with respect to a contract, shall be treated as a reference to DBHDS involved in such contract. To the extent necessary to achieve the purposes of the foregoing, The Joint Commission shall have the right to terminate the BA Addendum and all contracts to which it relates if DBHDS is in material breach or violation of the BA Addendum and fails to cure such breach or violation.

(d) Section 13401(b) and Section 13404(c) of HITECH each apply to The Joint Commission with respect to its status as a business associate to the extent set forth in each such Section.

(e) Pursuant to Section 13402 of HITECH, The Joint Commission shall give DBHDS notice of breach of unsecured protected health information (as such terms are defined in HITECH) by the deadline set forth in Section 13402(d) and, in any event, within thirty (30) days after The Joint Commission has knowledge of such breach.

5. Except as amended and modified by this Amendment and to the extent not inconsistent therewith, all terms and conditions of the BA Addendum shall remain in full force and effect. To the extent that this Amendment conflicts with, is inconsistent with or addresses matters not addressed by the BA Addendum, the Accreditation Contract and/or the Certification Contract, it shall supersede and take precedence over such provisions. Except as otherwise agreed in writing by both parties, the BA Addendum, as amended hereby, constitutes the entire understanding and obligation of the parties with respect to the subject matter hereof and supersedes any prior agreements, writings or understandings, whether oral or written with respect to the subject matter hereof.
6. This Amendment is provided to document The Joint Commission's and DBHDS' obligations and to comply with HITECH. The Joint Commission and DBHDS have previously agreed to comply with all applicable laws, so both Parties are already bound to comply with HITECH requirements.