

BUSINESS ASSOCIATE AGREEMENT

(Agreement #)

THIS DOCUMENT CONSTITUTES AN AGREEMENT BETWEEN:

(Contractor name and address), hereinafter referred to as **Business Associate**;
AND
The Department of Behavioral Health and Developmental Services (DBHDS) (or facility name and address), P.O. Box 1797, Richmond, Virginia 23218, hereinafter referred to as **Covered Entity** or **DBHDS (or facility initials)**;

AND IS DATED (current date)

Specific Definitions:

- a. Business Associate. “Business Associate” shall mean **(contractor name)**
- b. Covered Entity. “Covered Entity” shall mean the Department of Behavioral Health and Developmental Services (DBHDS) **(or facility)**
- c. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- d. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- e. Protected Health Information. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- f. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.103.
- g. Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

The following agreements are made:

1.0 PURPOSE:

The purpose of this Business Associate Agreement (Agreement) is to establish a business associate agreement in order to protect the privacy of protected health information (PHI) in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder.

2.0 SCOPE:

The scope of this Agreement shall be limited to **(Insert scope of Business Associate’s access to PHI)**.

3.0 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE:

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, DBHDS (or facility) as specified in this Agreement. In performance of services under this Agreement, Business Associate agrees:

- 3.1 Not to use or further disclose PHI other than as permitted or required by the terms of this Agreement or as required by law.
- 3.2 To use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement.
- 3.3 To immediately report to DBHDS (or facility) any use or disclosure of PHI not provided for by this Agreement of which it becomes aware.
- 3.4 To mitigate, to the extent practicable, any known harmful effect of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement.
- 3.5 To impose the same requirements and restrictions contained in this Agreement on its subcontractors and agents to whom Business Associate provides PHI received from, or created or accessed by Business Associate on behalf of, DBHDS (or facility).
- 3.6 To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of DBHDS (or facility) as required by the HIPAA Security Rule, 45 C.F.R. Parts 160, 162, and 164 and the American Recovery and Reinvestment Act (P.L. 111-5).
- 3.7 To ensure that any agent, including a subcontractor, to whom it provides PHI agrees to implement reasonable and appropriate safeguards to protect it.
- 3.8 To report to DBHDS (or facility) any security incident of which it becomes aware.
- 3.9 Upon termination of this Agreement, Business Associate agrees to return or destroy all PHI received from DBHDS (or facility) that the Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Agreement to the information and make no further uses or disclosures of the information.
- 3.10 Business Associate shall notify DBHDS (or facility) of a breach of unsecured PHI on the first day on which such breach is known by Business Associate or an employee, officer, or agent of Business Associate other than the person committing the breach, or as soon as possible following the first day on which Business Associate or an employee, officer, or agent of Business Associate other than the person committing the breach should have known by exercising reasonable diligence of such breach. Notification shall include, to

the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during the breach. Business Associate shall also provide DBHDS (or facility) with any other available information at the time Business Associate makes notification to DBHDS or promptly thereafter as information becomes available. Such additional information shall include (i) a brief description of what happened, including the date of the breach; (ii) a description of the types of unsecured PHI that were involved in the breach; (iii) any steps the Business Associate believes individuals should take to protect themselves from potential harm resulting from the breach; and (iv) a brief description of what Business Associate is doing to investigate the breach, mitigate harm to individuals, and protect against any future breaches.

For purposes of this paragraph, unsecured PHI means PHI which is not encrypted or destroyed. Breach means the acquisition, access, use, or disclosure of PHI in a manner not permitted by the HIPAA Privacy Rule or this Agreement that compromises the security or privacy of the PHI by posing a significant risk of financial, reputational, or other harm to the individual.

4.0 PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE:

- 4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of DBHDS (or facility) for the following purposes, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity:

(Insert the permitted uses and disclosures of PHI allowed the Business Associate. Some EXAMPLES are listed below:

- a. Create paper and electronic copies of paper documents provided by DBHDS as required by the Subpoena.**

- b. Search electronic Exchange email PSTs provided by DBHDS and create paper and electronic copies of responsive documents as required by the Subpoena.)**

5.0 TERM AND TERMINATION:

- 5.1 This Agreement shall be effective upon execution by both parties and shall terminate when all of the PHI provided by DBHDS (or facility) to Business Associate, or created or received by Business Associate on behalf of DBHDS (or facility), is destroyed or returned to DBHDS (or facility), or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

5.2 Effect of Termination.

- a. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from DBHDS (or facility), or created or received by Business Associate on behalf of DBHDS (or facility). This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- b. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to DBHDS (or facility) notification of the conditions that make return or destruction infeasible. Upon DBHDS' (or facility) determination in DBHDS' (or facility) sole discretion that the conditions presented by Business Associate make return or destruction of PHI infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

5.3 Upon DBHDS' (or facility) knowledge of a material breach by Business Associate, DBHDS (or facility) will either:

- a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DBHDS (or facility); or
- b. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
- c. If neither termination nor cure is feasible, DBHDS (or facility) will report the violation to the U.S. Secretary of Health and Human Services.

5.4 Any disclosure of documents obtained or created by Business Associate pursuant to this Agreement to any other entity for any other purpose shall constitute cause for termination of this Agreement.

6.0 MISCELLANEOUS:

6.1 Survival. The respective rights and obligations of Business Associate under Sections 3.8, 3.9, and 3.10 of this Agreement shall survive termination of this agreement.

6.2 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.

6.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the

requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

(CONTRACTOR NAME)

**COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF BEHAVIORAL
HEALTH AND DEVELOPMENTAL
(OR FACILITY NAME)**

By: _____
(Signature)

By: _____
(Signature)

**Name
Title**

James W. Stewart, III (or Facility Director)
Commissioner

Date: _____

Date: _____