



CONTRACT ADDENDUM BUSINESS ASSOCIATE CONTRACT¹

THIS AGREEMENT is entered into on _____ ("Effective Date") by and between LaSalle County Health Department, hereinafter called "Covered Entity" and _____, hereinafter called the "Business Associate".

WHEREAS, the Health Insurance Portability and Accountability Act ("HIPAA"), Pub. L. No. 104-191, gives the Department of Health and Human Services the authority to promulgate rules regulating the privacy of certain kinds of health information; and

WHEREAS, the Department of Health and Human Services has promulgated a Privacy Rule under this authority which is contained at 45 C.F.R. Parts 160 and 164; and

WHEREAS, the Privacy Rule requires covered entities to have a contract with contractors that receive protected health information that reflects certain requirements; and

WHEREAS, the services performed by the Business Associate for the Covered Entity are services which require a Business Associate Contract;

NOW THEREFORE, the Covered Entity and Business Associate agree as follows:

1. DEFINITIONS. The terms listed below shall have the following meaning for purposes of this contract:

(a) **Business Associate.** ``Business Associate" shall mean _____.²

(b) **Covered Entity.** ``Covered Entity" shall mean LaSalle County Health Department.

(c) **Individual.** ``Individual" shall have the same meaning as the term ``individual" in 45 CFR 164.501 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 164.501, 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 164.501.

(g) Secretary. ``Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(h) Other. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

(a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

(e) Business Associate agrees to ensure that any agent, including a [[Page 53265]] subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. Business Associate agrees to provide requested information within 7 days of receipt of the request, unless an alternative time is agreed upon by both parties.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual. Business Associate will make such amendments(s) within 7 days of receipt of the amendment, unless an alternative time is agreed upon by both parties.

(h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, or individual designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Business Associate will provide information to the Covered Entity within 7 days of the receipt of the request for information, unless an alternative time is agreed upon by the Covered Entity and the Business Associate.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity 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) Business Associate agrees to provide to Covered Entity or an Individual, information collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528. Covered Entity will direct whether the information is to be provided to the Covered Entity or an Individual. Business Associate will provide information to the Covered Entity 7 days of the receipt of the request for information, unless an alternative time is agreed upon by both parties.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE. [(a) and (b) are alternative approaches. Parties should initial the appropriate paragraph (a) or (b) to specify approach used.]

_____ (a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity:

[List Purposes].

_____ (b) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or

services for, or on behalf of, Covered Entity as specified in _____ [Insert Name of Services Agreement], provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

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4. SPECIFIC USE AND DISCLOSURE PROVISIONS [only necessary if parties wish to allow Business Associate to engage in such activities]

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, 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.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

(d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).

5. OBLIGATIONS OF COVERED ENTITY [provisions dependent on business arrangement]

(a) Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

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

6. **PERMISSIBLE REQUESTS BY COVERED ENTITY.** Covered Entity shall not request 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 Entity. [Include an exception if the Business Associate will use or disclose protected health information for, and the contract includes provisions for, data aggregation or management and administrative activities of Business Associate].

7. **TERM AND TERMINATION.**

(a) Term. The Term of this Agreement shall be effective as of _____ [Insert Effective Date], and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, 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 Section. [Term may differ.]

(b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

(1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the underlying contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

(2) Immediately terminate this Agreement and the underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

(3) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) Business Associate has determined that returning or destroying the Protected Health Information is infeasible due to the following conditions:

Therefore, 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 Business Associate maintains such Protected Health Information.

7. **MISCELLANEOUS**

- (a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule 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 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.
- (c) Survival. The respective rights and obligations of Business Associate under Section [Insert Section Number Related to "Effect of Termination"] of this Agreement shall survive the termination of this Agreement.
- (d) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

IN WITNESS HEREOF, the parties hereto have duly executed this Agreement as of the Effective Date listed above:

On behalf of COVERED ENTITY:

Signature

Printed Name

Title

On behalf of BUSINESS ASSOCIATE:

Signature

Printed Name

Title

1. [Insert Name of Business Associate] This Business Associate Contract is designed to be an Appendix to your existing form contracts. By itself, this contract will not cover all needed terms. Your underlying agreement should contain a variety of clauses, depending on the contract, but may include:

Services to be Performed
Compensation or Payment
Term of the Agreement
Billing Procedures
Subcontracting Provisions
Modification of the Contract
Ownership of Work Product
Liability
Termination
Required state certifications, if any (i.e. non-discrimination, audits, drug-free workplace, etc.)

2. Insert Name of Business Associate