

**APPENDIX G: NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES
BUSINESS ASSOCIATE ADDENDUM**

This Contract is made effective the 00 day of MONTH YEAR, by and between TRILLIUM HEALTH RESOURCES (“Covered Entity”) and CONTRACTOR NAME. (“Business Associate”) (collectively the “Parties”).

1. BACKGROUND.

Covered Entity and Business Associate are parties to a contract entitled “Procurement Contract for Provision of Services between Trillium Health Resources (BH I/DD Tailored Plan) and Contractor Name a Provider of BH I/DD Tailored Plan Services” (the “Contract”), whereby Business Associate agrees to perform certain services for or on behalf of Covered Entity.

- A. Covered Entity is an organizational unit of the North Carolina Department of Health and Human Services (the “Department”) that has been designated in whole or in part by the Department as a health care component for purposes of the HIPAA Privacy Rule.
- B. The relationship between Covered Entity and Business Associate is such that the Parties believe Business Associate is or may be a “business associate” within the meaning of the HIPAA Privacy Rule.
- C. The Parties enter into this Business Associate Addendum to the Contract with the intention of complying with the HIPAA Privacy Rule provision that a covered entity may disclose protected health information to a business associate, and may allow a business associate to create or receive protected health information on its behalf, if the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information.

2. DEFINITIONS.

Unless some other meaning is clearly indicated by the context, the following terms shall have the following meaning in this Contract:

- A. “Electronic Protected Health Information” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103.
- B. “HIPAA” means the Administrative Simplification Provisions, Sections 261 through 264, of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as modified and amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- C. “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- D. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164.
- E. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- F. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- G. “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or the person to whom the authority involved has been delegated.
- H. Unless otherwise defined in this Contract, terms used herein shall have the same meaning as those terms have in the Privacy Rule.

3. OBLIGATIONS OF BUSINESS ASSOCIATE.

- A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Contract or as required by law.
- B. Business Associate agrees to use appropriate safeguards and comply, where applicable, with subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, to prevent

- use or disclosure of the Protected Health Information other than as provided for by this Contract.
- 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 Contract.
 - D. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Contract of which it becomes aware, including breaches of unsecured protected health information as required by 45 C.F.R. § 164.410.
 - E. Business Associate agrees, in accordance with 45 C.F.R. § 164.502(e)(1) and § 164.308(b)(2), to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such information.
 - F. Business Associate agrees to make available protected health information as necessary to satisfy Covered Entity's obligations in accordance with 45 C.F.R. § 164.524.
 - G. Business Associate agrees to make available Protected Health Information for amendment and incorporate any amendment(s) to Protected Health Information in accordance with 45 C.F.R. § 164.526.
 - H. Unless otherwise prohibited by law, 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 Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
 - I. Business Associate agrees to make available the information required to provide an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528,

4. PERMITTED USES AND DISCLOSURES.

- A. Except as otherwise limited in this Contract or by other applicable law or Contract, if the Contract permits, 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 the Contract, provided that such use or disclosure:
 - i. would not violate the Privacy Rule if done by Covered Entity; or
 - ii. would not violate the minimum necessary policies and procedures of the Covered Entity.
- B. Except as otherwise limited in this Contract or by other applicable law or Contracts, if the Contract permits, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that:
 - i. the disclosures are Required By Law; or
 - ii. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be 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 Contract or by other applicable law or Contracts, if the Contract permits, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- D. Notwithstanding the foregoing provisions, Business Associate may not use or disclose Protected Health Information if the use or disclosure would violate any term of the Contract or other applicable law or Contracts.

5. TERM AND TERMINATION.

- A. **Term.** This Contract shall be effective as of the effective date stated above and shall terminate when the Contract terminates.
- B. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, at its option:
 - i. Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Contract and services provided by Business Associate, to the extent permissible by law, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

- ii. Immediately terminate this Contract and services provided by Business Associate, to the extent permissible by law; or
- iii. If neither termination nor cure is feasible, report the violation to the Secretary as provided in the Privacy Rule.

C. Effect of Termination.

- i. Except as provided in paragraph (2) of this section or in the Contract or by other applicable law or Contracts, upon termination of this Contract and services provided by Business Associate, 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.
- ii. In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Business Associate shall extend the protections of this Contract 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.

6. GENERAL TERMS AND CONDITIONS.

- A. This Contract amends and is part of the Contract.
- B. Except as provided in this Contract, all terms and conditions of the Contract shall remain in force and shall apply to this Contract as if set forth fully herein.
- C. In the event of a conflict in terms between this Contract and the Contract, the interpretation that is in accordance with the Privacy Rule shall prevail. In the event that a conflict then remains, the Contract terms shall prevail so long as they are in accordance with the Privacy Rule.
- D. A breach of this Contract by Business Associate shall be considered sufficient basis for Covered Entity to terminate the Contract for cause.

Contractor: Legally Authorized Representative