

BAA/HIPAA Requirements

The contractor shall adhere to the following requirements for handling all “Protected Health Information” (PHI) during the course of this contract. The term PHI has the same meaning given to that term by HIPAA, the HITECH Act, and the Privacy and Security Rule.

The contractor may use or disclose PHI for the following purposes: to provide pharmacy benefit management services to the state. The contractor may use or disclose PHI as required by law, and shall not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the state, except for the specific uses and disclosures set out below.

Permitted uses and disclosures: The contractor may only use and disclose PHI owned by the state that it creates, receives, maintains, or transmits if the use or disclosure is in compliance with each applicable requirement of 45 C.F.R. 164.504(e) of the Privacy Rule or this contract. The additional requirements of Subtitle D of the HITECH Act contained in Public Law 111-5 that relate to privacy and that are made applicable with respect to Covered Entities shall also be applicable to the contractor and are incorporated into this contract.

To the extent that the contractor discloses the state’s PHI to a subcontractor, the contractor must obtain, prior to making any such disclosure: (1) reasonable assurances from the subcontractor that it will agree to the same restrictions, conditions, and requirements that apply to the contractor with respect to such information; and (2) an agreement from the subcontractor to notify the contractor of any breach of unsecured PHI, or security incident, promptly, and in any event within five business days of when it becomes aware of such breach or incident.

Safeguards: 45 C.F.R. 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies, procedures and documentation requirements) shall apply to the contractor in the same manner that such sections apply to the state, and shall be implemented in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. The additional requirements of Title XIII of the HITECH Act contained in Public Law 111-5 that relate to security and that are made applicable to Covered Entities shall also apply to the contractor and are incorporated into this contract.

Unless the state agrees in writing that this requirement is infeasible with respect to certain data, the contractor shall secure all paper and electronic PHI by encryption or destruction such that the PHI is rendered unusable, unreadable or indecipherable to unauthorized individuals; or secure paper, film and electronic PHI in a manner that is consistent with guidance issued by the Secretary of the United States Department of Health and Human Services specifying the technologies and methodologies that render PHI unusable, unreadable or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by Section 13101 of the HITECH Act contained in Public Law 111-5.

Reporting Unauthorized Disclosures and Breaches: During the term of this contract, the contractor shall notify the state within three business days of discovering: (i) any use or disclosure of PHI not provided for in this agreement, including any use or disclosure of the state's PHI in violation of any applicable federal or state law; (ii) any security incident of which contractor becomes aware; and/or (iii) any Breach of Unsecured PHI of which it becomes aware. The contractor shall identify for the state the individuals whose unsecured PHI has been, or is reasonably believed to have been, breached so that the state can comply with any notification requirements if necessary. The contractor shall also indicate whether the PHI subject to the breach; intrusion; or unauthorized acquisition, access, use or disclosure was encrypted or destroyed at the time. The contractor shall take prompt corrective action to cure any deficiencies that result in breaches of security; intrusion; or unauthorized acquisition, access, use, and disclosure. For the purposes of reporting under this provision, a reportable security incident shall not include unsuccessful or inconsequential incidents that do not represent a material threat to the confidentiality, integrity or availability of PHI (such as scans, pings or unsuccessful attempts to penetrate computer networks).

If the unauthorized acquisition, access, use or disclosure of the state's PHI involves only secured PHI, the contractor shall notify the state within 10 days of discovering the breach but is not required to notify the state of the names of the individuals affected.

Contractor's Agents: If the contractor uses a subcontractor or agent to provide services under this contract, and the subcontractor or agent creates, receives, maintains, or transmits the state's PHI, the subcontractor or agent shall sign an agreement with the contractor containing substantially the same provisions as this Agreement. Contractor will indemnify the state in the event of any violation of the subcontractor or agent agreement. The contractor shall mitigate the effects of any violation of that agreement. Contractor is responsible for all subcontractor or agent's breach of the terms of this agreement, and for all acts or omissions of its subcontractors or agents with respect to the services provided to the State.

Availability of Information to the State: Within 15 days after the date of a written request by the state, the contractor shall provide any information necessary to fulfill the state's obligations to provide access to PHI under HIPAA, the HITECH Act, or the Privacy and Security Rule.

Accountability of Disclosures: If the contractor is required by HIPAA, the HITECH Act, or the Privacy or Security Rule to document a disclosure of PHI, the contractor shall make that documentation. If the state is required to document a disclosure of PHI made by the contractor, the contractor shall assist the state in documenting disclosures of PHI made by the contractor so that the state may respond to a request for an accounting in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. Accounting records shall include the date of the disclosure, the name and if known, the address of the recipient of the PHI, the name of the individual who is subject of the PHI, a brief description of the PHI disclosed and the purpose of the disclosure. Within 15 days of a written request by the state, the contractor shall make the accounting record available to the state.

Amendment of PHI: Within 30 days of a written request by the state or an individual, the contractor shall amend PHI maintained, transmitted, created or received by the contractor on behalf of the state as directed by the state or the individual when required by HIPAA, the HITECH Act or the Privacy and Security Rule, or take other measures as necessary to satisfy the state’s obligations under 45 C.F.R. 164.526.

Internal Practices: The contractor shall make its internal practices, books and records relating to the use and disclosure of the state’s PHI available to the state and all appropriate federal agencies to determine the state’s and the contractor’s compliance with HIPAA, the HITECH Act and the Privacy and Security Rule. To the extent the contractor is to carry out one or more of state’s obligations under Subpart E of 45 C.F.R. Part 164, the contractor must comply with the requirements of that Subpart that apply to the state in the performance of such obligations.

Breach: A breach of a material term of this Appendix by the contractor that is not cured within a reasonable period of time may be grounds for the immediate termination of the contract.

Effect of Termination: Upon termination of the contract, the contractor will, at the direction of the state, either return or destroy all PHI received from the state or created, maintained, or transmitted on the state’s behalf by the contractor in any form. Unless otherwise directed, the contractor is prohibited from retaining any copies of PHI received from the state or created, maintained, or transmitted by the contractor on behalf of the state. If destruction or return of PHI is not feasible, the contractor must continue to extend the protections of this Appendix to PHI and limit the further use and disclosure of the PHI. The obligations in this Appendix shall continue until all of the PHI provided by the state to the contractor is either destroyed or returned to the state.

Agree Disagree **I have read and agree to the terms of this Agreement, and represent and warrant that I have authority to bind this entity named below to these terms and conditions.**

Printed Name of Authorized Representative _____

Title _____

Signature _____

Date _____

Contractor Name _____