



**Business Associates Agreement
For HIPAA Compliant Agencies
For NW Social Service Connections HMIS
(HIPAA ADDENDUM)**

This Business Associates Agreement is made and executed this the _____ day of _____, 20____, by and between the Bureau of Housing and Community Development (“BHCD”), Department of School and Community Partnerships (“DSCP”), and _____ (hereinafter referred to as “Agency”) located at _____.

1. Definitions:

Business Associate. “Business Associate” shall mean BHCD and DSCP.

Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).

Protected Health Information. Protected Health Information (“PHI”) means individually identifiable health information maintained and transmitted in any form or medium, including without limitation, all information (including demographic, medical, and financial information) data, documentation, and materials that is created or received by a health care provider, health plan, or health care clearinghouse and relates to: (a) the past, present, or future physical or mental health or condition of an individual; (b) the provision of health care to an individual; (c) the past, present, or future payment for the provision of health care to an individual and that identifies or could reasonably be used to identify an individual. PHI does not include: (1) health information that has been de-identified in accordance with the standards for de-identification provided for in the Privacy Rule, or (2) employment records held by the Agency.

Privacy Rule. Privacy Rule means the standards for privacy set forth in 45 CFR Part 160 and Part 164, Subparts A and E.

Regulatory References. A reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

Required by Law. Required by Law shall have the same meaning as the term “required by law” in 45 CFR Section 164.501.

Secretary. Secretary means the Secretary of the Department of Health and Human Services or his designee.

2. Purpose:

Agency is or may be subject to the Standards for Privacy of Individually Identifiable Health Information as found at 45 CFR Parts 160 and 164 (the “Privacy Rule”), which provides certain federal regulations for the purpose of protecting certain PHI. Pursuant to the Agency Participation Agreement (the “Agreement”), BHCD and DSCP will provide, for or on behalf of Agency, the products and/or services described in the Agency Participation Agreement (“Covered Services”) and, in the process, may from time to time use, receive, or have access to PHI that it uses, maintains or discloses for Agency or on Agency’s behalf, i.e., as a “Business Associate” of Agency for purposes of the Privacy Rule. As a result, Agency and the Council for the Homeless enter into this Agreement in order for Agency to comply with the Privacy Rule. The parties agree that BHCD and DSCP serve as a Business Associate under this Agreement shall specifically exclude any use, maintenance and/or disclosure of information pursuant to a research protocol approved by an Institutional Review Board, which are subject to the privacy requirements of that research protocol.

3. Permitted Uses and Disclosures of PHI:

Except as provided in Paragraph 4, BHCD and DSCP are permitted and required to use and disclose any PHI it obtains pursuant to the Agreement or in the process of furnishing the Covered Services only as described or permitted in the Agreement (“Permitted Uses and Disclosures”). BHCD and DSCP are prohibited from any use or disclosure beyond the Permitted Uses and Disclosures without written permission of Agency. BHCD and DSCP will make reasonable efforts to use, disclose, or request only the minimum necessary PHI to accomplish the intended purpose.

4. Additional Permitted Uses and Disclosures:

- A. Notwithstanding Paragraph 3, BHCD and DSCP may use PHI to perform any data Aggregation services permitted by 45 CFR §164.504 (e)(2)(i)(B) or to create a limited data set as described in and limited by 45 CFR § 164.514 (e), if allowed by or necessary under the Permitted Uses and Disclosures.
- B. To report violations of law to appropriate Federal and State authorities, where consistent with 45 CFR § 164.502 (j)(1);
- C. For any use or disclosure that is necessary for the proper management and administration of BHCD, DSCP, NWSCC or to carry out any legal responsibilities.

5. Additional Obligations of BHCD and DSCP

In addition to the foregoing, BHCD and DSCP shall, to the extent required by the Privacy Rule:

- A. Not use or further disclose any PHI other than as permitted or required by the Agreement or as required by law;
- B. Use appropriate and commercially reasonable safeguards to prevent any use or disclosure of PHI other than as provided for by the Agreement or as required by law;
- C. Report to Agency in a reasonably prompt manner any use or disclosure of PHI not provided for by the Agreement or as required by law, of which it becomes aware and take all reasonable steps to mitigate any harmful effects resulting from such use or disclosure of PHI;
- D. Ensure that any agents, including without limitation any vendor, to whom the Council for the Homeless provides any PHI agrees to the same restrictions and conditions that apply to the Council for the Homeless with respect to such PHI;
- E. Promptly make PHI available to Agency upon request in compliance with the access provisions of the Privacy Rule as found at 45 CFR § 164.524;
- F. Promptly make PHI available for amendment and incorporate any amendments to the PHI maintained by the Council for the Homeless as required by the Privacy Rule;
- G. Maintain data on all disclosures of PHI for which accounting is required by 45 CFR 164.528 for at least six years after the date of the last such disclosure, and make the data available to Agency as necessary for Agency to provide accountings of disclosures in accordance with the Rule;
- H. Make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services or his/her designee for purposes of determining the Agency’s compliance with the Privacy Rule; and
- I. At termination of the Agreement, to the extent feasible, recover all PHI in the possession of its agents and subcontractors and return or destroy all of the PHI that BHCD and DSCP still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible in the reasonable judgment of BHCD and DSCP, extend the protections of the Agreement to the remaining PHI and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- J. BHCD and DSCP shall ensure that any of its agents, including a subcontractor, to whom it provides PHI that is created or received by BHCD and DSCP on behalf of Agency, shall agree to the same restrictions and conditions that apply through the Agreement to BHCD and DSCP with respect to such information.

6. Obligations of Agency:

Agency shall notify BHCD and DSCP of:

- A. Any changes in, or revocation of an authorization by an Individual to use or disclose PHI, to the extent that such changes may affect BHCD and DSCP's use or disclosure of PHI; and
- B. Any restriction to the use or disclosure of PHI that Agency has agreed to in accordance with 45 CFR § 164.55, to the extent that such restriction may affect BHCD and DSCP's use or disclosure of PHI. If possible, Agency shall notify BHCD and DSCP of proposed restrictions prior to accepting them, so the Council for the Homeless can determine whether the proposed restriction is administrable. Agency shall cooperate with reasonable determinations of administrability by BHCD and DSCP in determining whether to grant or deny a request for restriction.
- C. Agency will be solely responsible for the production and distribution of the required Notice of Privacy Practices in accordance with 45 CFR Section 164.520 which is given to all individuals who receive services from the Agency. The Agency will give a copy to BHCD and DSCP and will notify BHCD and DSCP if there are any changes to the Notice of Privacy Practices.

7. Term:

This Agreement shall become effective immediately upon execution and, except as hereinafter provided, shall remain in force and effect until the last of the PHI is returned to Agency or destroyed.

8. Termination of Contract Pursuant to Privacy Rule:

Notwithstanding any provision of the Agreement to the contrary regarding term or termination, Agency is authorized to terminate the Agreement if it determines that BHCD and DSCP have violated a material term of this Agreement or the Privacy Rule (a "Privacy Breach") upon compliance with the following:

- A. Unless Agency reasonably believes that BHCD and DSCP have already cured the Privacy Breach by remedying the condition leading to or causing the Privacy Breach, Agency shall give written note ("Notice") to BHCD and DSCP, at the address listed at the top of this Agreement, that the Privacy Breach shall be cured as soon as possible and in any event within twenty (20) days.
- B. If it is not possible to cure the Privacy Breach or if Agency has not received satisfactory assurances within twenty (20) days of the date that the Notice is received by BHCD and DSCP has cured the Privacy Breach, then Agency may terminate the Contract if it determines that termination is reasonable and feasible. If Agency determines that termination is not feasible, it may immediately report the problem to the Secretary of the Department of Health & Human Services.

9. Changes to Addendum as required by law:

The parties hereto have acknowledged that this Agreement is entered into in order to comply with the requirements of the Privacy Rule. In the event that the provisions or interpretation of the Privacy Rule are materially changed, or in the event that any other law is enacted or interpreted which materially effects the terms of this Agreement, the parties agree to enter into a mutually acceptable amendment to the Agreement, on or before the effective date of that change, to bring the terms hereof into compliance therewith.

10. Survival.

The respective rights and obligations of BHCD and DSCP under Section 5 shall survive termination of the Agreement.

11. Interpretation.

Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits the Agency to comply with the Privacy Rule.

12. Counterparts.

This Addendum may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

HIPAA ADDENDUM TO
AGREEMENT BETWEEN _____
AND
City of Portland Bureau of Housing & Community Development and
the Department of School and Community Partnerships

SIGNATURE PAGE

CITY OF PORTLAND **APPROVED AS TO FORM**

Julie Kennedy
HIPAA Privacy & Security Officer

City Attorney

Date

Date

**Dept. of School and Community
Partnerships**

Agency

Name

Name

Title

Title

Date

Date