

## HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum (“Addendum”) supplements and is made a part of the agreement (“Agreement”) by and between **Salish Behavioral Health Organization** (SBHO) and \_\_\_\_\_ (“Associate”), and is effective as of the compliance date of the Privacy Rule (defined below).

### RECITALS

- A. SBHO wishes to disclose certain information to Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) defined below.
- B. SBHO and Associate intend to protect the privacy and provide for the security of PHI disclosed to the Associate pursuant to this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated by the U.S. Department of Health and Human Services (the “HIPAA regulations”) and other applicable laws.
- C. As part of the HIPAA regulations, the Privacy Rule (defined below) requires Associate to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45 CFR §§ 164.502 (e) and 164.504(e). CFR refers to the Code of Federal Regulations.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

#### 1. Definitions

- a. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy Rule.
- b. Business Associate shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §160.103.
- c. Covered Entity shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §160.103.
- d. Designated Record Set shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.
- e. Individual shall have the same meaning as such term under the Privacy Rule in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- f. Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information (HIPAA Regulations) that is codified at 45 CFR Parts 160 and 164.
- g. Protected Health Information or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or behavioral condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and 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.
- h. Protected Information shall mean PHI provided by SBHO to Associate or created or received by Associate on SBHO’s behalf.
- i. Required By Law shall have the same meaning as the term "required by law" in 45 CFR §164.501.

- j. Secretary shall mean the Secretary of the Department of Health and Human Services or his or her designee.

2. Obligations of Associate

- a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate's obligations under the Agreement and as permitted under the Agreement and Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by SBHO, except that Associate may use Protected Information to carry out legal responsibilities of Associate.
- b. Permitted Disclosure. Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if disclosed by SBHO, except that Associate may disclose Protected Information in a manner permitted pursuant to the Agreement and Addendum.
- c. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by this Addendum.
- d. Reporting of Improper Use or Disclosure. Associate shall report to SBHO in writing of any use or disclosure of Protected Information outside of that provided for by the Agreement and this Addendum immediately after becoming aware of such use or disclosure.
- e. Associate's Agents. Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information agree in writing to the same restrictions and conditions that apply to Associate with respect to such PHI.
- f. Access to Protected Information. Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to SBHO for inspection and copying within ten (10) days of receiving a request from SBHO in order to enable SBHO to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.524.
- g. Amendment of PHI. Within ten (10) days of a request from SBHO for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such Protected Information available to SBHO for amendment and incorporate any such amendment to enable SBHO to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.526.
- h. Accounting Rights. Within ten (10) days of notice by SBHO of a request for an accounting of disclosures of Protected Information, Associate and its agents or subcontractors shall make available to SBHO the information required to provide an accounting of disclosures to enable SBHO to fulfill its obligations under the privacy Rule, including, but not limited to, 45 CFR §164.528. As set forth in, and as limited by, 45 CFR § 64.528, Associate shall not provide an accounting to SBHO of disclosures:
  - (i) to carry out treatment, payment or health care operations;
  - (ii) to individuals of Protected Information about them; to persons involved in the individual's care or other notification purposes;
  - (iv) national security or intelligence purposes; or
  - (v) to correctional institutions or law enforcement officials.

Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule (April 14, 2003). At a minimum, such information is to include: (i) date of disclosure; (ii) name of the entity or person who received Protected Information, and if known, address of the entity or person;

- (iii) brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. Associate shall not disclose any Protected Information except as set forth in §2.b. of this Addendum.
- i. Governmental Access to Records. Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary for purposes of determining SBHO's compliance with the Privacy Rule.
  - j. Minimum Necessary. Associate and its agents or subcontractors shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure.
  - k. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.
  - l. Retention of Protected Information. Notwithstanding §5.d. of this Addendum, Associate and its subcontractors or agents shall retain the information required under §2.h. of this Addendum for a period of six (6) years after the creation of the Protected Information as set forth in 45 CFR, §164.230(j)(2).
  - m. Notification of Breach. During the term of the Agreement, Associate shall notify SBHO within twenty-four (24) hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI and/or any actual or suspected use of disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by federal and state laws and regulations.
  - n. Audits, Inspection and Enforcement. Within ten days of a written request by SBHO, Associate and its agents or subcontractors shall allow SBHO to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use and disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that (i) Associate and SBHO shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) SBHO shall protect the confidentiality of all confidential and proprietary information of Associate to which SBHO has access during the course of such inspection, and (iii) SBHO shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by the Associate. The fact that SBHO inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does SBHO's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of SBHO's enforcement rights under this Agreement.
3. Obligations of SBHO. SBHO shall be responsible for using appropriate safeguards to maintain and ensure confidentiality, privacy and security of PHI transmitted to Associate pursuant to this Agreement, in accordance with the standards and requirements of the Privacy Rule, until such PHI is received by Associate.
  4. Termination.
    - a. Material Breach. A breach by Associate of any material provision of this Addendum, determined by SBHO, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by SBHO.

- b. Reasonable Steps to Cure Breach. If SBHO knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provision of this Addendum or another arrangement and does not terminate this Agreement pursuant to 4.a., then SBHO shall take reasonable steps to cure such breach or end such violation, as applicable. If SBHO's efforts to cure such breach or end such violation are unsuccessful, SBHO shall either (i) terminate this Agreement, if feasible or (ii) if termination of this Agreement is not feasible, SBHO shall report Associate's breach or violation to the Secretary.
  - c. Judicial or Administrative Proceedings. Either party may terminate this Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws, or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
  - d. Effect of Termination. Upon termination of this Agreement for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, Associate shall continue to extend the protections of §§2.a, 2.b, 2.c, and 2.e of this Addendum to such information and limit further use of PHI to those purposes that make the return or destruction of such PHI infeasible.
5. Disclaimer. SBHO makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purpose. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.
  6. Certification. To the extent SBHO determines that such examination is necessary to comply with SBHO's legal obligations pursuant to HIPAA relating to certification of its security practices, SBHO or its authorized agents, may, at SBHO's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents to certify to SBHO the extent to which Associate's security safeguards comply with HIPAA, HIPAA Regulations or this Addendum.
  7. Amendment to Comply with Law. The parties hereto shall comply with applicable laws and regulations governing their relationship, including, without limitation, the Privacy Regulations, and any other federal or state laws or regulations governing the privacy, confidentiality or security of patient health information, including without limitation, the Washington Uniform Healthcare Information Act, RCW ch. 70.02. If a provision of this Amendment is held invalid under any applicable law, such invalidity will not affect any other provision of this Amendment that can be given effect without the invalid provision. Further, all terms and conditions of this Amendment will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect. Upon request by SBHO, Associate agrees to promptly enter into negotiations with SBHO concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of the Privacy Regulations or other applicable laws. SBHO may terminate this Agreement upon 30 days written notice to Associate in the event (i) Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this § or (ii) Associate does not enter into an amendment of this Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of the Privacy Regulations.

8. Effect on Agreement. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect.
9. Interpretation. The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.
10. Indemnification. Associate will indemnify, hold harmless and defend SBHO from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with (i) any misrepresentation, breach or non-fulfillment of any undertaking on the part of Associate under this Amendment; and (ii) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with Associate's obligations under this Addendum.

The parties hereto have duly executed this Addendum as of the Addendum Effective Date.

\_\_\_\_\_  
Salish Behavioral Health Organization

\_\_\_\_\_  
Business Associate

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

(Revised 5/2016)