

**MEMORANDUM OF UNDERSTANDING NO. [XXXX]**

**BETWEEN**

**THE GEORGIA DEPARTMENT OF HUMAN SERVICES, [DIVISION]**

**AND**

**[CONTRACTOR NAME]**

**FOR**

**[AGREEMENT TITLE]**

This Memorandum of Understanding (“MOU”) is made and entered into by and between the Georgia Department of Human Services, [Division] (“DHS-[DIV]”) and the [Contractor Name] (“CONTR”), each individually a “Party” and collectively referred to as the “Parties” and shall be effective upon the date of last signature by the authorized representatives of the Parties ("Effective Date").

**WHEREAS**, DHS is the State agency that administers and sets parameters for a statewide system of programs and services that provide public assistance to the disadvantaged, disabled and elderly residents of the State of Georgia (the “State”) through a network of other agencies and organizations, pursuant to O.C.G.A. § 49-2-1 et seq.;

**WHEREAS**, [CONTR description];

**WHEREAS**, [Contract Recital(s)];

**WHEREAS**, DHS and [CONTR] are empowered to enter into this MOU pursuant to 1983 Ga. Const. Art. IX, Sec. III, Para. I, as an intergovernmental agreement.

**NOW THEREFORE**, in consideration of the mutual agreements and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. PARTIES’ JOINT RESPONSIBILITIES**

The Parties agree to:

1.1. Maintain regular communication with each other, in all matters, as needed throughout the duration of the MOU.

1.2. Work in partnership with each other and with each Party’s authorized representatives and contractors in the provision of the services and such other goals as may be mutually agreed upon by the Parties.

1.3. Provide information and documentation as reasonably necessary to meet the obligations of this MOU.

1.4. Cooperate in good faith with any audit or financial reviews conducted by the other Party or any other authorized entity regarding this MOU. This includes maintaining and providing information descriptive of the services required under this Agreement necessary for the other Party to meet any reporting requirements imposed by State or federal law.

**2. [CONTR] RESPONSIBILITIES**

[CONTR] agrees to:

2.1. [Responsibility # 1]

2.2. [Responsibility # 2]

2.3. [Responsibility # 3]

**3. DHS-[DIV] RESPONSIBILITIES**

DHS-**[DIV]** agrees to:

3.1. [Responsibility # 1]

3.2. [Responsibility # 2]

3.3. [Responsibility # 3]

**4. TERM**

4.1. This MOU shall begin on the Effective Date and shall continue until [End Date] (“Initial Term”), unless terminated earlier pursuant to **Section 7**, ***Termination***; provided, however, that termination or expiration of this MOU shall not affect any obligations, representations, or warranties, which by their nature survive termination or expiration. Thereafter, this MOU may be renewed by the Parties for up to four (4) additional terms, each up to one (1) State Fiscal Year, which shall begin on July 1, and end at midnight on June 30, of the following year as follows (“Additional Term(s)” and together with the Initial Term, the “Term”):

The Term are as follows:

Initial Term: Effective Date – [End Date]

Renewal Option 1: July 1, [Year] – June 30, [Year]

Renewal Option 2: July 1, [Year] – June 30, [Year]

Renewal Option 3: July 1, [Year] – June 30, [Year]

Renewal Option 4: July 1, [Year] – June 30, [Year]

4.2. The terms and conditions in effect at the time of the renewal shall apply to each renewal term. DHS-[DIV] shall send [CONTR] written notice memorializing the Parties’ intent to exercise a renewal option under this MOU.

**5. PAYMENT**

5.1. It is expressly understood that neither Party shall have any financial obligations arising from this MOU.

**6. RELATIONSHIP OF THE PARTIES**

6.1. Neither Party is an agent, employee, assignee or servant of the other. It is expressly agreed that this MOU is not to be construed as creating a partnership, joint venture, master-servant, principal-agent, or other relationship for any purpose whatsoever. Furthermore, neither Party is authorized to or has the power to obligate or bind the other by contract, agreement, warranty, representation or otherwise in any manner whatsoever.

**7. TERMINATION**

7.1. This MOU may be cancelled or terminated, in whole or in part:

7.1.1. For convenience of either Party upon delivery of thirty (30) calendar days’ written notice of intent to do so, signed by a duly authorized representative of either Party;

7.1.2. By operation of law or act of the General Assembly, so as to render the fulfillment of the MOU infeasible; and

**8. DEFAULT**

8.1. If there is an event of default, the non-defaulting Party shall provide written notice thereof requesting that the breach or noncompliance be remedied within the time period specified in the notice. If the breach or noncompliance is not remedied by such date, the non-defaulting Party may immediately terminate this MOU, in whole or in part, without additional written notice.

**7. LIMITATION OF LIABILITY**

7.1. No civil action may be brought under this MOU by one Party against the other Party.

7.2. DHS-[DIV] shall not be held liable for claims arising solely from the acts, omissions or negligence of [CONTR]. [CONTR] shall not be held liable for claims arising solely from the acts, omissions or negligence of DHS-[DIV].

**8. CONFIDENTIALITY AND PERSONAL HEALTH INFORMATION**

8.1. All Parties herein shall abide by all state and federal laws, rules and regulations, and DHS policy on respecting confidentiality of an individual’s records. The Parties herein further agree not to divulge any information concerning any individual to any unauthorized person without the written consent of the individual employee, consumer/client/customer, or responsible parent or guardian.

8.2. Pursuant to 45 C.F.R § 160.103, the Parties agree that DHS-[DIV] is a "covered entity" as defined by the federal Standards for Privacy of Individually Identifiable Health Information. DHS-[DIV] from time to time may disclose "protected health information" ("PHI") to carry out the functions of this MOU. These disclosures relate to PHI created or acquired by DHS-[DIV] in connection with programs it administers.

8.3. PHI disclosed pursuant to this MOU is confidential information and will be subject to appropriate safeguards while in DHS-[DIV] possession. PHI will not be re-disclosed by DHS-[DIV] or its employees without the written consent of the individual to whom the PHI relates or that individual's authorized representative, except as may be required by compulsory legal process. PHI will be retained by DHS-[DIV] as required by law and, as appropriate, will be destroyed only in accordance with approved records retention schedules.

8.4. DHS-[DIV] is required by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (hereinafter referred to as ‘HIPAA’), to obtain satisfactory assurances that its Business Associates will provide appropriate safeguards to ensure the security, confidentiality and integrity of PHI that a Business Associate may receive or create on behalf of DHS-[DIV] pursuant to this MOU, and to document those assurances by entering into a Business Associate Agreement with certain entities that provide activities and/or services involving the use of PHI.

8.5. DHS-[DIV] agrees to execute, and to require its vendors, contractors and agents to execute, a HIPAA Business Associate Agreement, which is attached to this MOU as **Attachment A** and incorporated herein by reference.

**9. NOTICE**

9.1. All notices, requests, or other communications (excluding invoices) under this MOU shall be in writing and either transmitted via overnight courier, electronic mail, hand deliver or certified or registered mail, postage prepaid and return receipt requested to the Parties at the following addresses. Notices will be deemed to have been given when received.

**DHS-[DIV]:**

**Project Leader**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Contracts Administrator**

Joy Walker

Contracts Manager

Office of Procurement, Contracts and Vendor Management

2 Peachtree Street, NW

Suite 27-214

Atlanta, Georgia 30303

(404) 656-4861

(770) 359-3276 (fax)

[R.Joy.Walker@dhs.ga.gov](mailto:R.Joy.Walker@dhs.ga.gov)

**[CONTR]**

**Project Leader**

|  |
| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Contract Administrator**

|  |
| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

9.2. In the event a Party decides to identify a new or additional point-of-contact, said Party shall send written notification to the other Party identifying, the name, title, and address of the new point-of-contact. Identification of a new point-of-contact is not considered an amendment to this Agreement

**10. AMENDMENTS IN WRITING**

10.1. The Parties recognize and agree that it may be necessary or convenient for the Parties to amend this MOU so as to provide for the orderly implementation of all of the undertakings described herein, and the Parties agree to cooperate fully in connection with such amendments if and as necessary. However, no amendment, modification or alteration of this MOU will be valid or effective unless such modification is made in writing and signed by both Parties and affixed to this MOU as an amendment. Except for the specific provisions of the Agreement which are amended, the MOU remains in full force and effect after such amendment.

**11. COMPLIANCE WITH APPLICABLE LAWS**

11.1. The Parties agree to comply and abide by all federal and state laws, rules, statutes, case law, precedent, policies, or procedures that may govern the MOU, or any of the Parties' responsibilities. To the extent that applicable federal and state laws, rules, regulations, statutes, case law, precedent, policies, or procedures - either those in effect at the time of the execution of this MOU, or those which become effective or are amended during the life of the MOU - require a Party to take action or inaction, any costs, expenses, or fees associated with that action or inaction shall be borne and paid by said Party.

**12. ASSIGNMENT**

12.1. No Party may assign this MOU, in whole or in part, without prior written consent of the other Party, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.

**13. DISPUTE RESOLUTION**

13.1. The Parties shall cooperate with each other in good faith and agree to amicably settle any differences expediently through negotiations. Outstanding issues shall be resolved between departmental unit management as appropriate. If no resolution can be reached at the appropriate unit level, the issue will be escalated to upper/ senior management for resolution. If no resolution can be reached at the upper/senior management level, the issue will be escalated to the commissioner level for resolution.

**14. MISCELLANEOUS PROVISIONS**

14.1. Audits. The Parties may audit the performance of this MOU following reasonable notice to the other. The Parties agree to cooperate with such audit and to furnish any and all records and information reasonable requested by the other.

14.2. Boycott of Israel. [CONTR] certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. § 50-5-85.

14.3. Governing Law. This Contract and the rights and obligations of the Parties hereto shall be governed, construed, and interpreted according to the laws of the State of Georgia.

14.4. Legislation. Each Party shall promptly notify the other Party of proposed legislation which may affect the subject matter of this MOU.

14.5. Parties Bound. This MOU is binding upon all employees, agents and third-party vendors of [CONTR] and DHS-[DIV] and will bind the respective heirs, executors, administrators, legal representatives, successors and assigns of each Party.

**15. WAIVER AND SEVERABILITY**

15.1. No failure or delay in exercising or enforcing any right or remedy hereunder by a Party shall constitute a waiver of any other right or remedy, or future exercise thereof. If any provision of this MOU is determined to be invalid under any applicable statute or rule of law, it is to that extent deemed to be omitted, and the balance of the MOU shall remain enforceable.

**16. COUNTERPARTS/ELECTRONIC SIGNATURES**

16.1. This Contract may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Any signature below that is transmitted by facsimile or other electronic means shall be binding and effective as the original.

**17. ENTIRE AGREEMENT**

17.1. This MOU together with attachments or exhibits, which are incorporated by reference, constitutes the complete agreement and understanding between the Parties with respect to the subject matter and supersedes any and all other prior and contemporaneous agreements and understandings between the Parties, whether oral or written.

***(SIGNATURES ON FOLLOWING PAGE)***

**[THIS SPACE HAS BEEN INTENTIONALLY LEFT BLANK]**

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Parties agree to the terms and conditions of this MOU and the undersigned duly authorized officers or agents of each Party have hereunto affixed their signatures on the day and year indicated below.

**GEORGIA DEPARTMENT OF HUMAN SERVICES**

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Robyn A. Crittenden, Commissioner | Date |
|  |  |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| [Name], Director, [Division] | Date |
|  |  |

**[CONTRACTOR NAME]**

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| [Name], [Title] | Date |

**ATTACHMENT A**

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (hereinafter referred to as “Agreement”) is made and entered into by and between the Georgia Department of Human Services (hereinafter referred to as “DHS”) and the [Contractor Name] (hereinafter referred to as “Contractor”) as an attachment to Memorandum of Agreement No. **[XXXX]** between DHS and Contractor (hereinafter referred to as “Contract”). The effective date of this Agreement shall be the date the Contract referenced above is executed by Contractor.

**WHEREAS,** DHS is required by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), to enter into a Business Associate Agreement with certain entities that provide functions, activities, or services involving the use of Protected Health Information, as defined by HIPAA;

**WHEREAS**, Contractor, under the Contract provides functions, activities, or services involving the use of Protected Health Information, as defined by HIPAA, and individually identifiable information (“PHI”) protected by other state and federal law;

**NOW, THEREFORE,** for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DHS and Contractor (each individually a “Party” and collectively the “Parties”) hereby agree as follows:

1. Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms have in HIPAA and in Title XIII of the American Recovery and Reinvestment Act of 2009 (the Health Information Technology for Economic and Clinical Health Act, or “HITECH”), and in the implementing regulations of HIPAA and HITECH. Implementing regulations are published as the Standards for Privacy and Security of Individually Identifiable Health Information in 45 C.F.R. Parts 160 and 164. Together, HIPAA, HITECH, and their implementing regulations are referred to in this Agreement as the “Privacy Rule and Security Rule.” If the meaning of any defined term is changed by law or regulation, then this Agreement will be automatically modified to conform to such change. The term “NIST Baseline Controls” means the baseline controls set forth in National Institute of Standards and Technology (NIST) SP 800-53 established for “moderate impact” information.
2. Except as limited in this Agreement, Contractor may use or disclose PHI only to the extent necessary to meet its responsibilities as set forth in the Contract provided that such use or disclosure would not violate the Privacy Rule or the Security Rule, if done by DHS. Furthermore, except as otherwise limited in this Agreement, Contractor may:
   1. Use PHI for internal quality control and auditing purposes.
   2. Use or disclose PHI as Required by Law.
   3. After providing written notification to DHS’ Office of Inspector General, use PHI to make a report to a health oversight agency authorized by law to investigate DHS (or otherwise oversee the conduct or conditions of the DHS) about any DHS conduct that Contractor in good faith believes to be unlawful as permitted by 45 C.F.R. 164.502(j)(1). Notwithstanding the foregoing, Contractor shall not be required to provide prior written notice to DHS’ Privacy Officer if Contractor is provided written instruction otherwise by the health oversight agency authorized by law to investigate DHS.
   4. Use and disclose PHI to consult with an attorney for purposes of determining Contractor’s legal options with regard to reporting conduct by DHS that Contractor in good faith believes to be unlawful, as permitted by 45 C.F.R. 164.502(j)(1).
3. Contractor warrants that only individuals designated by title or name on **Attachments A-1** and **A-2** will request PHI from DHS or access DHS PHI in order to perform the services of the Contract, and these individuals will only request the minimum necessary amount of information necessary in order to perform the services.
4. Contractor warrants that the individuals listed by title on **Attachment A-1** require access to PHI in order to perform services under the Contract. Contractor agrees to send updates to **Attachment A-1** whenever necessary. Uses or disclosures of PHI by individuals not described on **Attachment A-1** are impermissible.
5. Contractor warrants that the individuals listed by name on **Attachment A-2** require access to a DHS information system in order to perform services under the Contract. Contractor agrees to notify the Project Leader and the Access Control Coordinator named on **Attachment A-2** immediately, but at least within twenty-four (24) hours, of any change in the need for DHS information system access by any individual listed on **Attachment A-2**. Any failure to report a change within the twenty-four (24) hour time period will be considered a security incident and may be reported to Contractor’s Privacy and Security Officer, Information Security Officer and the Georgia Technology Authority for proper handling and sanctions.
6. Contractor agrees that it is a Business Associate to DHS as a result of the Contract, and warrants to DHS that it complies with the Privacy Rule and Security Rule requirements that apply to Business Associates and will continue to comply with these requirements. Contractor further warrants to DHS that it maintains and follows written policies and procedures to achieve and maintain compliance with the HIPAA Privacy and Security Rules and updates such policies and procedures as necessary in order to comply with the HIPAA Privacy and Security Rules that apply to Business Associates. These policies and procedures shall be provided to DHS upon request.
7. The Parties agree that a copy of all communications related to compliance with this Agreement will be forwarded to the following Privacy and Security Contacts:
   1. At DHS: Harold Johnson

HIPAA Privacy Officer, Office of General Counsel

Harold.Johnson@dhs.ga.gov

404-651-6602

Eric Boateng

Agency Information Security Officer

Eric.Boateng@dhs.ga.gov

404-651-9876

* 1. At Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Contractor agrees that it will:**
2. Not request, create, receive, use or disclose PHI other than as permitted or required by this Agreement, the Contract, or as required by law.
3. Establish, maintain and use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement or the Contract. Such safeguards must include all NIST Baseline Controls, unless DHS has agreed in writing that the control is not appropriate or applicable.
4. Implement and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of DHS. Such safeguards must include all NIST Baseline Controls, unless DHS has agreed in writing that the control is not appropriate or applicable.
5. In addition to the safeguards described above, include access controls that restrict access to PHI to the individuals listed on **A-1** and **A-2**, as amended from time to time, and shall implement encryption of all electronic PHI during transmission and at rest.
6. Upon DHS’ reasonable request, but no more frequently than annually, obtain an independent assessment of Contractor’s implementation of the NIST Baseline Controls and the additional safeguards required by this Agreement with respect to DHS PHI, provide the results of such assessments to DHS, and ensure that corrective actions identified during the independent assessment are implemented.
7. Mitigate, to the extent practicable, any harmful effect that may be known to Contractor from a use or disclosure of PHI by Contractor in violation of the requirements of this Agreement, the Contract or applicable regulations. Contractor shall bear the costs of mitigation, which shall include the reasonable costs of credit monitoring or credit restoration when the use or disclosure results in exposure of information commonly used in identity theft.
8. Ensure that its agents or subcontractors to whom it provides PHI are contractually obligated to comply with at least the same obligations that apply to Contractor under this Agreement, and ensure that its agents or subcontractors comply with the conditions, restrictions, prohibitions and other limitations regarding the request for, creation, receipt, use or disclosure of PHI, that are applicable to Contractor under this Agreement and the Contract.
9. Except for “Non-Reportable Incidents,” report to DHS any use or disclosure of PHI that is not provided for by this Agreement or the Contract of which it becomes aware. Non-Reportable Incidents are limited to the following:
   * 1. the unintentional acquisition, access, or use of PHI by a workforce member of Contractor acting under the authority of Contractor, so long as the PHI is not further acquired, accessed, used or disclosed in an impermissible manner;
     2. the inadvertent disclosure of PHI from a person designated in **A-1** or **A-2** as authorized to access DHS PHI to a workforce member of Contractor who is not designated in **A-1** or **A-2**, but is authorized to access other Protected Health Information maintained by Contractor, so long as the information is not further acquired, accessed, used or disclosed in an impermissible manner.
10. Make an initial report to DHS in writing in such form as DHS may require within three (3) business days after Contractor (or any subcontractor) becomes aware of the unauthorized use or disclosure. This report will require Contractor to identify the following:
11. The nature of the impermissible use or disclosure (the “incident”), which will include a brief description of what happened, including the date it occurred and the date Contractor discovered the incident;
12. The PHI involved in the impermissible use or disclosure, such as whether the full name, social security number, date of birth, home address, account number or other information were involved;
13. Who (by title, access permission level and employer) made the impermissible use or disclosure and who received the PHI as a result;
14. What corrective or investigational action Contractor took or will take to prevent further impermissible uses or disclosures, to mitigate harmful effects, and to prevent against any further incidents;
15. What steps individuals who may have been harmed by the incident might take to protect themselves; and
16. Whether Contractor believes that the impermissible use or disclosure constitutes a Breach of Unsecured PHI.

Upon request by the DHS HIPAA Privacy and Security Officer or the DHS Information Security Officer, Contractor agrees to make a complete report to the DHS in writing within two (2) weeks of the initial report that includes a root cause analysis and a proposed corrective action plan. Upon approval of a corrective action plan by the DHS, Contractor agrees to implement the corrective action plan and provide proof of implementation to the DHS within five (5) business days of DHS’ request for proof of implementation.

1. Report to the DHS HIPAA Privacy and Security Officer and the DHS Agency Information Security Officer any successful unauthorized access, modification, or destruction of PHI or interference with system operations in Contractor’s information systems as soon as practicable but in no event later than three (3) business days of discovery. If such a security incident resulted in a use or disclosure of PHI not permitted by this Agreement, Contractor shall also make a report of the impermissible use or disclosure as described above. Contractor agrees to make a complete report to the DHS in writing within two weeks of the initial report that includes a root cause analysis and, if appropriate, a proposed corrective action plan designed to protect PHI from similar security incidents in the future. Upon DHS’ approval of Contractor’s corrective action plan, Contractor agrees to implement the corrective action plan and provide proof of implementation to the DHS.
2. Upon DHS’ reasonable request and not more frequently than once per quarter, report to the DHS Agency Information Security Officer any (A) attempted (but unsuccessful) unauthorized access, use, disclosure, modification, or destruction of PHI or (B) attempted (but unsuccessful) interference with system operations in Contractor’s information systems. Contractor does not need to report trivial incidents that occur on a daily basis, such as scans, “pings,” or other routine attempts that do not penetrate computer networks or servers or result in interference with system operations.
3. Cooperate with DHS and provide assistance necessary for DHS to determine whether a Breach of Unsecured PHI has occurred, and whether notification of the Breach is legally required or otherwise appropriate. Contractor agrees to assist DHS in its efforts to comply with the HIPAA Privacy and Security Rules, as amended from time to time.  To that end, the Contractor will abide by any requirements mandated by the HIPAA Privacy and Security Rules or any other applicable laws in the course of this Contract.  Contractor warrants that it will cooperate with DHS, including cooperation with DHS privacy officials and other compliance officers required by the HIPAA Privacy and Security Rules and all implementing regulations, in the course of performance of this Contract so that both Parties will be in compliance with HIPAA.
4. If DHS determines that a Breach of Unsecured PHI has occurred as a result of Contractor’s impermissible use or disclosure of PHI or failure to comply with obligations set forth in this Agreement or in the Privacy or Security Rules, provide all notifications to Individuals, HHS and/or the media, on behalf of DHS, after the notifications are approved by the DHS. Contractor shall provide these notifications in accordance with the security breach notification requirements set forth in 42 U.S.C. §17932 and 45 C.F.R. Parts 160 & 164 subparts A, D & E as of their respective Compliance Dates, and shall pay for the reasonable and actual costs associated with such notifications.

In the event that DHS determines a Breach has occurred, without unreasonable delay, and in any event no later than thirty (30) calendar days after Discovery, Contractor shall provide the DHS HIPAA Privacy and Security Officer a list of Individuals and a copy of the template notification letter to be sent to Individuals. Contractor shall begin the notification process only after obtaining DHS’ approval of the notification letter.

1. Make any amendment(s) to PHI in a Designated Record Set that DHS directs or agrees to pursuant to 45 CFR 164.526 within five (5) business days after request of DHS. Contractor also agrees to provide DHS with written confirmation of the amendment in such format and within such time as DHS may require.
2. In order to meet the requirements under 45 CFR 164.524, regarding an individual’s right of access, within five (5) business days following DHS’ request, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the DHS, provide DHS access to the PHI in an individual’s Designated Record Set. However, if requested by DHS, Contractor shall provide access to the PHI in a Designated Record Set directly to the individual to whom such information relates.
3. Give the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) or the Secretary’s designees access to Contractor’s books and records and policies, practices or procedures relating to the use and disclosure of PHI for or on behalf of DHS within five (5) business days after the Secretary or the Secretary’s designees request such access or otherwise as the Secretary or the Secretary’s designees may require. Contractor also agrees to make such information available for review, inspection and copying by the Secretary or the Secretary’s designees during normal business hours at the location or locations where such information is maintained or to otherwise provide such information to the Secretary or the Secretary’s designees in such form, format or manner as the Secretary or the Secretary’s designees may require.
4. Document all disclosures of PHI and information related to such disclosures as would be required for DHS to respond to a request by an Individual or by the Secretary for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. By no later than five (5) business days of receipt of a written request from DHS, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the DHS HIPAA Privacy and Security Officer, Contractor shall provide an accounting of disclosures of PHI regarding an Individual to DHS. If requested by DHS, Contractor shall provide an accounting of disclosures directly to the individual. Contractor shall maintain a record of any accounting made directly to an individual at the individual’s request and shall provide such record to the DHS upon request.
5. Work in good faith with DHS to promptly resolve any dispute, controversy or claim arising out of or relating to a violation of the HIPAA Privacy and Security Rules or Breach that arises from the conduct or omission of Business Associate or its employee(s), agent(s) or subcontractor(s). Business Associate acknowledges that such a violation of the HIPAA Privacy and Security Rules or breach of this Agreement may result in financial harm to DHS, including, but not limited to, damages, fines, civil penalties and reasonable attorneys’ fees imposed on DHS as a result of such conduct or omission. Business Associate agrees to act in good faith to mitigate such financial harm to DHS, including, but not limited to, pursuing or assisting DHS in its pursuit of any financial recovery available through insurance or other financial coverage maintained by the Department of Administrative Services or any successor entity, pursuing any financial recovery available through Business Associate’s contracts with its agents or subcontractors as applicable, or taking such other action as determined reasonable by DHS and the Business Associate taking into consideration State budgetary requirements and restrictions.
6. **DHS agrees that it will:**
   1. Notify Contractor of any new limitation in DHS’ Notice of Privacy Practices in accordance with the provisions of the Privacy Rule if, and to the extent that, DHS determines in the exercise of its sole discretion that such limitation will affect Contractor’s use or disclosure of PHI.
   2. Notify Contractor of any change in, or revocation of, authorization by an Individual for DHS to use or disclose PHI to the extent that DHS determines in the exercise of its sole discretion that such change or revocation will affect Contractor’s use or disclosure of PHI.
   3. Notify Contractor of any restriction regarding its use or disclosure of PHI that DHS has agreed to in accordance with the Privacy Rule if, and to the extent that, DHS determines in the exercise of its sole discretion that such restriction will affect Contractor’s use or disclosure of PHI.
   4. Prior to agreeing to any changes in or revocation of permission by an Individual, or any restriction, to use or disclose PHI, DHS agrees to contact Contractor to determine feasibility of compliance. Following the receipt by DHS of a written cost estimate, DHS agrees to assume all costs incurred by Contractor in compliance with such special requests.

1. The **Term of this Agreement** shall be effective on the Effective Date and shall terminate when all of the PHI provided by DHS to Contractor, or created or received by Contractor on behalf of DHS, is destroyed or returned to DHS, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.
   1. **Termination for Cause.**  Upon DHS’ knowledge of a material breach of this Agreement by Contractor, DHS shall either:
      1. Provide an opportunity for Contractor to cure the breach of Agreement within a reasonable period of time, which shall be within thirty (30) calendar days after receiving written notification of the breach by DHS;
      2. If Contractor fails to cure the breach of Agreement, terminate the Contract upon thirty (30) calendar days’ notice; or
      3. If neither termination nor cure is feasible, DHS shall report the breach of Agreement to the Secretary of the Department of Health and Human Services.
2. **Effect of Termination.**
3. Upon termination of this Agreement, for any reason, DHS and Contractor shall determine whether return of PHI is feasible. If return of the PHI is not feasible, Contractor agrees to continue to extend the protections of this Agreement to the PHI for so long as the Contractor maintains the PHI and shall limit the use and disclosure of the PHI to those purposes that made return or destruction of the PHI infeasible. If at any time it becomes feasible to return or destroy any such PHI maintained pursuant to this paragraph, Contractor must notify DHS and obtain instructions from DHS for either the return or destruction of the PHI.
4. Contractor agrees that it will limit its further use or disclosure of PHI only to those purposes DHS may, in the exercise of its sole discretion, deem to be in the public interest or necessary for the protection of such PHI, and will take such additional actions as DHS may require for the protection of patient privacy and the safeguarding, security and protection of such PHI.
5. This Effect of Termination section survives the termination of the Agreement.
6. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit DHS to comply with applicable laws, rules and regulations, the HIPAA Privacy Rule, the HIPAA Security Rule and any rules, regulations, requirements, rulings, interpretations, procedures or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable laws, rules and regulations and the laws of the State of Georgia shall supersede the Privacy Rule if, and to the extent that, they impose additional requirements, have requirements that are more stringent than or have been interpreted to provide greater protection of patient privacy or the security or safeguarding of PHI than those of the HIPAA Privacy Rule.
7. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations or liabilities whatsoever.
8. **All other terms and conditions contained in the Contract and any amendment thereto, not amended by this Agreement, shall remain in full force and effect.**

**IN WITNESS WHEREOF,** Contractor, through its authorized officer and agent, has caused this Agreement to be executed on its behalf as of the date indicated.

**[CONTRCTOR NAME]**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE DATE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TITLE\*

\* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract

**ATTACHMENT A-1**

**List of Individuals Permitted to Receive, Use and Disclose DHS PHI**

The following Position Titles, as employees and/or representatives of Contractor, need access to DHS Protected Health Information in order for Contractor to perform the services described in the Contract:

* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Transfers of PHI must comply with DHS Policy and Procedures.

Approved methods of secure delivery of PHI between Contractor and DHS:

* Secure FTP file transfer (preferred)
* Encrypted email or email sent through “secure tunnel” approved by DHS Information Security Officer
* Email of encrypted document (password must be sent by telephone only)
* Encrypted portable media device and tracked delivery method

Contractor must update this list as needed and provide the updated form to DHS. Use of DHS Protected Health Information by individuals who are not described on this **Attachment A-1**, as amended from time to time, is impermissible and a violation of the Agreement. Contractor must update this **Attachment A-1** as needed and provide the updated form to DHS.

DHS Project Leader Contact Information: **[XXXX]**

**ATTACHMENT A-2**

**Part 1:**

Please initial beside the correct option. Please select only one option.

\_\_\_\_\_\_\_\_\_ Contractor DOES NOT need any user accounts to access DHS Information Systems. Do not complete Part 2 of this form.

\_\_\_\_\_\_\_\_\_ Contractor DOES need user accounts to access DHS Information Systems. Please complete Part 2 of this form.

**Part 2:**

Please complete the table below if you indicated that Contractor DOES need any user accounts to access DHS Information Systems. Please attach additional pages if needed.

**List of Individuals Authorized to Access a DHS Information System Containing PHI**

The following individuals, as employees and/or representatives of Contractor, need access to DHS Information Systems containing DHS Protected Health Information in order for Contractor to perform the services described in the Contract:

|  |  |  |  |
| --- | --- | --- | --- |
| **Full Name** | **Employer** | **DHS Information System** | **Type of Access**  **(Read only? Write?)** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Contractor must notify the Project Leader identified in the Contract immediately, but at least within twenty-four (24) hours, after any individual on this list no longer needs the level of access described. Failure to provide this notification on time is a violation of the Agreement and will be reported as a security incident.

Contractor must update this **Attachment A-2** as needed and provide the updated form to DHS.

DHS Project Leader Contact Information: **[XXXX]**