



## COMMONWEALTH of VIRGINIA

### *Department of Medical Assistance Services*

CYNTHIA B. JONES  
ACTING DIRECTOR

600 EAST BROAD STREET  
SUITE 1300  
RICHMOND, VA 23219

### **MODIFICATION NO. 1 TO THE MASTER BUSINESS ASSOCIATE AGREEMENT BETWEEN THE DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (DMAS) AND «SCHOOLBOARD».**

#### **GENERAL CONDITIONS**

This Modification No. 1, entered into as of the date below modifies the Master Business Associate Agreement (“BAA”) signed between the parties on «BAA\_signed\_\_returned». This Modification amend Section IV(4) (Special Provisions to General Conditions – Reporting) as set forth below.

#### **Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder**

**DMAS Contact:** William J. Lessard, Jr. Director, Provider Reimbursement Division.

«SchoolBoard», Contact: «Provider\_Contact\_Name», «Medicaid\_Coordinator».

#### **A. Section IV (Special Provisions to General Conditions), Subsection 4 (Reporting)**

Section IV (Special Provisions to General Conditions), subsection 4 (Reporting) is amended by adding a new subsection (4.2) as follows:

Except as otherwise limited in this contract, contractor may use or disclose protected health information (PHI) to perform functions, activities, or services for, or on behalf of, DMAS as specified in this contract. In performance of contract services, Contractor agrees to:

- Not use or further disclose protected health information (PHI) other than as permitted or required by the terms of this contract or as required by law;

- Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this contract;
- Report to DMAS any use or disclosure of PHI not provided for by this Contract of which it becomes aware;
- Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of DMAS as required by the HIPAA Security Rule, 45 C.F.R. Parts 160, 162, and 164 and the American Recovery and Reinvestment Act (P.L. 111-5) when effective;
- Ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it;
- Report to DMAS any security incident of which it becomes aware.
- Contractor shall notify DMAS of a breach of unsecured PHI on the first day on which such breach is known by Contractor or an employee, officer or agent of Contractor other than the person committing the breach, or as soon as possible following the first day on which Contractor or an employee, officer or agent of Contractor other than the person committing the breach should have known by exercising reasonable diligence of such breach. Notification shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Contractor to have been, accessed, acquired, used or disclosed during the breach. Contractor shall also provide DMAS with any other available information at the time Contractor makes notification to DMAS or promptly thereafter as information becomes available. Such additional information shall include (i) a brief description of what happened, including the date of the breach; (ii) a description of the types of unsecured PHI that were involved in the breach; (iii) any steps the Contractor believes individuals should take to protect themselves from potential harm resulting from the breach; and (iv) a brief description of what Contractor is doing to investigate the breach, mitigate harm to individuals, and protect against any future breaches.
- In the event of impermissible use or disclosure by Business Associate of unsecured protected health information, the Business Associate shall notify in writing all affected individuals as required by Section 13402 of the Health Information Technology for Economic and Clinical Health (HITECH) Act. Business Associate shall be responsible for all costs associated with such notification.

For purposes of this paragraph, unsecured PHI means PHI which is not encrypted or destroyed. Breach means the acquisition, access, use or disclosure of PHI in a manner not permitted by the HIPAA Privacy Rule or this contract which compromises the security or privacy of the PHI by posing a significant risk of financial, reputational, or other harm to the individual.

- Impose the same requirements and restrictions contained in this contract on its subcontractors and agents to whom contractor provides PHI received from, or created or received by a contractor on behalf of DMAS;
- Provide access to PHI contained in a designated record set to the DMAS, in the time and manner designated by the DMAS, or at the request of DMAS, to an individual in order to meet the requirements of 45 CFR 164.524.
- Make available PHI for amendment and incorporate any amendments to PHI in its records at the request of DMAS;
- Document and provide to DMAS information relating to disclosures of PHI as required for DMAS to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528;
- Make its internal practices, books, and records relating to use and disclosure of PHI received from, or created or received by a contractor on behalf of DMAS, available to the Secretary of the U.S. Department of Health and Human Services Secretary for the purposes of determining compliance with 45 CFR Parts 160 and 164, subparts A and E;
- At termination of the contract, if feasible, return or destroy all PHI received from, or created or received by a Contractor on behalf of the DMAS that the contractor still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

Contractor may use or disclose PHI received from DMAS, if necessary, to carry out its legal responsibilities and for the proper management and administration of its business. Contractor may disclose PHI for such purposes if the disclosure is required by law, or if contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially, that it will be used or further disclosed only as required by law of for the purpose for which it was disclosed to the person, and that person will notify the contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

Written notices regarding any impermissible use or disclosure by the Business Associate shall be sent to DMAS through general mail to:

Contact: Office of Compliance and Security  
Department of Medical Assistance Services  
600 East Broad Street  
Richmond, Virginia 23219

The terms and conditions of this Modification No. 1 supersede any corresponding terms and conditions of any previous BAA signed between the parties, and shall be controlling authority regarding any conflict of terms that may arise between any previous BAA signed between the parties.

EACH PARTY has caused this Modification No. 1 to be properly executed on its behalf as of the date first above written.

For: Dept. of Medical Assistance Services

For: «SchoolBoard»

BY: \_\_\_\_\_  
Cynthia B. Jones, Acting Director

BY: \_\_\_\_\_  
«Superintendent\_Name», Superintendent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date