



## **BUSINESS ASSOCIATE AGREEMENT ADDENDUM TO SERVICES AGREEMENT**

### **1. INTRODUCTION**

- 1.1 *Parties and Services Agreement.* This Business Associate Agreement (“BAA” or “Agreement”) addendum is effective as of the execution date of the Service Order for Release of Information which is a part of the services agreement (the “Services Agreement”) between Medical Facility (as defined in the Services Agreement) (“Covered Entity”) and CIOX Health, LLC (“Business Associate”). Pursuant to the Services Agreement, Business Associate provides or performs certain services, functions or activities that involve access to PHI, and/or creates, receives, maintains or transmits PHI on Covered Entity’s behalf.
- 1.2 *HIPAA.* In connection with the performance of its Services to medical providers who are Covered Entities, Business Associate receives from Covered Entities, or otherwise has access to, certain information that is required to be kept confidential in accordance with the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as may be amended from time to time (collectively, “HIPAA”). Therefore, in consideration of the foregoing premises and the mutual covenants and conditions set forth below and in the Services Agreement, Business Associate and Covered Entity, intending to be legally bound, have agreed to certain terms and conditions in this Business Associate Agreement.
- 1.3 Business Associate will be directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for using or disclosing PHI in ways that are not authorized by this Agreement or by law. Business Associate may use or disclose PHI only as permitted or required by this Agreement or by law.

### **2. DEFINITIONS**

- 2.1 “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 CFR 160.103.
- 2.2 “Disclosure” means the release, transfer, provision of access to, or divulging in any other manner, of Protected Health Information, outside Business Associate’s organization, i.e., to anyone other than its employees who have a need to know or have access to the PHI.
- 2.3 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- 2.4 “Protected Health Information” or “PHI” means information transmitted by or maintained in electronic media or any other form or medium, including demographic information collected from an individual, that (a) relates to the past, present, or future physical or mental health or 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; (b) individually identifies the individual or, with respect to which, there is a reasonable basis for believing that the information



can be used to identify the individual; and (c) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by any Covered Entity.

- 2.5 “Secretary” means the Secretary of the United States Department of Health and Human Services or any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.
- 2.6 “Services” has the same meaning as in the Services Agreement.
- 2.7 “Use” (whether capitalized or not and including the other forms of the word) means, with respect to Protected Health Information, the sharing, employment, application, utilization, transmission, examination, or analysis of such information to, from or within Business Associate’s organization.

### **3. CONFIDENTIALITY OBLIGATIONS**

- 3.1 *Privacy, Security, and Confidentiality.* Business Associate shall maintain the privacy, security, and confidentiality of all PHI in accordance with the HIPAA Rules and this Agreement.
- 3.2 *Use of PHI.* Business Associate is authorized to use and disclose PHI only in accordance with the provisions of this Agreement, and only to the extent reasonably necessary (a) to provide the Services; (b) for the proper management and administration of its business; and (c) to carry out its legal responsibilities.
- 3.3 *Notice of Breach or Violation.* Business Associate acknowledges that, under HIPAA, it could be deemed to be in violation of HIPAA if it knows of a pattern of activity, a practice of Business Associate or Covered Entity, or a single incident that constitutes a breach or violation of HIPAA or of Covered Entity/Business Associate’s obligations under this Agreement to maintain the privacy, security, and confidentiality of PHI, unless Business Associate or Covered Entity takes timely reasonable steps to cure the breach or end the violation; and, if such steps are unsuccessful, terminates the Services Agreement or reports the problem to the Secretary. Accordingly, Business Associate shall promptly notify Covered Entity of any incident, or pattern of activity or practice of Covered Entity that may constitute any such breach or violation.
- 3.4 *Additional Obligations.* Business Associate shall, to the extent applicable:
  - 3.4.1 not use or disclose PHI other than as permitted or required by the Services Agreement, this Agreement or as required by law.
  - 3.4.2 use appropriate safeguards to prevent use or disclosure of PHI other than as provided by the Services Agreement or this Agreement.
  - 3.4.3 mitigate, as much as possible, any harmful effect of which it is aware of any use or disclosure of PHI in violation of the Services Agreement or this Agreement.
  - 3.4.4 promptly report to Covered Entity any use or disclosure of PHI not permitted by this Agreement of which it becomes aware.



- 3.4.5 ensure that each of its agents and subcontractors to whom it provides PHI agrees in writing to the same restrictions and conditions that apply to Covered Entity with respect to such information.
  - 3.4.6 in accordance with the provisions of HIPAA, specifically 45 CFR §164.528, make available the information required to provide an accounting of disclosures of PHI.
  - 3.4.7 make its internal practices, books, and records (including the pertinent provisions of this Agreement and the Services Agreement) relating to the use and disclosure of PHI available to the Secretary for the purposes of determining Covered Entity's or Business Associate's compliance with HIPAA.
  - 3.4.8 return to Covered Entity, or destroy, Covered Entity's PHI still in Business Associate's possession upon termination of the Services Agreement.
- 3.5 *Disclosure Compelled by Law or Governmental Request.* If Covered Entity/Business Associate (a) becomes legally compelled by law, or by order of any court or governmental agency to disclose PHI, or (b) receives a request from the Secretary to inspect Covered Entity/Business Associate's books and records relating to the use and disclosure of PHI, Business Associate, to the extent it is not legally prohibited from so doing, shall promptly notify Covered Entity and cooperate with Covered Entity in connection with any reasonable and appropriate action Covered Entity deems necessary with respect to such PHI.

#### **4. OTHER PROVISIONS**

- 4.1 *Default.* A breach under this Agreement shall be deemed to be a material default under the Services Agreement, and may result in termination of this Agreement and the Services Agreement.
- 4.2 *Termination; Obligations upon Termination of Services Agreement.* Upon the termination of the Services Agreement, Business Associate shall promptly return or destroy all PHI that it maintains in any form and retain no copies of such information. If the return or destruction of such PHI is not feasible, the obligations under this Agreement shall continue in effect for so long as Business Associate retains such information, and any further use or disclosure of such PHI shall be limited to those purposes that make the return or destruction of the PHI infeasible. This Agreement shall run concurrently with the Services Agreement.
- 4.3 *Use by Business Associate of a Business Associate.* Business Associate shall not retain or use subcontractors for performance of any obligations under this Agreement or the Services Agreement without (i) providing advance written notice to Covered Entity and (ii) ensuring that any subcontractor it may engage on its behalf that will have access to PHI agree in writing to the same restrictions and conditions that apply to Business Associate.
- 4.4 *Inconsistencies.* To the extent there are any inconsistencies between this Agreement, and the terms of the Services Agreement, the terms of this Agreement shall prevail.

