

SOUTHERN HIGHLANDS COMMUNITY MENTAL HEALTH CENTER

POLICY AND PROCEDURE MANUAL

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Policy 506 – Uses and Disclosures: Business Associates/Qualified Service Organization Agreement

I. PURPOSE

Southern Highlands Community Mental Health Center, in an effort to be compliant with the Privacy Rule of HIPAA's Administrative Simplification provisions, sets out, in this policy, the nature of the third party relationships that will be considered to be business associates and the requirements for contracting with them.

II. DEFINITIONS

Business Associate/Qualified Service Organization (BA/QSO) means a person or entity who, on behalf of SHCMHC and other than in the capacity of a workforce member, performs, maintains, creates, or assists in the performance of a function or activity that involves the use or disclosure of protected health information (PHI), or; provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

Protected Health Information (PHI) means individually identifiable information relating to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual.

Workplace Members means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the agency, its offices, programs or facilities, is under the direct control of the agency regardless of whether they are paid by SHCMHC.

III. POLICY

Any vendor or independent contractor (excluding any member of our workforce) who qualifies as a business associate will be required to enter into a Business Associate or QSO Agreement with SHCMHC. The agreement will be in the form attached to this policy.

Amendments to the Business Associates Agreement may not be made without the knowledge of the Privacy Officer and approval of the Chief Executive Officer, in consultation with legal counsel.

Any conduct that is in violation of the Privacy Act on the part of a business associate should be reported to the Privacy Officer or CEO and SHCMHC will take appropriate

actions to either cure the breach or end the violation, and if such attempt is unsuccessful, terminate the agreement, if feasible and, if not, report the problem to the Office of the U. S. Secretary of Health and Human Resources.

IV. Procedures

- A. The Privacy Officer, in consultation with the Chief Executive Officer and counsel, will be responsible for developing and maintaining a list of the agency's business associates.
 - 1. All staff will report to the Privacy Officer any time they are considering the development of a business relationship with another individual or organization that will use PHI created or disclosed by the agency to conduct agency-related work. All agreements must be approved by the CEO and Privacy Officer.
 - a. Staff should assume that most relationships with outside individuals or agencies that are not treatment related could be business associate relationships and should contact the Privacy Officer to determine if a business associate agreement is needed.
 - b. Prior notice is critical so that the appropriate pre-contract procedures can be instituted.
- B. A listing of the current business associate relationships, including the scope of work and types of allowed disclosures of PHI, will be provided to Management Team.
 - 1. It is critical that management staff be aware of any BA or QSO agreement that is utilized in their program in order to make sure they can provide adequate oversight of the business associate's work for their department and/or site (including the appropriateness of disclosures of PHI) and its adherence to the privacy requirements contained in their contract.
 - 2. The list will be updated annually or more often as needed and distributed to Management Team.
- C. All business associate agreements will follow basically the form of the contract attached and will be approved by the agency's counsel, Privacy Officer and Chief Executive Officer.
 - 1. No business associate agreement can be modified or changed without the knowledge of the Privacy Officer and approval of the Chief Executive Officer, in consultation with legal counsel. Business associate agreements may contain, on the advice of counsel, certain provisions for the oversight

of the contract including on-site audits and self-reporting by the business associate of breaches of the agreement.

- E. Procedures for Executing the Business Associate Agreement – Forms 1 and 2 attached to this Policy.

Executing Form 1

1. This model business associate agreement may be used to initiate a contractual relationship with a new business associate. This agreement (Form 1) contains the necessary contractual provisions related to uses and disclosures of PHI, in addition to standard contract language. (See Article VI (Miscellaneous)).
2. Articles III (Other Obligations of Business Associate) and IV (Other Obligations of Health Care Provider) of Form 1 should be completed by the Privacy Officer, in consultation with a lawyer, to reflect all the other rights, duties, obligations and conditions regarding contractual matters NOT associated with PHI.
3. The text in brackets and bold [**xxxx**] are either instructions for completion of the contracts or optional provisions. All bracketed items should be reviewed carefully and completed or deleted.
4. Sections 2.12 (Proper Management and Administration of Business Associate) and 2.13 (Data Aggregation) permit business associates to use and disclose PHI for the proper management and administration of its own business and for data aggregation purposes, respectively. If the business associate does not require PHI for either of these purposes, you should delete the relevant provision(s) from the agreement and renumber the remaining provisions of Article 2.
5. If the business associate will not need to receive PHI in a Designated Record Set, delete Sections 2.14 and 2.15 of this agreement.

Executing Form 2

1. This model business associate addendum may be used to amend an existing contract with a business associate. This addendum (Form 2) contains the necessary contractual provisions related to uses and disclosures of PHI, in addition to language that is designed to complement contractual provisions in the existing contract. (See Articles II (Integration of Addendum) and V (Miscellaneous)).

2. This addendum should be completed by the Privacy Officer, in consultation with a lawyer, to ensure that provisions in the addendum are consistent with the existing contract.
3. The text in brackets and bold [xxxx] are either instructions for completion of the contracts or optional provisions. All bracketed items should be reviewed carefully and completed or deleted.
4. Sections 3.12 (Proper Management and Administration of Business Associate) and 3.13 (Data Aggregation) permit business associates to use and disclose PHI for the proper management and administration of its own business and for data aggregation purposes, respectively. If the business associate does not require PHI for either of these purposes, we should delete the relevant provision(s) from the addendum and renumber the remaining provisions of Article 3.
5. Additionally, if the business associate will not need to receive PHI in a Designated Record Set, we will delete Sections 3.14 and 3.15 of this addendum.

Prior to Executing Either Form 1 or Form 2

At or prior to the time any business associate agreement is signed, SHCMHC must:

1. Ask for a copy of the business associate's security policies. A copy of each current policy should be maintained in the file with the original signed agreement.
 2. Provide our business associate with a copy of our current Notice of Privacy Practices. (See Section 2.7 of the agreement). Any updates or new versions of this notice must be sent to all business associates at least 10 days prior to the effective date.
 3. Obtain a copy of the business associate's insurance policy or a certificate from its insurer evidencing the required insurance coverage as provided in Section 6.2 of the agreement.
- F. If at any time any staff person becomes aware that a business associate is in breach of their business associate agreement, they should contact their supervisor or the Privacy Officer directly. These breaches can include security lapses, privacy violations, and, in addition, non-cooperation with the agency in complying with its obligations, for example, to account for disclosures of PHI or to give individuals access to their PHI.

1. Business associates, as a part of their contract with us, are required to report any breaches of our contract with them or violations of our privacy practices. Any reports received from a business associate should be immediately forwarded to the Privacy Officer.
 2. The Privacy Officer will be responsible for logging these reports and for follow-up.
 3. If the Privacy Officer believes that the business associate has materially breached the agreement or has been reported a number of times for smaller breaches such that the Privacy Officer is concerned about the business associate's ability to perform in compliance with the agreement, the Privacy Officer can, after consultation with agency's counsel, the Chief Executive Officer and the appropriate County or Program Director, terminate the entire contractual relationship with the business associate, if feasible.
 4. If there are no viable alternatives to continuing a contract with that particular business associate, the Privacy Officer will report the problem to DHHS.
- G. Upon termination of a business associate agreement, the business associate must destroy or return the PHI they are maintaining, using or storing on behalf of the agency. The Privacy Officer or their designee will be responsible for overseeing the orderly transfer or destruction of the PHI and for assuring the business associate's compliance with any post-contract obligations.
1. If the PHI cannot be returned or destroyed, the Privacy Officer should extend the protections of the business associate agreement to the PHI still being held and limit further use and disclosure to those purposes only that prevent the return or destruction of the PHI.

Other policies and procedures related to this policy:
Administrative Requirements – Documentation Retention

Form 1 – Business Associate Agreement – New Contracts

BUSINESS ASSOCIATE AGREEMENT
With [Full Legal Name of Business Associate]
Effective Date: [Insert Effective Date of this Agreement]

This **Business Associate and Chain of Trust Agreement** (the “Agreement”) is made as of the Effective Date set forth above, by and between **Southern Highlands Community Mental Health Center (SHCMHC)** with a principal office at **200 12th Street Extension, Princeton, WV 24740** and **[Insert full legal name of Business Associate]** (“Business Associate”) with a principal office at **[Insert address of Business Associate]**.

Whereas, SHCMHC desires to disclose, and Business Associate desires to use, disclose, create, and/or receive, Individually Identifiable Health Information (a) on behalf of SHCMHC in the performance of certain functions or activities involving Individually Identifiable Health Information, or (b) while providing certain designated services (including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services) to or for SHCMHC;

Whereas, SHCMHC and Business Associate wish to comply with the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320(d)) (“HIPAA”) including without limitation the Standards for Privacy of Individually Identifiable Health Information (42 C.F.R., Part 160 and 164), the Standards for Electronic Transactions (45 C.F.R., Part 160 and 162) and the Security Standards (45 C.F.R., Part 142) (collectively, the “Standards”) promulgated or to be promulgated by the Secretary of Health and Human Services (the “Secretary”).

I. Definitions.

The following terms, as used in this Agreement, shall have the meanings set forth below:

- 1.1 **"Data Aggregation"** means, with respect to Protected Health Information created or received by Business Associate in its capacity as the business associate of SHCMHC, the combining of such Protected Health Information by Business Associate with the Protected Health Information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- 1.2 **"Designated Record Set"** means a group of records maintained by or for SHCMHC that is (a) the medical records and billing records about individuals maintained by or for SHCMHC, (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) used, in whole or in part, by or for SHCMHC to make

decisions about individuals. As used in this Agreement, the term "Record" means any item, collection, or grouping of information that includes Protected Health information and is maintained, collected, used, or disseminated by or for SHCMHC.

- 1.3 **"Electronic Media"** means the mode of electronic transmissions. It includes the internet, extranet (using internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media.
- 1.4 **"Individually Identifiable Health Information"** means information that is a subset of health information, including demographic information collected from an individual, and:
- (a) is created or received by a SHCMHC, health plan, employer, or health care clearinghouse; and
 - (b) 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; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- 1.5 **"Protected Health Information" or "PHI"** means Individually Identifiable Health Information that is (a) transmitted by electronic media, (b) maintained in any medium constituting Electronic Media; or (c) transmitted or maintained in any other form or medium. "Protected Health Information" excludes individually identifiable health information in: (a) education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. §1232g; (b) records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (c) employment records held by a covered entity in its role as an employer.

II. **Obligations of Business Associate With Respect to PHI.**

- 2.1 **Use and Disclosure of PHI.** Business Associate shall use and disclose PHI only as required to satisfy its obligations under this Agreement or as required by law and shall not otherwise use or disclose any PHI. SHCMHC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Standards for Individually Identifiable Health Information (hereinafter, the "Privacy Standards") if done by SHCMHC except with respect to uses and disclosures of PHI for data aggregation or management and administrative activities of Business Associate, as provided in Sections 2.12 and 2.13 of this Agreement, respectively.
- 2.2 **Purposes and Limitations on Use or Disclosure of PHI.**
- 2.2.1 **Purposes.** Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to,

SHCMHC only for the following purposes, so long such use or disclosure of PHI would not violate (a) the minimum necessary policies and procedures of SHCMHC, and (b) the Privacy Standards if used or disclosed by the SHCMHC:

[List specific purposes for Business Associate's use or disclosure of PHI]
e.g., to provide accounting services to SHCMHC.

- 2.2.2 **Property Rights in PHI.** Business Associate hereby acknowledges that, as between Business Associate and SHCMHC, all PHI shall be and remain the sole property of SHCMHC, including any forms of PHI developed by Business Associate in the course of fulfilling its obligations under this Agreement.
- 2.2.3 **Minimum Necessary.** Business Associate further represents that, to the extent Business Associate requests SHCMHC to disclose PHI to Business Associate, such request is only for the minimum necessary PHI for the accomplishment of Business Associate's purposes.
- 2.2.4 **Reporting Violations.** Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

2.3 **Safeguards and Security.**

- 2.3.1 **Safeguards.** Business Associate agrees to use all appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement or as required by law.
- 2.3.2 **Security.** Business Associate shall establish security policies, processes and procedures in compliance with the Security Standards including without limitation administrative procedures, physical safeguards, technical security services, and technical security mechanisms, in order to protect the integrity and confidentiality of PHI exchanged electronically. Business Associate acknowledges and agrees that the legal, technical or business requirements for security of PHI may change and that, at any time during the term of this Agreement, SHCMHC shall have the right to require Business Associate to adopt new policies, processes and procedures, or to require modifications to existing policies, processes and procedures. SHCMHC shall communicate in writing such new or altered requirements to Business Associate, and Business Associate agrees to promptly implement such requirements. Business Associate shall supply a written copy of its security policies and procedures to SHCMHC upon the execution of this Agreement.

- 2.4 **Reporting Disclosures of PHI; Mitigation.** Business Associate shall report any use or disclosure in violation of this Agreement within 2 business days of learning of such violation by Business Associate or its officers, directors, employees, contractors or other agents or by any third party to which Business Associate has disclosed PHI. Business Associate agrees to mitigate promptly at the direction of SHCMHC any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement. SHCMHC may, at its sole discretion, access records of Business Associate, direct an investigation of a use or disclosure by Business Associate, and determine the appropriate method of mitigation; Business Associate agrees to cooperate fully with SHCMHC in any such investigation or mitigation.
- 2.5 **Employees, Subcontractors, and Agents.** Business Associate hereby represents and warrants that its employees and agents will be specifically advised of, and shall comply in all respects with, the terms and conditions of this Agreement. Business Associate shall obtain and maintain, in full force and effect, a binding contract with each of its agents including without limitation subcontractors who will have access to PHI and whose PHI is received from, or created or received by, Business Associate on behalf of SHCMHC. Business Associate shall further ensure that any such agent agrees in such contract to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI.
- 2.6 **Accounting of Disclosures.**
- 2.6.1 **Accounting by Business Associate.** Business Associate agrees to document any disclosures of PHI made by Business Associate, as well as other information related to such disclosures, as would be required for SHCMHC to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Business Associate also agrees to provide SHCMHC, in a time and manner designated by SHCMHC, information collected in accordance with this section of the Agreement, to permit SHCMHC to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
- 2.6.2 **Record Keeping.** Business Associate agrees to implement an adequate record keeping process to enable it to comply with the requirements of this section of the Agreement.
- 2.7 **Privacy Practices.** Business Associate hereby acknowledges and agrees that SHCMHC has provided it with a copy of its Notice of Privacy Practices. Business Associate agrees to comply with the practices identified in the Notice

of Privacy Practices, to the extent that such practices would apply to SHCMHC if it were performing Business Associate's functions, and will utilize as appropriate SHCMHC's form documents. SHCMHC hereby reserves the right to change the applicable privacy practices and related documents at any time. To the extent that such changes affect the duties and obligations of Business Associate under this Agreement, Business Associate will implement such changes within 10 days of receipt of notice of the change.

- 2.8 **Revocation or Modification of Consumer Permission.** SHCMHC shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- 2.9 **Consumer Restrictions on Uses and Disclosures.** SHCMHC shall notify Business Associate of any restriction to the use or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 2.10 **Availability of Books and Records.** Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, SHCMHC available to SHCMHC, or to the Secretary, in a time and manner designated by SHCMHC or designated by the Secretary, for purposes of the Secretary determining SHCMHC's compliance with the Privacy Standards. The provisions of this section shall survive termination of this Agreement.
- 2.11 **Notice of Request for PHI.** Business Associate agrees to notify SHCMHC within 2 business days of receipt of any request, subpoena or other legal process to obtain PHI or an accounting of PHI. SHCMHC in its discretion shall determine whether Business Associate may disclose PHI pursuant to such request, subpoena, or other legal process. Business Associate agrees to cooperate fully with SHCMHC in any legal challenge initiated by SHCMHC in response to such request, subpoena, or other legal process. The provisions of this section shall survive the termination of this Agreement.

[Optional: Include the following section only if you intend Business Associate to be able to use PHI in its own management or administration functions.]

2.12 **Proper Management and Administration of Business Associate.**

2.12.1 **Permissible Uses.** Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and

administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

- 2.12.2 **Permissible Disclosures.** Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or that Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

[Optional: Include the following section only if you intend Business Associate to perform Data Aggregation functions.]

- 2.13 **Data Aggregation.** Except as other limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to SHCMHC as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

[Optional: Include the following section only if Business Associate will receive PHI in Designated Record Sets.]

- 2.14 **Access to Records in a Designated Record Set.** At the request of SHCMHC and in the time and manner designated by SHCMHC, Business Associate agrees to provide access to PHI in a Designated Record Set to SHCMHC (and its employees and agents) or, as directed by SHCMHC, to an individual in order to meet the requirements under 45 C.F.R. § 164.524.

[Optional: Include the following section only if Business Associate will receive PHI in Designated Record Sets.]

- 2.15 **Amendment of Records in a Designated Record Set.** At the request of SHCMHC and in the time and manner designated by SHCMHC, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the SHCMHC(or its employees or agents) directs or agrees to pursuant to 45 C.F.R. § 164.526.

III. Other Obligations of Business Associate.

[Insert Duties and Obligations of Business Associate Not Related to HIPAA]

IV. Other Obligations of Seneca.

[Insert Duties and Obligations of SHCMHC Not Related to HIPAA]

V. Term and Termination.

5.1 Term.

[Insert provisions relating to term of this Agreement – the Term to commence with the Effective Date. If Business Associate functions are the only activities to be performed under this Agreement, you may use the following provision:]

The term of this Agreement shall commence upon the Effective Date and continue thereafter for a period of **[Insert period (in days, months or years) that contract is in effect]** or until earlier terminated in accordance with Section 5.2 below.

5.2 Termination.

5.2.1 General Termination Provisions.

[Insert general provisions relating to the termination of this Agreement. If Business Associate functions are the only activities to be performed under this Agreement and you wish to permit Business Associate to terminate this Agreement without cause, you may use the following provision:]

Either SHCMHC or Business Associate may terminate this Agreement at any time without cause with **[Insert number of days of required notice – typically 30 to 120 days, depending upon the time period needed for a transition]** day's prior written notice.

5.2.2 Termination Upon Breach. Any other provision of this Agreement notwithstanding, this Agreement may be terminated by SHCMHC upon 5 business days written notice to Business Associate in the event that the Business Associate breaches any provision (including any covenant, representation, warranty, or condition) contained in Article II of this Agreement or any other such provision of this Agreement that relates to PHI and such breach is not cured within the 5 day notice period; provided, however, that in the event that termination of this Agreement is not feasible in SHCMHC's sole discretion, SHCMHC shall report the breach to DHHS.

5.2.3 Return or Destruction of PHI upon Termination.

5.2.3.1 General Provisions. Upon termination of this Agreement, Business Associate shall either return or destroy, at the option

of SHCMHC, all PHI received from SHCMHC, or created or received by Business Associate on behalf of SHCMHC and which Business Associate still maintains in any form. Business Associate shall not retain any copies of such PHI.

5.2.3.2 **Alternative Arrangement.** Notwithstanding the foregoing, to the extent that SHCMHC agrees that it is not feasible to return or destroy such PHI, Business Associate shall provide SHCMHC with a written acknowledgement and notification of the conditions that make return or destruction infeasible. Business Associate hereby agrees to (a) extend the protections of this Agreement to such PHI only for those purposes that make the return or destruction infeasible, (b) limit further uses and disclosures of such PHI to such purposes, and (c) extend any term or provision of this Agreement relating to PHI so that such term or condition shall survive termination of this Agreement. Thereafter, such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

5.2.3.3 **Applicability of Provisions.** The provisions of this section of the Agreement shall apply, to the same extent that it applies to Business Associate, to PHI that is in the possession of agents of Business Associate.

5.2.4 **SHCMHC's Right to Cure.** At the expense of Business Associate, SHCMHC shall have the right to cure any breach of Business Associate's obligations under this Agreement with respect to PHI. SHCMHC shall give Business Associate notice of its election to cure any such breach and Business Associate shall cooperate fully in the efforts by SHCMHC to cure Business Associate's breach. All requests for payment for such services of SHCMHC shall be paid within 30 days of Business Associate's receipt of the request for payment.

VI. Miscellaneous.

6.1 **Indemnification.** Business Associate hereby agrees to indemnify and hold SHCMHC and its employees and agents harmless from and against any and all loss, liability, or damages, including reasonable attorneys' fees, arising out of or in any manner occasioned by a breach of any provision of this Agreement by Business Associate, or its employees or agents.

- 6.2 **Insurance.** Business Associate shall obtain and maintain, at its sole expense, during the term of this Agreement liability insurance on an occurrence basis with responsible insurance companies covering claims based upon a violation of any of the Standards or any applicable state law or regulation concerning the privacy of patient information and claims based upon its obligations pursuant to Section 6.1 of this Agreement in amount not less than **\$1,000,000 per claim**. A copy of such policy or a certificate evidencing the policy shall be provided to SHCMHC upon written request.
- 6.3 **Injunction.** Business Associate hereby agrees that SHCMHC will suffer irreparable damage if Business Associate breaches this Agreement and that such damages will be difficult to quantify. Business Associate hereby agrees that SHCMHC may file an action for an injunction to enforce the terms of this Agreement against Business Associate, in addition to any other remedy SHCMHC may have.
- 6.4 **Independent Contractor.** Under this Agreement, Business Associate shall at all times be acting and performing in the status of independent contractor to SHCMHC. Business Associate shall not by virtue of this Agreement be deemed a partner or joint venture of SHCMHC. No person employed by Business Associate will be an employee of SHCMHC, and SHCMHC shall have no liability for payment of any wages, payroll taxes, and other expenses of employment for any employee of Business Associate. Business Associate is constituted the agent of SHCMHC only for the purpose of, and to the extent necessary to, carrying out its obligations under this Agreement.
- 6.5 **Authorization for Agreement.** Business Associate represents and warrants that the execution and performance of this Agreement by Business Associate has been duly authorized by all necessary laws, resolutions and corporate action, and this Agreement constitutes the valid and enforceable obligations of the Business Associate in accordance with its terms.
- 6.6 **Governing Law and Choice of Forum.** The parties agree that this Agreement shall be construed in accordance with the laws of **West Virginia**, without regard to conflict of laws principles. The parties further agree that any litigation concerning this Agreement shall only be brought in a court of competent jurisdiction within **West Virginia**. To the extent that the Privacy Standards apply to any provision in this Agreement, any ambiguity shall be resolved to permit SHCMHC to comply with the Privacy Standards.
- 6.7 **Binding Agreement; Assignment.** This Agreement shall inure to the benefit and be binding upon the parties hereto and their respective successors and assigns; provided, however, that Business Associate may not assign any rights

or obligations under this Agreement without the prior written consent of SHCMHC.

- 6.8 **Notices.** Any notice, request, demand, report, approval, election, consent or other communication required or permitted under the terms of this Agreement (collectively, "Notice") shall be in writing and either delivered personally, by registered or certified mail, return receipt requested, postage prepaid, or by reputable overnight courier, addressed as follows:

To SHCMHC:

**Southern Highlands Community Mental Health Center
200 12th Street Extension
Princeton, WV 24740
Attn: Chief Executive Officer**

To Business Associate:

**[Insert Full Legal Name of Entity]
[Street Address]
[City or Town, State, Zip Code]**

Attn: [Insert Title of Officer in Business Associate's Organization, e.g., President]

With a copy to: **[If copy is desired, insert name and address of person to whom copy should be sent.]**

or at such other address as either party may designate by Notice. Notice shall be deemed to have been given when received if delivered personally, 3 days after postmarked if sent by certified mail, or one day after deposited with an overnight courier.

- 6.9 **Integration.** This Agreement constitutes the sole and only agreement of the parties hereto with respect to the subject matter herein. Any and all prior agreements, promises, proposals, negotiations or representations, whether written or oral, which are not expressly set forth in this Agreement are hereby superseded and are of no force or effect.
- 6.10 **Amendment.** This Agreement may not be amended, modified or terminated orally, and no amendment, modification, termination or attempted waiver shall be valid unless in writing signed by the party against whom the same is sought to be enforced.
- 6.11 **Severability.** Should any provision of this Agreement or application thereof be held invalid, illegal or unenforceable for any reason whatsoever, then

notwithstanding such invalidity, illegality or unenforceability, the remaining terms and provisions of this Agreement shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law unless to do so would defeat the purposes of this Agreement.

- 6.12 **Survival.** All matters that (a) expressly survive the termination of this Agreement including without limitation the provisions of Sections 2.10, 2.11, 5.2.3, and 5.2.4, (b) relate to the termination of this Agreement, or (c) in the normal course would not occur or be effectuated until after any such termination, as well as all rights and obligations of the parties pertaining thereto, shall survive any termination and be given full force and effect notwithstanding any termination of this Agreement.
- 6.13 **Waiver.** The failure at any time by either party to require or demand performance of any provision of this Agreement shall not constitute a waiver by such party of such provision and shall not affect such party's full right to require performance at any later time.
- 6.14 **Legislative, Regulatory or Administrative Changes.** In the event of a change in federal, state or local law, any of which could, in SHCMHC's reasonable judgment, materially and adversely affect the manner in which either party may perform services under this Agreement, the parties shall immediately amend this Agreement to comply with the law, regulation, or policy and approximate as closely as possible the arrangements set forth in this Agreement as it existed immediately prior to the change in law, regulation or policy.
- 6.15 **Joint Notices.** If applicable, in this Agreement the term "covered entity" shall include all entities covered by a joint Notice of Privacy Practices.
- 6.16 **Business Associates That Are Covered Entities.** In the event a Business Associate is a "covered entity" under the Privacy Standards, Business Associate may designate a "health care component" of that entity, pursuant to 45 C.F.R. § 164.504(a) as the Business Associate for purposes of this Agreement.
- 6.17 **No Third Party Beneficiary.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties to this Agreement and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- 6.18 **Headings.** The headings to the various paragraphs of this Agreement have been inserted for convenient reference only and shall not modify, define, limit or expand the provisions of this Agreement.

6.19 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument.

In Witness Whereof, SHCMHC and Business Associate have caused this instrument to be duly executed by their authorized representatives as of the Effective Date.

Southern Highlands Community Mental Health Center

By: **Chief Executive Officer**

[Insert Full Legal Name of Business Associate]

By: **[Insert "President" or Title of Other Authorized Officer]**

Form 2 – Business Associate Addendum – Amendment to Existing Contract

BUSINESS ASSOCIATE ADDENDUM **With [Full Legal Name of Business Associate]** **Effective Date: [Insert Effective Date of this Addendum]**

This **Business Associate and Chain of Trust Addendum** (the “Addendum”) is made as of the Effective Date set forth above, by and between **Southern Highlands Community Mental Health Center (SHCMHC)** and **[Insert full legal name of Business Associate]** (“Business Associate”) as a duly executed amendment to **[Insert name of original contract]** originally effective as of **[Insert effective date of original contract]** (the “Agreement”).

Whereas, SHCMHC and Business Associate desire to amend the Agreement with this Addendum in order to permit the use or disclosure of Individually Identifiable Health Information between SHCMHC and Business Associate and to permit Business Associate as necessary to use, disclose, create and/or receive Individually Identifiable Health Information (a) on behalf of the SHCMHC in the performance of certain functions or activities involving Individually Identifiable Health Information, or (b) while providing certain designated services (including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services) to or for the SHMCMHC.

Whereas, SHCMHC and Business Associate wish to comply with the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320(d)) (“HIPAA”) including without limitation the Standards for Privacy of Individually Identifiable Health Information (42 C.F.R., Part 160 and 164), the Standards for Electronic Transactions (45 C.F.R., Part 160 and 162) and the Security Standards (45 C.F.R., Part 142) (collectively, the “Standards”) promulgated or to be promulgated by the Secretary of Health and Human Services (the “Secretary”).

I. Definitions.

The following terms, as used in this Addendum, shall have the meanings set forth below:

- 1.1 **"Data Aggregation"** means, with respect to Protected Health Information created or received by Business Associate in its capacity as the business associate of SHCMHC, the combining of such Protected Health Information by Business Associate with the Protected Health Information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- 1.2 **"Designated Record Set"** means a group of records maintained by or for SHCMHC that is (a) the medical records and billing records about individuals maintained by or for SHCMHC, (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or

for a health plan; or (c) used, in whole or in part, by or for SHCMHC to make decisions about individuals. As used in this Agreement, the term "Record" means any item, collection, or grouping of information that includes Protected Health information and is maintained, collected, used, or disseminated by or for the SHCMHC.

- 1.3 **"Electronic Media"** means the mode of electronic transmissions. It includes the internet, extranet (using internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media.
- 1.4 **"Individually Identifiable Health Information"** means information that is a subset of health information, including demographic information collected from an individual, and:
- (a) is created or received by a SHCMHC, health plan, employer, or health care clearinghouse; and
 - (b) 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; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- 1.5 **"Protected Health Information" or "PHI"** means Individually Identifiable Health Information that is (a) transmitted by electronic media, (b) maintained in any medium constituting Electronic Media; or (c) transmitted or maintained in any other form or medium. "Protected Health Information" excludes individually identifiable health information in: (a) education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. §1232g; (b) records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (c) employment records held by a covered entity in its role as an employer.

II. Integration of Addendum.

- 2.1 **Effect of this Addendum.** The terms and provisions of this Addendum shall supercede any other conflicting or inconsistent terms and provisions in the Agreement to which this Addendum is attached, including all exhibits or other attachments to, and all documents incorporated by reference in, the Agreement. Without limitation of the foregoing, any limitation or exclusion of damages provisions contained in the Agreement shall not be applicable to this Addendum.

III. Obligations of Business Associate With Respect to PHI.

- 3.1 **Use and Disclosure of PHI.** Business Associate shall use and disclose PHI only as required to satisfy its obligations under the Agreement or as required by law and shall not otherwise use or disclose any PHI. SHCMHC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Standards for Individually Identifiable Health Information (hereinafter, the “Privacy Standards”) if done by SHCMHC, except with respect to uses and disclosures of PHI for data aggregation or management and administrative activities of Business Associate, as provided in Sections 3.12 and 3.13 of this Addendum, respectively.
- 3.2 **Purposes and Limitations on Use or Disclosure of PHI.**
- 3.2.1 **Purposes.** Except as otherwise provided in this Addendum, Business Associate may use or disclose PHI on behalf of, or to provide services to, SHCMHC only for the following purposes, so long such use or disclosure of PHI would not violate (a) the minimum necessary policies and procedures of SHCMHC and (b) the Privacy Standards if used or disclosed by the SHCMHC:
- [List specific purposes for Business Associate’s use or disclosure of PHI]** e.g., to provide accounting services to SHCMHC.
- 3.2.2 **Property Rights in PHI.** Business Associate hereby acknowledges that, as between Business Associate and SHCMHC, all PHI shall be and remain the sole property of SHCMHC, including any forms of PHI developed by Business Associate in the course of fulfilling its obligations under this Agreement.
- 3.2.3 **Minimum Necessary.** Business Associate further represents that, to the extent Business Associate requests SHCMHC to disclose PHI to Business Associate, such request is only for the minimum necessary PHI for the accomplishment of Business Associate’s purposes.
- 3.2.4 **Reporting Violations.** Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).
- 3.3 **Safeguards and Security.**
- 3.3.1 **Safeguards.** Business Associate agrees to use all appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Addendum or as required by law.

- 3.3.2. **Security.** Business Associate shall establish security policies, processes and procedures in compliance with the Security Standards including without limitation administrative procedures, physical safeguards, technical security services, and technical security mechanisms, in order to protect the integrity and confidentiality of PHI exchanged electronically. Business Associate acknowledges and agrees that the legal, technical or business requirements for security of PHI may change and that, at any time during the term of this Agreement, SHCMHC shall have the right to require Business Associate to adopt new policies, processes and procedures, or to require modifications to existing policies, processes and procedures. SHCMHC shall communicate in writing such new or altered requirements to Business Associate, and Business Associate agrees to promptly implement such requirements. Business Associate shall supply a written copy of its security policies and procedures to SHCMHC upon the execution of this Agreement.
- 3.4 **Reporting Disclosures of PHI; Mitigation.** Business Associate shall report any use or disclosure in violation of this Addendum within 2 business days of learning of such violation by Business Associate or its officers, directors, employees, contractors or other agents or by any third party to which Business Associate has disclosed PHI. Business Associate agrees to mitigate promptly at the direction of SHCMHC any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum. SHCMHC may, at its sole discretion, access records of Business Associate, direct an investigation of a use or disclosure by Business Associate, and determine the appropriate method of mitigation; Business Associate agrees to cooperate fully with SHCMHC in any such investigation or mitigation.
- 3.5 **Employees, Subcontractors, and Agents.** Business Associate hereby represents and warrants that its employees and agents will be specifically advised of, and shall comply in all respects with, the terms and conditions of this Addendum. Business Associate shall obtain and maintain, in full force and effect, a binding contract with each of its agents including without limitation subcontractors who will have access to PHI and whose PHI is received from, or created or received by, Business Associate on behalf of the SHCMHC. Business Associate shall further ensure that any such agent agrees in such contract to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI.
- 3.6 **Accounting of Disclosures.**
- 3.6.1 **Accounting by Business Associate.** Business Associate agrees to document any disclosures of PHI made by Business Associate, as well

as other information related to such disclosures, as would be required for SHCMHC to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Business Associate also agrees to provide SHCMHC, in a time and manner designated by Health Provider, information collected in accordance with this section of the Addendum, to permit SHCMHC to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.

- 3.6.2 **Record Keeping.** Business Associate agrees to implement an adequate record keeping process to enable it to comply with the requirements of this section of the Addendum.
- 3.7 **Privacy Practices.** Business Associate hereby acknowledges and agrees that SHCMHC has provided it with a copy of its Notice of Privacy Practices. Business Associate agrees to comply with the practices identified in the Notice of Privacy Practices, to the extent that such practices would apply to SHCMHC if it were performing Business Associate's functions, and will utilize as appropriate SHCMHC's form documents. SHCMHC hereby reserves the right to change the applicable privacy practices and related documents at any time. To the extent that such changes affect the duties and obligations of Business Associate under this Agreement, Business Associate will implement such changes within 10 days of receipt of notice of the change.
- 3.8 **Revocation or Modification of Consumer Permission.** SHCMHC shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- 3.9 **Consumer Restrictions on Uses and Disclosures.** SHCMHC shall notify Business Associate of any restriction to the use or disclosure of PHI in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 3.10 **Availability of Books and Records.** Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, SHCMHC available to SHCMHC, or to the Secretary, in a time and manner designated by SHCMHC or designated by the Secretary, for purposes of the Secretary determining SHCMHC's compliance with the Privacy Standards. The provisions of this section of the Addendum shall survive the termination of this Agreement.

3.11 **Notice of Request for PHI.** Business Associate agrees to notify SHCMHC within 2 business days of receipt of any request, subpoena or other legal process to obtain PHI or an accounting of PHI. SHCMHC in its discretion shall determine whether Business Associate may disclose PHI pursuant to such request, subpoena, or other legal process. Business Associate agrees to cooperate fully with SHCMHC in any legal challenge initiated by SHCMHC in response to such request, subpoena, or other legal process. The provisions of this section shall survive the termination of this Agreement.

[Optional: Include the following section only if you intend Business Associate to be able to use PHI in its own management or administration functions.]

3.12 **Proper Management and Administration of Business Associate.**

3.12.1 **Permissible Uses.** Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.12.2 **Permissible Disclosures.** Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or that Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

[Optional: Include the following section only if you intend Business Associate to perform Data Aggregation functions.]

3.13 **Data Aggregation.** Except as other limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to SHCMHC as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

[Optional: Include the following section only if Business Associate will receive PHI in Designated Record Sets.]

3.14 **Access to Records in a Designated Record Set.** At the request of SHCMHC and in the time and manner designated by SHCMHC, Business Associate agrees to provide access to PHI in a Designated Record Set to SHCMHC (and its

employees and agents) or, as directed by SHCMHC, to an individual in order to meet the requirements under 45 C.F.R. § 164.524.

[Optional: Include the following section only if Business Associate will receive PHI in Designated Record Sets.]

3.15 Amendment of Records in a Designated Record Set. At the request of SHCMHC and in the time and manner designated by SHCMHC, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the SHCMHC (or its employees or agents) directs or agrees to pursuant to 45 C.F.R. § 164.526.

IV. Termination.

4.1 Termination Upon Breach. Any other provision of this Agreement notwithstanding, this Agreement may be terminated by SHCMHC upon 5 business days written notice to Business Associate in the event that the Business Associate breaches any provision (including any covenant, representation, warranty, or condition) contained in Article III of this Addendum or any other such provision of this Addendum that relates to PHI and such breach is not cured within the 5 day notice period; provided, however, that in the event that termination of this Agreement is not feasible in SHCMHC's sole discretion, SHCMHC shall report the breach to the Secretary, notwithstanding any other provision of this Agreement to the contrary.

4.2 Return or Destruction of PHI upon Termination.

4.2.1 General Provisions. Upon termination of this Agreement, Business Associate shall either return or destroy, at the option of SHCMHC, all PHI received from the SHCMHC, or created or received by Business Associate on behalf of the SHCMHC and which Business Associate still maintains in any form. Business Associate shall not retain any copies of such PHI.

4.2.2 Alternative Arrangement. Notwithstanding the foregoing, to the extent that the SHCMHC agrees that it is not feasible to return or destroy such PHI, Business Associate shall provide SHCMHC with a written acknowledgement and notification of the conditions that make return or destruction infeasible. Business Associate hereby agrees to (a) extend the protections of this Agreement to such PHI only for those purposes that make the return or destruction infeasible, (b) limit further uses and disclosures of such PHI to such purposes, and (c) extend any term or provision of this Agreement relating to PHI so that such term or

condition shall survive termination of this Addendum. Thereafter, such PHI shall be used or disclosed solely for such purpose or purposes, which prevented the return or destruction of such PHI.

4.2.3 **Applicability of Provisions.** The provisions of this section of the Addendum shall apply, to the same extent that it applies to Business Associate, to PHI that is in the possession of agents of Business Associate.

4.2.4 **SHCMHC's Right to Cure.** At the expense of Business Associate, SHCMHC shall have the right to cure any breach of Business Associate's obligations under this Addendum. SHCMHC shall give Business Associate notice of its election to cure any such breach and Business Associate shall cooperate fully in the efforts by the SHCMHC to cure Business Associate's breach. All requests for payment for such services of the SHCMHC shall be paid within 30 days of Business Associate's receipt of the request for payment.

4.2.5 **Survival.** The provisions of this Article IV of the Addendum shall survive the termination of this Agreement.

V. Miscellaneous.

5.1 **Indemnification.** Business Associate hereby agrees to indemnify and hold SHCMHC and its employees and agents harmless from and against any and all loss, liability, or damages, including reasonable attorneys' fees, arising out of or in any manner occasioned by a breach of any provision of this Addendum by Business Associate, or its employees or agents, without regard to any limitation or exclusion of damages provision otherwise set forth in this Agreement.

5.2 **Insurance.** Business Associate shall obtain and maintain, at its sole expense during the term of this Agreement, liability insurance on an occurrence basis with responsible insurance companies covering claims based on a violation of any of the Standards or any applicable state law or regulation concerning the privacy of patient information and claims based on its obligations pursuant to Section 5.1 of this Addendum in amount not less than **\$1,000,000 per claim**. A copy of such policy or a certificate evidencing the policy shall be provided to SHCMHC upon written request.

5.3 **Injunction.** Business Associate hereby agrees that SHCMHC will suffer irreparable damage if Business Associate breaches this Addendum and that such damages will be difficult to quantify. Business Associate hereby agrees that SHCMHC may file an action for an injunction to enforce the terms of this

Addendum against Business Associate, in addition to any other remedy SHCMHC may have.

- 5.4 **Authorization for Addendum.** Business Associate represents and warrants that the execution and performance of this Addendum by Business Associate has been duly authorized by all necessary laws, resolutions and corporate action, and this Addendum constitutes the valid and enforceable obligations of the Business Associate in accordance with its terms.
- 5.5 **Legislative, Regulatory or Administrative Changes.** In the event of a change in federal, state or local law, any of which could, in SHCMHC's reasonable judgment, materially and adversely affect the manner in which either party may perform services under this Addendum, the parties shall immediately amend this Addendum to comply with the law, regulation, or policy and approximate as closely as possible the arrangements set forth in this Addendum as it existed immediately prior to the change in law, regulation or policy.
- 5.6 **Interpretation.** Notwithstanding any other provision of this Agreement, any ambiguity in a provision of this Agreement that may require an interpretation of the Standards, shall be resolved to permit SHCMHC to comply with the Standards including without limitation those standards relating to preemption of state laws.

In Witness Whereof, SHCMHC and Business Associate have caused this instrument to be duly executed by their authorized representatives as of the Effective Date.

Southern Highlands Community Mental Health Center

By: **Chief Executive Officer**

[Insert Full Legal Name of Business Associate]

By: **[Insert "President" or Title of Other Authorized Officer]**