
Disclosure of New York State Department of Corrections and Community Supervision Information

THIS NONDISCLOSURE AGREEMENT is entered into by the New York State Department of Corrections and Community Supervision (“DOCCS”) which is the party disclosing confidential information, and **[Vendor Name]** _____, which is the party receiving confidential information (“Recipient”), in order to protect the confidential information which is disclosed to the Recipient by DOCCS.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The Recipient’s representatives for receiving confidential information are:

Name	Title

Recipient shall not disclose the confidential information to any of its employees other than those who have a need to review it and which employees are legally obligated to honor the confidentiality provisions herein.

2. The confidential information disclosed by DOCCS under this Agreement is described as: During the course of this contract, the Recipient may be provided with or observe confidential information including, but not limited to, department policies and procedures, including Directives, Facility Operations Manuals, and Policy Memoranda (e.g., Directives designated with a D or A Distribution); names/identification numbers (e.g., DIN, NYSID, FBI numbers) of incarcerated individuals and disciplinary history for participating/discharged program participants; and records pertaining to individuals’ criminal histories, incarceration histories, and program and treatment histories.
3. The Recipient shall keep the information confidential and shall use the confidential information only for **Contract #** _____. The Recipient shall not make any copies of the confidential information except as necessary for its employees who are entitled to view it under Section 1 above. Any copies made shall be identified as belonging to DOCCS and marked “confidential,” or with a similar legend.
4. The Recipient shall, where applicable, protect the confidential information in a manner consistent with the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 Privacy and Security provisions and all other applicable regulations.
5. The Recipient shall comply with all Federal and State regulations intended to protect criminal history records as they apply to the confidential information.
6. The Recipient shall comply with all DOCCS directives, policies, practices, and

procedures as they apply to the protection of the confidential information.

7. The Recipient shall, in the event, of unauthorized disclosure of the confidential information, immediately notify DOCCS, in writing, and fully comply with the requirements of the New York State Breach Notification Act.
8. Any unauthorized disclosure of procurement information may subject Recipient to criminal, civil, and/or administrative penalties.
9. To the extent permitted by law, the Recipient shall protect the disclosed confidential information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the confidential information as the Recipient uses to protect its own confidential information of a like nature.
10. The Recipient shall have a duty to protect all confidential information which is disclosed to it, whether disclosed in writing, orally or in any other manner and which is identified as confidential at the time of disclosure. If the disclosure is in writing, it shall be marked "**confidential.**" If a disclosure is not in writing, DOCCS shall provide Recipient with a written memorandum summarizing and designating such information as confidential within thirty (30) days of the disclosure.
11. This agreement controls information that is disclosed to Recipient for the life of the contract.
12. The Recipient's duties under paragraph 3, 4, 5 ,6, & 7 of this Agreement shall expire one (1) year after the information is received. The recipient shall return or destroy all DOCCS confidential information. All paper documents and any copies made in accordance with #3 above are to be shredded. Electronically stored information is to be destroyed by shredding or securely wiping the media.
13. This Agreement imposes no obligation upon the Recipient with respect to confidential information which (a) was in the Recipient's possession before receipt by DOCCS; (b) is or becomes a matter of public knowledge through no fault of the Recipient; (c) is received by the Recipient from a third party without a duty of confidentiality; (d) is disclosed by DOCCS to a third party without a duty of confidentiality on the third party; (e) is independently disclosed by the Recipient with DOCCS' prior written approval; (f) is developed by the Recipient without reference to information disclosed hereunder.
14. DOCCS warrants that it has the right to make the disclosure under this Agreement.
15. Neither party acquires any intellectual property under this Agreement
16. Neither party has an obligation under this Agreement to purchase, sell or license any service or item from the other party.
17. The Recipient shall adhere to U.S. Export Administration laws and Regulations and shall not export, or re-export, technical data, information or products received from DOCCS or the direct product of such technical data or information to any proscribed country listed in the U.S. Export Administration Regulations, unless properly authorized by the U.S. Government.

18. The parties do not intend that any agency or partnership be created between them by this Agreement.
19. All additions or modifications to this Agreement must be in writing and signed by both parties.
20. This Agreement is made under and shall be governed by the laws of the State of New York.
21. Neither party may assign its rights or obligations under this Agreement without the written consent of the other party. Any assignment made without said consent shall be null and void.
22. The recipient shall indemnify and hold harmless DOCCS and the State of New York from any and all suits, causes of actions, claims, grievances, damages, judgments, and costs of every name and description under this Agreement, unless such injuries or damages are directly attributable to the intentional acts or negligent conduct of DOCCS, the State of New York, or their employees.
23. The failure of DOCCS to insist upon strict adherence to any provision or other requirement of this Agreement shall not be considered a waiver to deprive DOCCS of the right to insist upon strict adherence of the terms of this Agreement in the future.
24. If any provision, or portion thereof, of this Agreement is, or becomes, invalid under any applicable statute or rule of law, it is to be deemed stricken and the rest of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**NYS Department of Corrections and
Community Supervision**

By: _____

Print Name: Melissa McLaughlin

Title: Director of Financial Administration 6

Date: _____

Vendor Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

**NYS Department of Corrections and Community Supervision
RFP 2024-17 Statewide Utilization Management Program**

Business Associate Agreement Between

And

NYS Department of Corrections and Community Supervision

This Business Associate Agreement (BAA) by and between _____ and New York State Department of Corrections and Community Supervision (DOCCS) is for Contractor that creates, receives, maintains or transmits Protected Health Information on behalf of DOCCS pursuant to contract _____, the parties agree to the terms of this BAA to satisfy certain standards and requirements of HIPAA, the Privacy Rule, the Security Rule and HITECH, to protect the privacy and provide for the security of such Protected Health Information.

I. Definitions

- a. "Business Associate" shall mean Contractor.
- b. "Covered Program" shall mean NYS Department of Corrections and Community Supervision (DOCCS).
- c. "Protected Health Information" will have the same meaning as the term "protected health information" in 45 CFR §160.103, as applied to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Program.

II. Obligations and Activities of Business Associate:

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the agreement, perform the services for, or on behalf of Covered Program as contemplated and necessary to perform services, or as required by law.
- b. Business Associate agrees to use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the agreement and to comply with the applicable security standards for the protection of Electronic Protected Health Information in 45 CFR Part 164, Subpart C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BAA.
- c. Business Associate agrees to document and report such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures or Protected Health Information in accordance with 45 CFR § 164.528; and, at the written request of Covered Program, Business associate agrees to provide to Covered Program, in time and manner reasonably requested by Covered Program, information collected in accordance with this Section, to permit Covered Program to comply with 45 CFR §164.528.

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- d. Business Associate agrees to make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526 or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526.
- e. To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- f. Business Associate agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

III. Permitted Uses and Disclosures by Business Associate

- a. Except as otherwise limited in this BAA, Business Associate may use or disclose protected health information as necessary to perform functions, activities, or services for, or on behalf of Covered Program as specified in the agreement, provided such use or disclosure would not violate the Privacy Rule if done by Covered Program.
- b. Business Associate may only use and disclose Protected Health Information for the proper management and administration of Business Associate or to carry out its legal responsibilities, provided that with respect to such disclosures, that the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by Law or for the purposes for which it was disclosed to the person, and that the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Business Associate may disclose Protected Health Information as required by Law and to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j)(1).

IV. Term and Termination:

- a. The Term of this Business Associate Agreement shall be effective for the terms as specified in the Agreement and will terminate when all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business associate on behalf of Covered Program, is destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy such Protected Health Information, protections are extended to such information, in accordance with the provisions in Section IV c, of this Agreement.
- b. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide written notice detailing the nature of the breach and an opportunity for Business Associate to cure the breach and end the violation and may terminate this agreement if Business Associate does not cure the

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breach and end the violation within the reasonable time specified by Covered Program, or Covered Program may immediately terminate the Agreement if Business associate has breached a material term of this Agreement and cure is not possible.

- c. Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Program, or created, maintained, or received from Business Associate on behalf of Covered Program shall:
 - 1) Retain only that Protected Health Information which is necessary for Business associate to continue its proper management and administration or to carry out its legal responsibilities;
 - 2) Return to Covered Program or destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
 - 3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;
 - 4) Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section III - Permitted Uses and Disclosures by Business Associate above, which applied prior to termination; and
 - 5) Return to Covered Entity the protected Health Information retained by Business associate when it is no longer needed by Business associate for its proper management and administration or to carry out its legal responsibilities.

- d. Survival. The obligations of Business Associate under this Section shall survive the termination of the Agreement.

- e. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPPA Rules.

**NYS Department of Corrections and
Community Supervision**

By: _____

Print Name: _____

Title: _____

Date: _____

Vendor Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____