

Adopted: January 25, 2011

Minnewaska Area Schools Policy 1005

Revised: _____

Origin: 2010

1005 HEALTH INFORMATION PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)
Business Associate Contract Addendum

This Business Associate Contract Addendum (hereafter “Addendum”) modifies and is made a part of the Business Associate Contract (“Contract”) between Minnewaska Area Schools Day Treatment, a covered entity under the Health Information Portability and Accountability Act of 1996 (“HIPAA”), and [name of business associate], a business associate of Minnewaska Area Schools Day Treatment dated [date of business associate contract] and is effective as of _____, 201_ (“Addendum Effective Date”).

I. Recitals:

- A. Minnewaska Area Schools Day Treatment wishes to continue disclosing certain protected health information (“PHI”) to [name of business associate] pursuant to the Contract.
- B. The Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“HITECH Act”), changed the HIPAA requirements for business associates, which modify the requirements specified in the Contract.

In consideration of the mutual promises in the Contract and this Addendum, the parties agree as follows:

II. Definitions (in addition to those in the Contract):

- A. **Breach** shall have the meaning specified in § 17921 of the HITECH Act.
- B. **Business associate** shall have the meaning specified in the Privacy Rule, the Security Rule, and § 27938 of the HITECH Act.
- C. **Electronic Health Record** shall have the meaning specified in § 17921 of the HITECH Act.
- D. **Unsecured PHI** shall have the meaning specified in § 17932 of the HITECH Act and any regulations issued thereunder by the Department of Health and Human Services (“DHHS”).

III. Duties of Business Associate:

- A. **Permitted uses and disclosures:** [Name of business associate] shall not use or disclose PHI except for the purpose of performing its obligations under the Contract and as permitted by the Contract and this Addendum. [Name of business associate] shall not use or disclose PHI in any manner that would constitute a violation of HIPAA, the Privacy Rule, or the HITECH Act. [Name of business associate] may, however, use or disclose PHI for the proper management and administration of [name of business associate], to carry out the legal responsibilities of [name of business associate], as required by law, and to DHHS and its subordinate elements in an investigation or audit.
- B. **Disclosure to third parties:**
 - 1. If [name of business associate] discloses PHI to a third party, [name of business associate] must obtain, prior to making such disclosure, reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to Contract and to this

Addendum and disclosed only as required by law or for the purposes for which it was disclosed to such third party and that such third party will immediately notify [name of business associate] of any breaches of confidentiality of the PHI to the extent it has knowledge of such breach.

2. [Name of business associate] will insure that any agents, including subcontractors, to whom it discloses PHI, agree in writing to the same restrictions and conditions that apply to [name of business associate].
3. [For use if [name of business associate] creates, receives, maintains, or transmits electronic PHI on behalf of Minnewaska Area Schools Day Treatment: Agents, including subcontractors, will implement the safeguards required with respect to electronic PHI.
4. [Name of business associate] shall implement and apply appropriate sanctions against agents and subcontractors that violate the conditions and restrictions of Contract and this Addendum and shall mitigate the effects of any such violation.

C. Prohibited uses and disclosures:

1. [Name of business associate] shall not use or disclose PHI for fundraising or marketing purposes.
2. [Name of business associate] shall not disclose PHI to a health plan for payment or health care operations purposes if the individual who is the subject of the PHI has requested this restriction and has paid out of pocket in full for the item or service to which the PHI relates.
3. [Name of business associate] shall not receive remuneration in exchange for PHI except with the prior written consent of Minnewaska Area Schools Day Treatment and as permitted by § 17935(d)(2) of the HITECH Act. This prohibition shall not, however, affect payment by Minnewaska Area Schools Day Treatment to [name of business associate] for services performed pursuant to the Contract and this Addendum.^{1[1]}

D. Appropriate safeguards: In addition to the appropriate safeguards to protect the confidentiality, integrity, and availability of PHI required by the Contract, [name of business associate] will implement the administrative, physical, and technical safeguards and their required implementation specifications and will determine whether to implement the addressable implementation specifications of the Security Rule and comply with the policies and procedures and documentation requirements of the Security Rule as required by § 17931 of the HITECH Act.

E. Reporting of breaches: [Name of business associate] shall immediately report to Minnewaska Area Schools Day Treatment in writing any access, use, or disclosure of PHI not permitted by law, the Contract, and this Addendum and any breach of unsecured PHI of which it becomes aware without unreasonable delay and in no case later than [insert number of days no greater than 60 days] calendar days after discovery.

F. Access to protected health information: [For use only if the [name of business associate] maintains a designated record set on behalf of Minnewaska Area Schools Day Treatment]: [Name of business associate] shall make PHI maintained by [name of business associate], its agents, and its subcontractors, available to Minnewaska Area Schools Day Treatment for inspection and copying within 10 days of a request by Minnewaska Area Schools Day Treatment to enable Minnewaska Area Schools Day Treatment to comply with its obligations to provide individuals access under the Privacy Rule and the HITECH Act.

G. Accounting:

1. [Within 10 days of notice by Minnewaska Area Schools Day Treatment of a request for an accounting of disclosures of PHI] *or* [Promptly upon any disclosure of PHI for which Minnewaska Area Schools Day Treatment is required to account to an individual], [name of business associate] and its agents or subcontractors shall make available to Minnewaska Area Schools Day Treatment the information required to provide an accounting of disclosures to enable Minnewaska Area Schools Day Treatment to fulfill its obligations under the Privacy Rule and the HITECH Act, as determined by Minnewaska Area Schools Day Treatment.
2. [If [name of business associate] uses an electronic health record] Accounting of disclosures from an Electronic Health Record for treatment, payment, and health care operations must be collected and maintained for three (3) years prior to the request.
3. If a request for an accounting is delivered directly to [name of business associate] or its agents or subcontractors, [name of business associate] shall within 5 days of a request forward it to Minnewaska Area Schools Day Treatment in writing for Minnewaska Area Schools Day Treatment to act upon.

H. Breach Pattern or Practice by Minnewaska Area Schools Day Treatment: If [name of business associate] knows of a pattern of activity or practice of the Minnewaska Area Schools Day Treatment that constitutes a material breach or violation of the Minnewaska Area Schools Day Treatment's obligations under the Contract or the Addendum, [name of business associate] must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, [name of business associate] must terminate the Contract or, if termination is not feasible, report the problem to the Secretary of DHHS. [Name of business associate] shall provide written notice to Minnewaska Area Schools Day Treatment of any activity or practice of Minnewaska Area Schools Day Treatment that [name of business associate] believes constitutes a material breach or violation of the Contract or the Addendum within 5 days of discovery and shall meet with Minnewaska Area Schools Day Treatment to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

I. Notice of audit or investigation: [Name of business associate] will notify Minnewaska Area Schools Day Treatment within 5 days of learning the [name of business associate] has become the subject of an audit, compliance review, or complaint investigation by either the Office of the Inspector General of DHHS or the Office of Civil Rights of DHHS.

IV. Termination: In addition to the grounds for termination specified in the Contract, Minnewaska Area Schools Day Treatment may terminate the Contract, effective immediately, if [name of business associate] is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA regulations, or other security or privacy laws or if a finding or stipulation that [name of business associate] has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations, or other security or privacy laws is made in any administrative or civil proceeding in which [name of business associate] is a party.

V. Amendment to conform to changing laws and regulations: The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or the Addendum may be required to provide for procedures to ensure compliance with such changes. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy and Security Rules, and other applicable laws relating to the security or privacy of PHI.

VI. Effect on contract: Except as specified herein and as specifically required to implement the purposes and requirements of this Addendum or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum effective date.

COVERED ENTITY

Signed by: _____

Printed Name: _____

Title: _____

Date: _____

BUSINESS ASSOCIATE

Signed by: _____

Printed Name: _____

Title: _____

Date: _____