

Amendment

Attached to and made a part of the Employee Assistance Program Services Agreement between Horizon Behavioral Services, LLC (now known as Aetna Behavioral Health, LLC hereinafter “Aetna” or “Company”) and Littleton Public Schools (hereinafter “Customer”) (collectively, the “Services Agreement”).

Nothing contained in this amendment shall be held to alter or affect any of the terms of the Services Agreement other than as herein specifically stated.

It is understood and agreed that the Services Agreement is changed as follows:

- 1. The Appendix A – Health Insurance Portability and Accountability Act of 1996 (HIPAA) Addendum, of the Services Agreement, is replaced with:**

APPENDIX A

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) ADDENDUM

This Addendum by and among the Littleton Public Schools (referred to herein as “Customer” or “Plan Sponsor”), the group health plan components of the Littleton Public Schools Employee Benefits Plan (referred to herein as the “Covered Entity”) and Aetna Behavioral Health, LLC (referred to herein as “Company” or “Business Associate”) is an attachment to the Employee Assistance Program Services Agreement between Company and Customer, as amended (the “Agreement”) and is incorporated by reference therein.

In conformity with the applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-164) (“HIPAA Privacy Regulations” and/or “HIPAA Security Regulations”) and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”), that are applicable to business associates, along with any guidance and/or regulations issued by the U.S. Department of Health and Human Services (“HHS”), including, but not limited to, the HIPAA Omnibus Rule (the “Final Rule”), and other applicable federal and state laws, Company will, under the conditions and provisions (as set forth below) have access to, maintain, transmit, create and/or receive certain Protected Health Information. HIPAA and HITECH, as may be from time to time amended, and the regulations promulgated thereunder are collectively referred to in this Agreement as the “Applicable Laws.” Company and Covered Entity agree to incorporate into this Addendum any regulations issued with respect to the Applicable Laws that relate to the obligations of business associates. Business Associate recognizes and agrees that it is obligated by law to meet the applicable provisions of the Applicable Laws.

A capitalized term not otherwise defined herein shall have the meaning given to it in the Privacy Regulations and Security Regulations, as the case may be.

1. Definitions. The following terms shall have the meaning set forth below:
 - (a) ARRA. "ARRA" means the American Recovery and Reinvestment Act of 2009.
 - (b) Breach. "Breach" has the meaning assigned to such term "Breach" in 45 C.F.R. § 164.402.
 - (c) C.F.R. "C.F.R." means the Code of Federal Regulations.
 - (d) Designated Record Set. "Designated Record Set" has the meaning assigned to such term in 45 C.F.R. § 164.501.
 - (e) Discovery. "Discovery" shall mean the first day on which a Breach is known to Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of Business Associate), or should reasonably have been known to Business Associate, to have occurred.
 - (f) Electronic Health Record. "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed and consulted by authorized health care clinicians and staff.
 - (g) Electronic Protected Health Information. "Electronic Protected Health Information" means information that comes within paragraphs 1(i) or 1(ii) of the definition of "Protected Health Information", as defined in 45 C.F.R. § 160.103.
 - (h) Genetic Information. "Genetic Information" shall have the same meaning as the term "genetic information" in 45 C.F.R. § 160.103.
 - (i) Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502 (g).
 - (j) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E.
 - (k) Protected Health Information "Protected Health Information" shall have the same meaning as the term "Protected Health Information", as defined by 45 C.F.R. § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
 - (l) Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
 - (m) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services ("HHS") or his or her designee.
 - (n) Security Incident. "Security Incident" has the meaning assigned to such term in 45 C.F.R. § 164.304.
 - (o) Security Rule. "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and C.
 - (p) Standard Transactions. "Standard Transactions" means the electronic health care transactions for which HIPAA standards have been established, as set forth in 45 C.F.R., Parts 160-162.
 - (q) Unsecured Protected Health Information. "Unsecured Protected Health Information" means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by guidance issued by the Secretary from time to time.

2. 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 this Addendum or as Required By Law.

(b) Business Associate agrees to develop, implement, maintain, and use appropriate safeguards to protect the privacy of Covered Entity's Protected Health Information. The safeguards must reasonably protect Covered Entity's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Addendum. To the extent the Business Associate and Covered Entity agree that the Business Associate will carry out directly one or more of Covered Entity's obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

(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 or Breach relating to Business Associate or any of its agents or subcontractors in violation of the requirements of this Addendum.

(d) Business Associate agrees to report to Covered Entity any Security Incident or any use or disclosure of the Protected Health Information not allowed by this Addendum of which it becomes aware not more than ten (10) calendar days after the Business Associate discovers that such non-permitted use or disclosure, except that, for purposes of the Security Incident reporting requirement, the term "Security Incident" shall not include inconsequential incidents that occur on a daily basis, such as scans, "pings" or other unsuccessful attempts to penetrate computer networks or servers containing electronic PHI maintained by Business Associate. To be clear, an unauthorized use or disclosure that occurs in the performance of a function otherwise provided for in this Addendum, such as a misdirected communication made in the course of providing plan administration services under the Agreement, is not required to be reported unless it triggers reporting as a Breach of Unsecured Protected Health Information or a Security Incident.

(e) Business Associate agrees to report to Covered Entity any Breach of Unsecured Protected Health Information without unreasonable delay and in no case later than ten (10) calendar days after Business Associate discovers that such non-permitted use or disclosure in accordance with 45 C.F.R. § 164.410. Business Associate's notice will at least:

- (i) Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the Discovery of any Breach;
- (ii) Identify Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis;
- (iii) Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;
- (iv) Identify what corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further Breaches;
- (v) Identify what steps the individuals who were subject to a Breach should take to protect themselves;
- (vi) Provide such other information including a written report, as Covered Entity may reasonably request.

In addition, Business Associate shall provide any additional information reasonably requested by Covered Entity for purposes of investigating the Breach. Business Associate's notification of a Breach under this section shall comply in all respects with each applicable provision of Section 13400 of Subtitle D (Privacy) of ARRA and related guidance issued by the Secretary from time to time.

(f) Business Associate agrees to ensure that any subcontractor that creates, receives, maintains or transmits Protected Health Information on behalf of Business Associate agrees, by entering into a written business associate agreement with Business Associate, to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable.

(g) Business Associate agrees to provide access directly to an Individual, at the request of Covered Entity or the Individual and in a prompt and reasonable manner to Protected Health Information in a Designated Record Set, subject to and consistent with the timing and other provisions of 45 C.F.R. § 164.524. Effective September 23, 2013, if Covered Entity requests an electronic copy of Protected Health Information that is maintained in a Designated Record Set in the Business Associate's custody or control, Business Associate shall provide such a copy to Covered Entity or, alternatively, to the Individual directly, if such alternative choice is clearly, conspicuously, and specifically made by the Individual or Covered Entity.

(h) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set at the request of Covered Entity or an Individual, subject to and consistent with the timing and other provisions of 45 C.F.R. § 164.526.

(i) Business Associate agrees to make (i) internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, and (ii) policies, procedures, and documentation relating to the safeguarding of Electronic Protected Health Information available to the Secretary or his or her designee, in a time and manner designated by the Secretary or his or her designee, for purposes of the Secretary or his or her designee determining Covered Entity's compliance with the Privacy and Security Rules

(j) Business Associate agrees to document such disclosures of Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

(k) Business Associate agrees to provide to an Individual, at the request of Covered Entity or an Individual, an accounting of disclosures of Protected Health Information subject to and consistent with the timing and other provisions of 45 C.F.R. § 164.528. In addition, with respect to information contained in an Electronic Health Record, Business Associate shall document, and maintain such documentation for three (3) years from date of disclosure, such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of information contained in an Electronic Health Record, as required by Section 13405(c) of Subtitle D (Privacy) of ARRA and related regulations issued by the Secretary from time to time.

(l) With respect to Electronic Protected Health Information, Business Associate shall implement and comply with the administrative safeguards set forth at 45 C.F.R. § 164.308, the physical safeguards set forth at 45 C.F.R. § 164.310, the technical safeguards set forth at 45 C.F.R. § 164.312, and the policies and procedures and document requirements set forth at 45 C.F.R. § 164.316 to reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rules. Business Associate acknowledges that, (i) the foregoing safeguards, policies and procedures and document requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (ii) Business Associate shall be subject to the civil and criminal enforcement provisions set forth at 42 U.S.C. 1320d-5 and 1320d-6, as amended from time to time, for

failure to comply with the safeguards, policies and procedures and document requirements and any guidance issued by the Secretary or his or her designee from time to time with respect to such requirements.

(m) With respect to Electronic Protected Health Information, Business Associate shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it. Business Associate shall implement and maintain sanctions against subcontractors that violate such restrictions and conditions and shall mitigate such effects of any such violation.

(n) If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate shall comply with the applicable requirements of 45 C.F.R. Parts 160-162.

(o) Business Associate acknowledges that, it shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with any of the use and disclosure requirements of this Addendum and the Applicable Laws, including any guidance issued by the Secretary from time to time with respect to such use and disclosure requirements.

(p) Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA rules.

(q) To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

3. Permitted Uses and Disclosures by Business Associate

3.1 General Use and Disclosure

Except as otherwise provided in this Addendum, Business Associate may use or disclose Protected Health Information to perform its obligations under the Agreement, provided that such use or disclosure would not violate the Privacy and Security Rules if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.

3.2 Specific Use and Disclosure Provisions

(a) Except as otherwise provided in this Addendum, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(b) Except as otherwise provided in this Addendum, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that 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 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached in accordance with the Breach and Security Incident notifications requirements of this Addendum.

(c) Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an individual without Covered Entity's prior written approval and notice from Covered Entity that it has obtained from the individual, in accordance with 45 C.F.R. § 164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by Business Associate. The foregoing shall not apply to Covered Entity's payments to Business Associate for services delivered by Business Associate to Covered Entity.

(d) Except as otherwise provided in this Addendum, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

(a) 4. Obligations of Covered Entity.

4.1 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation(s) may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes affect Business Associate's uses or disclosures of Protected Health Information.

(c) Covered Entity agrees that it will not furnish or impose by arrangements with third parties or other Covered Entities or Business Associates special limits or restrictions to the uses and disclosures of its PHI that may impact in any manner the use and disclosure of PHI by Business Associate under the Agreement and this Addendum, including, but not limited to, restrictions on the use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522.

4.2 Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rules if done by Covered Entity.

5. Term and Termination

(a) Term. The provisions of this Addendum shall take effect upon the Effective Date of the Agreement and shall terminate when protections are extended to such information, in accordance with Section 5(c) of this Addendum.

(b) Termination for Cause. Without limiting the termination rights of the parties pursuant to the Agreement and upon either party's knowledge of a material breach by the other party, the non-breaching party shall either:

- (i) Provide an opportunity for the breaching party to cure the breach or end the violation, or terminate the Agreement, if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party,
- (ii) Immediately terminate the Agreement, if cure of such breach is not possible;
- (iii) If neither termination nor cure is feasible, the non-breaching party may report the violation to the Secretary.

(c) Effect of Termination.

The parties mutually agree that it is essential for Protected Health Information to be maintained after the expiration of the Agreement for regulatory and other business reasons. The parties further agree that it would be infeasible for Covered Entity to maintain such records because Covered Entity lacks the necessary system and expertise. Accordingly, Covered Entity hereby appoints Business Associate as its custodian for the safe keeping of any record containing Protected Health Information that Business Associate may determine it is appropriate to retain. Notwithstanding the expiration of the Agreement, Business Associate shall extend the protections of this Addendum to such Protected Health

Information, and limit further use or disclosure of the Protected Health Information to those purposes that make the return or destruction of the Protected Health Information infeasible.

6. Miscellaneous

(a) Regulatory References. A reference in this Addendum to a section in the Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. The parties agree to take such action to amend this Addendum from time to time as is necessary for Business Associate and Covered Entity to comply with the requirements of the HIPAA Privacy Rule, the HIPAA Security Rule, the HITECH Act, and HIPAA, as amended.

(c) Survival. The respective rights and obligations of Business Associate under Section 5(c) of this Addendum shall survive the termination of this Addendum.

(d) Interpretation. Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Rules.

(e) No third party beneficiary. Nothing express or implied in this Addendum or in the Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

(f) Governing Law. This Addendum shall be governed by and construed in accordance with the same internal laws as that of the Agreement.

(g) Indemnification. A breach by Business Associate of the terms and conditions of this Addendum shall be deemed a breach of the Agreement by Business Associate for purposes of the indemnification provisions of the Agreement. Without limiting the foregoing, Business Associate shall bear all costs for (i) drafting, printing and mailing any required notice to individuals impacted by a Breach of Unsecured Protected Health Information, (ii) establishing and operating a toll-free information line for impacted Individuals, (iii) costs of mitigating potential harm to such Individuals by providing credit monitoring, and (iv) penalties assessed against Plan Sponsor or Covered Entity, on account of the Breach, by any administrative entity authorized to enforce HIPAA's provisions.

(h) Counterparts. This Addendum and any amendments may be executed by electronic signature and in multiple counterparts and may be delivered by fax or other electronic means, all of which shall be deemed to be originals, and all of which shall constitute one document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Aetna Behavioral Health, LLC

Patricia P. Smelings

By: _____

Name: Patricia P. Smelings

Title: Risk Management Associate

Signed on behalf of Littleton Public Schools as the Plan Sponsor on 6-11-14

Date

LORI KINNEY

Asst. Superintendent of Human Resources

Lori Kinney

Signature

Title

Signed on behalf of the Littleton Public Schools Employee Benefits Plan on effective 9-23-13

Date

LORI KINNEY

Asst. Superintendent of Human Resources

LK

Signature

Title