



**State of Rhode Island
Department of Administration / Division of Purchases
One Capitol Hill, Providence, Rhode Island 02908-5855
Tel: (401) 574-8100 Fax: (401) 574-8387**

**Solicitation Information
June 25, 2020**

ADDENDUM #5

RFQ #7606780

TITLE: CALL CENTER VENDOR FOR CONTACT TRACING SURGE CAPACITY

Bid Closing Date & Time: **July 2, 2020 @ 10:00 AM Eastern Time (ET)**

Notice to Vendors

Additional document attached: Business Associate Agreement

**Dawn Vittorioso
Buyer II**

Interested parties should monitor this website, on a regular basis, for any additional information that may be posted.



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
DIVISION OF PURCHASES
One Capitol Hill
Providence, RI 02908-5855

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BUSINESS ASSOCIATE AGREEMENT

Except as otherwise provided in this Business Associate Agreement (hereinafter referred to as the “BAA”), [REDACTED], (hereinafter referred to as “Business Associate”), may use, access or disclose Protected Health Information to perform functions, activities or services for or on behalf of the State of Rhode Island, Department of Health (hereinafter referred to as the “Covered Entity”), as specified herein and the attached Contract between the Business Associate and the Covered Entity (hereinafter referred to as the “Contract”), which this BAA supplements and is made part of, provided such use, access, or disclosure does not violate the Health Insurance Portability and Accountability Act of 1996 (hereinafter referred to as “HIPAA”), Public Law 104-191, and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (hereinafter referred to as “HITECH”), and any regulations promulgated pursuant to HIPAA and HITECH, including, but not limited to, 45 C.F.R., Parts 160 and 164 (hereinafter referred to as the “Omnibus Rule”), the Rhode Island Mental Health Law, R.I. Gen. Laws § 40.1-5, and the Rhode Island Confidentiality of Health Care Communications and Information Act, R.I. Gen. Laws § 5-37.3 Business Associate recognizes and agrees it is obligated by law to meet the applicable privacy, security and confidentiality provisions of the aforementioned laws and regulations.

1. Definitions.

A. Generally:

- (1) Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.103, 164.304, 164.402, and 164.501.
- (2) The following terms used in this BAA shall have the same meaning as those terms in HIPAA, HITECH, and the Omnibus Rule: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

B. Specific:

- (1) "BAA" means this Business Associate Agreement.
- (2) "Contract" means the contractual arrangement by and between the State of Rhode Island, Department of Health and Business Associate, awarded pursuant to the State of Rhode Island's Purchasing Law (R.I. Gen. Laws § 37-2) and the Rhode Island Department of Administration Division of Purchases Procurement Regulations and General Conditions of Purchase.
- (3) "Business Associate" generally has the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this BAA, shall mean [Insert Name of Business Associate].
- (4) "Covered Entity" generally has the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this BAA, shall mean [Insert Name of Covered Entity].
- (5) "Electronic Protected Health Information" or "Electronic PHI" or "e-PHI" means PHI that is transmitted by or maintained in electronic media as defined in the Omnibus Rule.
- (6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended from time to time.
- (7) "Omnibus Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy and security of Protected Health Information and Electronic Protected Health Information including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.
- (8) "HITECH" means the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, Public Law 111-5, as amended from time to time.
- (9) "Privacy Rule" means the standards for the privacy and confidentiality of Protected Health Information ("PHI") found at 45 C.F.R. Part 160, and Subparts A and E of 45 C.F.R. Part 164.
- (10) "Secured PHI" means PHI that was rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of technologies or methodologies specified under HITECH § 13402 (h)(2).
- (11) "Security Incident" means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify,

access, or destroy any information.

- (12) "Security Rule" means the standards for the security of Electronic Protected Health Information found at 45 C.F.R. Part 160, and Subparts A and C of 45 C.F.R. Part 164. The provisions of 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314 and 164.316 shall apply to Business Associate of Covered Entity in the same manner that such sections apply to the Covered Entity.
- (13) "Suspected breach" is a suspected acquisition, access, use or disclosure of PHI in violation of the HIPAA Omnibus Rule that compromises the security or privacy of PHI.
- (14) "Unsecured PHI" means PHI that is not Secured PHI, as defined above, through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.

2. Obligations and Activities of Business Associate.

- A. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this BAA or as Required by Law, provided such use or disclosure would also be permissible by law if done by Covered Entity.
- B. Business Associate agrees to use appropriate safeguards (including encryption as specified in the Security Rule) and destruction, to prevent use or disclosure of PHI other than as provided for by this BAA.
- C. As required by the Security Rule, Business Associate agrees to conduct a risk assessment and implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- D. Business Associate agrees to use reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purposes of the use, disclosure, or request.
- E. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA.
- F. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this BAA, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware, within five (5) days of the incident's occurrence or Business Associate's discovery thereof.
- G. Business Associate agrees to ensure that any agent, including a subcontractor or vendor, to whom it provides PHI received from, or created or received by Business Associate on

behalf of Covered Entity agrees to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information through a contractual arrangement that complies with 45 C.F.R. § 164.314.

- H. Business Associate agrees to provide paper or electronic access, at the request of Covered Entity and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. If the Individual requests an electronic copy of the information, Business Associate must provide Covered Entity with the information requested in the electronic form and format requested by the Individual and/or Covered Entity if it is readily producible in such form and format; or, if not, in a readable electronic form and format as requested by Covered Entity.
- I. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity. If Business Associate receives a request for amendment to PHI directly from an Individual, Business Associate shall promptly notify Covered Entity upon receipt of such request.
- J. Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for the purposes of the Secretary determining compliance with the Omnibus Rule.
- K. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- L. Business Associate agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- M. If Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured PHI (as defined in 45 C.F.R. § 164.402) for Covered Entity, it shall, following the discovery of a Breach of such information, notify Covered Entity of such Breach within a period of five (5) days after discovery of the breach. Such notice shall include: a) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired or disclosed during such Breach; b) a brief description of what happened, including the date of the Breach and discovery of the Breach; c) a description of the type of Unsecured PHI that was involved in the Breach; d) a description of the investigation into the Breach, and the steps taken by Business Associate to mitigate harm

to the affected Individuals and protect against further Breaches; e) the results of any and all investigation performed by Business Associate related to the Breach; and f) contact information of the most knowledgeable individual for Covered Entity to contact relating to the Breach and Business Associate's investigation of the Breach.

- N. To the extent the Business Associate is carrying out an obligation of the Covered Entity's under the Privacy Rule, the Business Associate must comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation.
- O. Business Associate agrees that it will not receive remuneration directly or indirectly in exchange for PHI without authorization unless an exception under 45 C.F.R. § 164.502(a)(5)(ii)(B)(2) applies.
- P. Business Associate agrees that it will not receive remuneration for certain communications that fall within the exceptions to the definition of "Marketing" under 45 C.F.R. § 164.501, unless permitted by 45 C.F.R. § 164.508(a)(3)(i)(A)-(B).
- Q. If applicable, Business Associate agrees that it will not use or disclose genetic information for "underwriting purposes", as that term is defined in 45 C.F.R. § 164.502.
- R. Business Associate hereby agrees to comply with state laws and rules and regulations applicable to PHI and Individuals' personal information it receives from Covered Entity during the term of the Contract.
 - i. Business Associate agrees to: (a) implement and maintain appropriate physical, technical and administrative security measures for the protection of personal information as required by any state law and rules and regulations; including, but not limited to: (i) encrypting all transmitted records and files containing personal information that will travel across public networks, and encryption of all data containing personal information to be transmitted wirelessly; (ii) prohibiting the transfer of personal information to any portable device unless such transfer has been approved in advance; and (iii) encrypting any personal information to be transferred to a portable device; and (b) implement and maintain a Written Information Security Program as required by any state law as applicable.
 - ii. The safeguards set forth in this Agreement shall apply equally to PHI, confidential and "personal information." Personal information means an individual's first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such resident: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "personal information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

3. Permitted Uses and Disclosures by Business Associate.

- A. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity, or the minimum necessary policies and procedures of Covered Entity required by 45 C.F.R. § 164.514(d).
- B. 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.
- C. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person/entity to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person/entity, and that the person/entity will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- D. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services relating to the Health Care Operations of the Covered Entity as permitted by 45 C.F.R. § 164.504 (e)(2)(i)(B).
- E. 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).

4. Obligations of Covered Entity

- A. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- C. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by 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.
- D. Covered Entity shall provide written authorization to Business Associate prior to requesting that Business Associate disclose, transfer, or provide PHI to a third party.

5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, provided that, to the extent permitted by the Contract, Business Associate may use or disclose PHI for Business Associate's Data Aggregation activities, for the Business Associate's management and administrative activities, or to carry out the legal responsibilities of the Business Associate.

6. Term and Termination.

- A. The term of this Agreement shall begin as of the effective date of the Contract and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section.
- B. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BAA and the Contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity.
 - ii. Immediately terminate this BAA and the Contract if Business Associate has breached a material term of this BAA and cure is not possible.
- C. Except as provided in paragraph (d) of this Section, upon any termination or expiration of this BAA, Business Associate shall return to Covered Entity, or destroy, all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall ensure that its subcontractors or vendors return or destroy any of Covered Entity's PHI received from Business Associate.

In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's written agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

- D. The respective rights and obligations of Business Associate under this Section shall survive the termination of this BAA.

7. Miscellaneous.

- A. Any costs associated with Breach notifications, including mitigation costs, shall be the responsibility of Business Associate.
- B. If a term in the Contract conflicts or is otherwise inconsistent with a term in this BAA, the provisions of this BAA will prevail with respect to the subject matter hereof. This BAA and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the Omnibus Rule and HITECH.
- C. A reference in this BAA to a section in the Omnibus Rule, Privacy Rule or Security Rule means the section as in effect or as amended.
- D. The parties to this BAA agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the Omnibus Rule and HITECH. If Covered Entity and Business Associate have nevertheless not amended this BAA to address a law or final regulation that becomes effective after the effective date of the Contract and that is applicable to this BAA, then upon the effective date of such law or regulation (or any portion thereof), this BAA shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this BAA to be consistent with such law or regulation and for Covered Entity and Business Associate to be and remain in compliance with all applicable laws and regulations.
- E. Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with HIPAA and HITECH.
- F. Business Associate confirms that it is an independent contractor and is not acting as an agent of Covered Entity. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and its obligations under this BAA.
- G. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer upon any person/entity other than Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.
- H. Modification of the terms of this BAA shall not be effective or binding upon the parties unless and until such modification is committed to writing and executed by the parties hereto.
- I. This BAA shall be binding upon the parties hereto, and their respective subsidiaries, legal representatives, trustees, receivers, successors and permitted assigns; provided, however, that Business Associate may not assign its rights or delegate its responsibilities under this BAA.

- J. Should any provision of this BAA be found unenforceable, it shall be deemed severable and the balance of the BAA shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.
- K. This BAA and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of Rhode Island, including all matters of construction, validity and performance.
- L. All notices and communications required or permitted to be given hereunder shall be sent by certified or regular mail, addressed to the other party at its respective address as shown on the signature page, or at such other address as such party shall from time to time designate in writing to the other party, and shall be effective from the date of mailing.
- M. This BAA, including such portions as are incorporated by reference herein, constitutes the entire agreement by, between and among the parties as required by 45 C.F.R. § 164.504(e), and such parties acknowledge by their signature hereto that they do not rely upon any representations or undertakings by any person or party, past or future, not expressly set forth in writing herein, and that this BAA supersedes all prior agreements and understandings, both written and oral, with respect to the subject matter hereof.
- N. Business Associate shall maintain or cause to be maintained sufficient insurance coverage as shall be necessary to insure Business Associate and its employees, agents, representatives or subcontractors against any and all claims or claims for damages arising under this BAA and such insurance coverage shall apply to all services provided by Business Associate or its agents or subcontractors pursuant to this BAA. Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses (including but not limited to, reasonable attorneys' fees and costs, administrative penalties and fines, costs expended to notify Individuals and/or to prevent or remedy possible identity theft, financial harm, reputational harm, or any other claims of harm related to a breach) incurred as a result of, or arising directly or indirectly out of or in connection with any acts or omissions of Business Associate, its employees, agents, representatives or subcontractors, under this BAA, including, but not limited to, negligent or intentional acts or omissions. This provision shall survive termination of this BAA.
- O. This BAA may be executed in two or more counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument.
- P. From time to time after the effective date of the Contract, and without any consideration, Covered Entity and Business Associate will execute and deliver, or arrange for execution and delivery of, such other documents and take such other action or arrange for such other actions as may reasonably be requested to more fully effectuate the intent of this BAA.

8. Acknowledgment.

The undersigned affirms that he/she is a duly authorized representative of Business Associate for which he/she is signing and has the authority to execute this BAA on behalf of the Business Associate.

Acknowledged and agreed to by:

DIRECTOR
Department of Health

AUTHORIZED AGENT

TITLE

PRINTED NAME

PRINTED NAME

DATE

DATE