# [LCSW Name and Address]

# Business Associate Amendment to Agreement

By agreement of the parties, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Covered Entity”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Business Associate”), whose signatures have been affixed below, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Agreement for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Services, dated, 20\_\_, (“Agreement”), is hereby amended as set forth herein (“Amendment”). This Amendment is effective as of, 20\_\_ or such earlier date as this Amendment is fully signed by the parties (“Effective Date”).

**RECITALS**

WHEREAS, the parties have executed an agreement whereby Business Associate provides services to Covered Entity, and Business Associate receives, has access to or creates Protected Health Information in order to provide those services (“Agreement”);

WHEREAS, Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information codified at 45 Code of Federal Regulations Parts 160 and 164 (“Privacy Regulations”);

WHEREAS, the Privacy Regulations require Covered Entity to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information or electronic Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information or electronic Protected Health Information by Business Associate if such a contract is not in place;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

**DEFINITIONS**

1. “Disclose” and “Disclosure” mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information or electronic Protected Health Information outside Business Associate’s internal operations or to other than its employees.
2. “Protected Health Information” or “PHI” and electronic Protected Health Information or “ePHI” means information, including demographic information, that (i) 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; (ii) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity.
3. “Services” has the same meaning as in the Agreement.
4. “Use” or “Uses” mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination, or analysis of such information within Business Associate’s internal operations.
5. Terms used, but not otherwise defined, in this Amendment shall have the same meaning as those in 45 CFR 160.103 and 164.501.

**OBLIGATIONS OF BUSINESS ASSOCIATE**

1. Permitted Uses and Disclosures of PHI and ePHI. Business Associate may Use and Disclose PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement provided that such use or disclosure would not violate the Privacy Regulations if done by the Covered Entity. Business Associate agrees not to use or further disclose PHI other than as permitted or required by the Agreement, this Amendment, or as required by law.
2. Adequate Safeguards for PHI and ePHI. Business Associate warrants that it shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of PHI and ePHI in any manner other than as permitted by the Agreement and this Amendment.
3. Reporting Non-Permitted Use or Disclosure. Business Associate shall immediately in writing notify Covered Entity of each Use or Disclosure, of which it becomes aware, that is made by Business Associate, its employees, representatives, agents, or subcontractors that is not specifically permitted by this Amendment.
4. Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity’s compliance with the Privacy Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.
5. Access to and Amendment of PHI and ePHI. Within ten (10) days of receiving a request from the Covered Entity, Business Associate shall: (a) make the PHI or ePHI specified by Covered Entity available to the individual(s) identified by Covered Entity as being entitled to access and copy that PHI or ePHI, and (b) make PHI or ePHI available to Covered Entity for the purpose of amendment and incorporating such amendments into the PHI or ePHI. Business Associate shall provide such access and incorporate such amendments within the time and in the manner specified by Covered Entity.
6. Accounting of Disclosures. Within ten (10) days of receiving a request from the Covered Entity, Business Associate shall provide to Covered Entity an accounting of each Disclosure of PHI or ePHI made by Business Associate or its employees, agents, representatives, or subcontractors. Business Associate is not required to provide an accounting of Disclosures that are necessary to perform the Services when such Disclosures are for the purposes of the Covered Entity’s treatment, payment, or health care operations. Any accounting provided by Business Associate under this Section 2.6 shall include:

(a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the PHI or ePHI; (c) a brief description of the PHI or ePHI disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Section 2.6, Business Associate shall document the information specified in (a) through (d), above, and shall securely retain this documentation for six (6) years from the date of the Disclosure.

1. Term and Termination. The term of this Amendment shall be the same as the term of the Agreement. In addition to and notwithstanding the termination provisions set forth in the Agreement, both this Amendment and the Agreement may be terminated by Covered Entity immediately and without penalty upon written notice by Covered Form: Business Associate Amendment to Agreement Entity to Business Associate if Covered Entity determines, in its sole discretion, that Business Associate has violated any material term of this Agreement, as amended. Business Associate’s obligations under Sections 2.3, 2.4, 2.5, 2.6, 2.8, and 2.10 of this Amendment shall survive the termination or expiration of the Agreement.
2. Disposition of PHI or ePHI upon Termination or Expiration. Upon termination or expiration of the Agreement and this Amendment, Business Associate shall either return or destroy, in Covered Entity’s sole discretion and in accordance with any instructions by Covered Entity, all PHI or ePHI in the possession or control of Business Associate or its agents and subcontractors. However, if Covered Entity determines that neither return nor destruction of PHI or ePHI is feasible, Business Associate may retain PHI provided that Business Associate (a) continues to comply with the provisions of this Amendment for as long as it retains PHI or ePHI, and (b) limits further Uses and Disclosures of PHI or ePHI to those purposes that make the return or destruction of PHI or ePHI infeasible.
3. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
4. Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive PHI from Business Associate to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Amendment.
5. Relationship to Agreement Provisions. In the event that a provision of this Amendment is contrary to a provision of the Agreement, the provision of this Amendment shall control. Otherwise, this Amendment shall be construed under, and in accordance with, the terms of the Agreement.
6. Indemnification. Business Associate will indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, breach or non-fulfillment of any undertaking on the part of Business Associate under this Amendment; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with Business Associate’s obligations under this Amendment.

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

**Business Associate:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
**Business Associate:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_