ADDENDUM C

DHSS HIPAA BUSINESS ASSOCIATE AGREEMENT PROVISIONS
STATE FUNDS GRANT

1. BUSINESS ASSOCIATE. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party in this Grant, shall mean Grantee.

2. COVERED ENTITY. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this Grant, shall mean DHSS.


4. SECURITY INCIDENT. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

5. OTHER TERMS. The following terms shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Unsecured Protected Health Information, and Use.

6. THE GRANTEE shall do the following:
   6.1. Not use or disclose Protected Health Information other than as permitted or required by this Grant or as required by law. Grantee may use Protected Health Information for the purposes of managing its internal business processes relating to its functions and performance under this Grant. Use or disclosure must be consistent with DHHS’ minimum necessary policies and procedures.

   6.2. Implement and maintain appropriate administrative, physical, and technical safeguards to prevent access to and the unauthorized use and disclosure of Protected Health Information. Comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for in this Grant and assess potential risks and vulnerabilities to the individual health data in its care and custody and develop, implement, and maintain reasonable security measures.

   6.3. To the extent Grantee is to carry out one or more of the DHHS’ obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to DHHS in the performance of such obligations. Grantee may not use or disclosure Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by DHHS.

   6.4. In accordance with 45 CFR §§ 164.502(E)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agents or contractors that create, receive, maintain, or transmit Protected Health Information received from DHHS, or created by or received from the Grantee on behalf of DHHS, agree in writing to the same restrictions, conditions, and requirements relating to the confidentiality, care, custody, and minimum use of Protected Health Information that apply to the Grantee with respect to such information.

   6.5. Obtain reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Grantee of any instances of which it is aware that the confidentiality of the information has been breached.

   6.6. Grantee shall maintain and make available within fifteen (15) days in a commonly used electronic format:
       6.6.1. Protected Health Information to DHHS as necessary to satisfy DHHS’ obligations under 45 CFR § 164.524;
       6.6.2. Any amendment(s) to Protected Health Information as directed or agreed to by DHHS
pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy DHHS’ obligations under 45 CFR § 164.526;

6.6.3. The information required to provide an accounting of disclosures to DHHS as necessary to satisfy DHHS’ obligations under 45 CFR § 164.528.

6.7. Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Grantee on behalf of the DHHS available to the Secretary or DHHS for purposes of determining compliance with the HIPAA rules. Grantee shall provide DHHS with copies of the information it has made available to the Secretary at the same time as it was made available to the Secretary.

6.8. Report to DHHS within fifteen (15) days of which the Grantee becomes aware, any unauthorized use or disclosure of Protected Health Information made in violation of this Grant, or the HIPAA rules, including any security incident that may put electronic Protected Health Information at risk. Grantee shall, as instructed by DHHS, take immediate steps to mitigate any harmful effect of such unauthorized disclosure of Protected Health Information pursuant to the conditions of this Grant through the preparation and completion of a written Corrective Action Plan subject to the review and approval by DHHS. The Grantee shall be responsible for all breach notifications in accordance with HIPAA rules and regulations and all costs associated with security incident investigations and breach notification procedures.

6.9. Business Associate shall indemnify, defend, and hold harmless DHHS for any financial loss as a result of claims brought by third parties and which are caused by the failure of Grantee, its officers, directors, agents or subcontractors to comply with the terms of this Grant or for penalties imposed by the HHS Office of Civil Rights for any violations of the HIPAA rules caused by Grantee, its officers, directors, agents or subcontractors. Additionally, Grantee shall indemnify DHHS for any time and expenses it may incur from breach notifications that are necessary under the HIPAA Breach Notification Rule, which are caused by a failure of Grantee, its officers, directors, agents or subcontractors to comply with the terms of this Grant.

7. TERMINATION.

7.1. DHHS may immediately terminate this Grant and any and all associated grants if DHHS determines that the Grantee has violated a material term of this Grant.

7.2. Within thirty (30) days of expiration or termination of this Grant, or as agreed, unless Grantee requests and DHHS authorizes a longer period of time, Grantee shall return or at the written direction of DHHS destroy all Protected Health Information received from DHHS (or created or received by Grantee on behalf of DHHS) that Grantee still maintains in any form and retain no copies of such Protected Health Information. Grantee shall provide a written certification to DHHS that all such Protected Health Information has been returned or destroyed (if so instructed), whichever is deemed appropriate. If such return or destruction is determined by DHHS to be infeasible, Grantee shall use such Protected Health Information only for purposes that makes such return or destruction infeasible and the provisions of this Grant shall survive with respect to such Protected Health Information.

7.3. The obligations of the Grantee under the Termination Section shall survive the termination of this Grant.