

**INDIANA DEPARTMENT OF CHILD SERVICES (DCS)
CONFIDENTIALITY AGREEMENT REQUIRING THE PROVIDER TO MAINTAIN
THE CONFIDENTIALITY OF ANY SOCIAL SECURITY NUMBERS AND OTHER
CONFIDENTIAL INFORMATION, INCLUDING PROTECTED HEALTH
INFORMATION, THAT DCS DISCLOSES TO SUCH PROVIDER**

By signing this Indiana Department of Child Services (DCS) Confidentiality Agreement Requiring the Provider to Maintain the Confidentiality of any Social Security Numbers and Other Confidential Information, Including Protected Health Information, that DCS Discloses to such Provider (this “Confidentiality Agreement”), the following Provider, _____
_____ (the “Provider”), hereby agrees to the following for the consideration received by the Provider for its provision of services to DCS, for DCS, and/or at the request of DCS and/or for its provision of services to a DCS’ ward’s or wards’ care and/or treatment (hereinafter such above-described services are collectively referred to as “DCS Services”) and also in consideration of DCS disclosing to the Provider the confidential information described below herein:

1. As a signatory to this Confidentiality Agreement, the above-referenced Provider understands and agrees that data, materials, and information that DCS discloses to such Provider may contain confidential and protected information. The Provider hereby covenants that data, material, and information gathered, based upon or disclosed to the Provider in performance of DCS Services will not be disclosed to or discussed with third parties without the prior written consent of DCS.

2. DCS and the Provider hereby acknowledge that the DCS Services to be performed by the Provider may require or allow access to data, materials, and information containing Social Security numbers maintained by DCS in its computer system or other records. In addition to the covenant made above in paragraph 1 of this Confidentiality Agreement and pursuant to 10 IAC 5-3-1(4) and the terms of this Confidentiality Agreement, the Provider and DCS agree to comply with the provisions of IC § 4-1-10 and § 4-1-11. If any Social Security number(s) is/are disclosed by the Provider, the Provider agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Confidentiality Agreement.

3. HIPAA Compliance:

A. This paragraph (3) of this Confidentiality Agreement applies only to the extent that the Provider receives any protected health information ("PHI"), as referenced in subparagraph B below, or any alcohol and drug abuse records (as defined in IC § 16-18-2-12), health records (as defined in IC § 16-18-2-168), or mental health records (as defined in IC § 16-18-2-226), concerning any individual, in connection with performance of DCS Services. Any records included in the above definitions in IC § 16-18-2 are referred to herein as "Health Records."

B. HIPAA. The Provider agrees to comply with all applicable requirements of the Health Insurance Portability and Accountability Act of 1996, Title II, Administrative Simplification ("HIPAA"), including amendments signed into law under the American Recovery and Reinvestment Act of 2009 ("ARRA"), in particular, applicable provisions of Title XIII known as the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Subtitle D, in all activities related to the Provider's performance of DCS Services, to maintain compliance during the performance of DCS Services and after as may be required by federal law, to operate any systems used to fulfill the requirements of its provision of DCS Services in full compliance with all applicable provisions of HIPAA and to take no action which adversely affects DCS' HIPAA compliance.

Terms used, but not otherwise defined, in this paragraph 3 of this Confidentiality Agreement shall have the same meaning as those found in the HIPAA Regulations under 45 CFR Parts 160, 162, and 164.

To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Provider assures that it will appropriately safeguard all forms of Health Records and/or Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Provider in the performance of DCS Services. The Provider agrees to comply with all applicable requirements of law relating to Health Records and/or PHI with respect to any task or other activity it performs via its provision of DCS Services including, as required by the final Privacy and Security regulations:

- (1) Implementing the following HIPAA requirements for any forms of Health Records and/or PHI that the Provider receives, maintains, or transmits on behalf of DCS:
 - (a) Administrative safeguards under 45 CFR § 164.308
 - (b) Physical safeguards under 45 CFR § 164.310

- (c) Technical safeguards under 45 CFR § 164.312
 - (d) Policies and procedures and documentation requirements under 45 CFR § 164.316;
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- (2) Implementing a disaster recovery plan, as appropriate for work conducted in the performance of DCS Services, which includes mechanisms to recover data and/or alternative data storage sites, as determined by DCS to be necessary to uphold integral business functions in the event of an unforeseen disaster;
 - (3) Not using or further disclosing Health Records and/or PHI other than as permitted or required in the performance of DCS Services or by applicable law;
 - (4) Immediately reporting to DCS' HIPAA Compliance Office any security and/or privacy breach directly relating to the work performed via the Provider's provision of DCS Services of which the Provider becomes aware;
 - (5) Mitigating, to the extent practicable, any harmful effect that is known to the Provider and immediately reporting to DCS' HIPAA Compliance Office any use or disclosure by the Provider, its agents, employees, subcontractors or third parties, of Health Records and/or PHI obtained via its performance of DCS Services in a manner not provided for by DCS or by applicable law of which the Provider becomes aware;
 - (6) Ensuring that any subcontractors or agents to whom the Provider provides Health Records and/or PHI received from, or created or received by the Provider, subcontractors or agents on behalf of DCS agree to the same restrictions, conditions and obligations applicable to such party regarding Health Records and/or PHI and agree to implement the required safeguards to protect it;
 - (7) Making the Provider's internal practices, books and records related to the use or disclosure of Health Records and/or PHI received from, or created or received by the Provider on behalf of DCS available to DCS at its request or to the Secretary of the United States Department of Health and Human Services ("DHHS") for purposes of determining DCS' compliance with applicable law. The Provider shall immediately notify DCS' HIPAA Compliance Office upon receipt by the Provider of any such request from the Secretary of DHHS or designee, and shall provide DCS' HIPAA Compliance Office with copies of any materials made available in response to such a request;

- (8) In accordance with procedures established by DCS, making available the information required to provide an accounting of disclosures pursuant to applicable law, if the duties of the Provider include disclosures that must be accounted for;
- (9) Making available Health Records and/or PHI for amendment and incorporating any amendments to Health Records and/or PHI in accordance with 45 CFR § 164.526, if the Provider maintains Health Records and/or PHI subject to amendment;
- (10) Make Health Records and/or PHI available to individuals entitled to access and requesting access in compliance with 45 CFR § 164.524 and the duties of the Provider;
- (11) At the discretion of DCS, authorizing termination of the Provider's performance of DCS Services if the Provider has violated a material provision of this paragraph (3) of this Confidentiality Agreement; and
- (12) At the termination of the Provider's performance of DCS Services, the Provider shall return or destroy all Health Records and/or PHI received or created pursuant to its provision of DCS Services. If DCS determines return or destruction is not feasible, the protections in this Confidentiality Agreement shall continue to be extended to any Health Records and/or PHI maintained by the Provider for as long as it is maintained.

C. Drug and Alcohol Patient Abuse Records. In the performance of DCS Services, the Provider may have access to confidential information concerning the disclosure and use of alcohol and drug abuse patient records. The Provider understands and agrees that data, materials and information disclosed to the Provider may contain confidential and protected data, including confidential individual information concerning alcohol and drug abuse patient records. Therefore, the Provider promises and assures that any such confidential data, material, and information gathered or disclosed to the Provider for the purposes of the Provider's performance of DCS Services and specifically identified as Confidential Information will not be disclosed or discussed with others without the prior written consent of DCS. The Provider and DCS shall comply with applicable requirements under 42 CFR Part 2 and any other applicable federal or state statutory or regulatory requirements. The Provider shall immediately report any unauthorized disclosures of these records to DCS' HIPAA Compliance Office.

4. Further, as a signatory to this Confidentiality Agreement, the above-referenced Provider acknowledges and agrees that violation of this Confidentiality Agreement may support a claim for damages against such Provider, its employees, and/or agents, and that any unauthorized disclosure of confidential information by the Provider, its employees, and/or agents may constitute a criminal act for which the Provider, its employees, and/or agents may be prosecuted.

5. This Confidentiality Agreement shall be governed, construed, and enforced in accordance with the laws of the state of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the state of Indiana.

6. The signatory for the Provider represents that he/she has been duly authorized to execute this Confidentiality Agreement on behalf of the Provider and has obtained all necessary or applicable approvals to make this Confidentiality Agreement fully binding upon the Provider when his/her signature is affixed, and accepted by DCS.

7. Non-Collusion and Acceptance: The undersigned attests, subject to the penalties for perjury, that the undersigned is the Provider, or that the undersigned is the properly authorized representative, agent, member or officer of the Provider. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Provider, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Confidentiality Agreement other than that which appears upon the face hereof.

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**SIGNATURE PAGE
TO
INDIANA DEPARTMENT OF CHILD SERVICES (DCS)
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INFORMATION, THAT DCS DISCLOSES TO SUCH PROVIDER**

In Witness Whereof, the Provider and DCS have, through their duly authorized representatives, entered into this Confidentiality Agreement. The parties, having read and understood the foregoing terms of this Confidentiality Agreement, do by their respective signatures dated below agree to the terms thereof.

Provider: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Indiana Department of Child Services

By: _____
Mary Beth Bonaventura, Director

Date: _____