

# PROGRESSIVE CARE NETWORK, INC.

## HIPAA ADDENDUM

**THIS ADDENDUM** (the "Addendum") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by and between \_\_\_\_\_ ("Business Associate") and Progressive Care Network and amends the following agreement (the "Agreement") previously entered into between Vendor and Client:

**Contract Title**

**Date of Vendor Execution**

Outside Services Contractor \_\_\_\_\_

1. **Definitions.** For purposes of this Addendum, the following terms shall have the designated meanings.

- (a) "Designated Record Set" shall mean a group of records maintained by or for Progressive Care Network that is (i) the medical records and billing records about individuals maintained by or for Progressive Care Network; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Progressive Care Network to make decisions about individuals. As used herein, the term "Record" means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for Progressive Care Network.
- (b) "Electronic Media" shall mean the mode of electronic transmissions. It includes the Internet, Extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media.
- (c) "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996.
- (d) "HIPAA Transaction" shall mean Transactions as defined in 45 C.F.R. 160.103 of the Transactions Standards.
- (e) "Individually Identifiable Health Information" shall mean information that is a subset of health information, including demographic information collected from an individual , and
  - (a) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
  - (b) related 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; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (f) "Privacy Standards" shall mean the Standard for Privacy of Individually Identifiable Health Information, 56 C.F.R. Parts 106 and 164.
- (g) "Protected Health Information" shall mean Individually Identifiable Health Information that is (i) transmitted by electronic media; (ii) maintained in any medium consisting electronic media; or (iii) transmitted in any other form or medium. "Protected Health Information" shall not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g, or records described in 20 U.S.C. 1232g(a)(4)(B)(iv).

- (h) "Secretary" shall mean the Secretary of the Department of Health and Human Services.
  - (i) "Security Standards" shall mean the regulations with regard to security standards for health information to be promulgated by the Secretary pursuant to the authority granted by Title II, Subtitle F, Section 263 of HIPAA.
  - (j) "Transactions Standards" shall mean the Standards for Electronic Transactions, 45 C.F.R. 160 and 162.
2. Use of Protected Health Information. Business Associate shall not and shall ensure that its directors, officers, employees, contractors and agents, do not use Protected Health Information received from Progressive Care Network in any manner that would constitute a violation of the Privacy Standards if used by Progressive Care Network, except that Business Associate may use Protected Health information (i) for Business Associate's proper management and administrative services, or (ii) to carry out the legal responsibilities of Business Associate.
  3. Disclosure of Protected Health Information. Business Associate shall not and shall ensure that its directors, officers, employees, contractors, and agents do not disclose Protected Health Information received from Progressive Care Network in any manner that would constitute a violation of the Privacy Standards if disclosed by Progressive Care Network, except that Business Associate may disclose Protected Health Information in a manner permitted pursuant to the agreement or as required by law. To the extent Business Associate discloses Protected Health Information to a third party, Business Associate must obtain, prior to making any such disclosure, reasonable assurances from such third party that such Protected Health Information will be held (i) confidential as provided pursuant to the Agreement, and only disclosed as required by law, or (ii) for the purposes for which it was disclosed to such third party; and (iii) an agreement from such third party to immediately notify Business Associate of any breaches of the confidentiality of the Protected Health Information, to the extent it has obtained knowledge of such breach.
  4. Safeguards Against Misuse of Information. Business Associate agrees that it will implement all appropriate safeguards to prevent the use or disclosure of Protected Health Information other than pursuant to the terms and conditions of the Agreement.
  5. Indemnification. Business Associate shall indemnify and hold Progressive Care Network harmless from and against any and all loss, cost or expense, including reasonable attorney's fees that arise out of this Agreement or of the HIPAA Privacy Regulations; or the need for Progressive Care Network to enforce any provisions of this Agreement.
  6. Reporting of Disclosures of Protected Health Information. Business Associate shall, within five (5) days of becoming aware of a disclosure of Protected Health Information in violation of the Agreement by Business Associate, its officers, directors, employees, contractors, or agents, or by a third party to which Business Associate disclosed Protected Health Information pursuant to subsection © of this Section, report any such disclosure to Progressive Care Network. The Secretary of Health and Human Services is the regulating agency for the HIPAA regulations. To contact the Secretary call 1-877-696-6775.
  7. Agreement by Third Parties. Business Associate shall enter into an agreement with any agent or subcontractor that will have access to Protected Health Information that is received from, or created or received by Business Associate on behalf of Progressive Care Network to which such agent or subcontractor agrees to be bound by the same restrictions, terms, and conditions that apply to Business Associate pursuant to this Addendum with respect to such Protected Health Information.
  8. Access to Information. Within five (5) days of a request by Progressive Care Network for access to Protected Health Information about an individual contained in a Designated Record Set, Business Associate shall make available to Progressive Care Network such Protected Health

Information for so long as such information is maintained in the Designated Record Set. In the event that any individual requests access to Protected Health Information directly from Business Associate, Business Associate shall within two (2) days forward such request to Progressive Care Network. Any denials of access to the Protected Health Information requested shall be the responsibility of Progressive Care Network.

9. Availability of Protected Health Information for Amendment. Within ten (10) days of receipt of a request from Progressive Care Network for the amendment of an individual's Protected Health Information or a record regarding an individual contained in a Designated Record Set (for so long as the Protected Health Information is maintained in the Designated Record Set), Business Associate shall provide such information to Progressive Care Network for amendment and incorporate any such amendments in the Protected Health Information as required by C.F.R. 164.526.
10. Accounting of Disclosures. Within ten (10) days notice by Progressive Care Network to Business Associate that it has received a request for an accounting of disclosures of Protected Health Information regarding an individual during the six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to Progressive Care Network such information, as is in the Business Associate's possession and is required for Progressive Care Network to make the accounting required by 45 C.F.R. 164.528. At a minimum, Business Associate shall provide Progressive Care Network with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within two (2) days forward such request to Progressive Care Network. It shall be Progressive Care Network's responsibility to prepare and deliver any such accounting requested. Business Associate hereby agrees to implement an appropriate record-keeping process to enable it to comply with the requirements of this Section.
11. Availability of Books and Records. Business Associate hereby agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Progressive Care Network's available to the Secretary for purposes of determining Progressive Care Network's and Business Associate's compliance with the Privacy Standards.
12. Effect of Termination. Upon the termination of the Agreement for any reason, Business Associate will return to Progressive Care Network, or, at Progressive Care Network's direction, destroy all Protected Health Information received from Progressive Care Network that Business Associate maintains in any form, recorded on any medium, or stored in any storage system, unless said information has been de-identified and is no longer Protected Health Information. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement, until such time as all Protected Health Information has been returned, de-identified or otherwise destroyed as provided in this section.
13. Termination of Contract. In addition to any other rights Progressive Care Network may have in the Agreement, this Addendum or by operation of law, Progressive Care Network may terminate the Agreement if Progressive Care Network determines that Business Associate has violated a material term of this Addendum.
14. Third-Party Rights. The terms of this Addendum are not intended, nor should they be construed to grant any rights to any parties other than Business Associate and Progressive Care Network.
15. Electronic Transmissions. Vendor hereby represents and warrants that to the extent it is transmitting any of the HIPAA Transactions for Progressive Care Network, the format and

structure of such transmissions shall be in compliance with the Transaction Standards, provided, it is Progressive Care Network responsibility to ensure that appropriate Code sets are used in the coding of services and supplies. Business Associate shall indemnify and hold Progressive Care Network harmless from any monetary penalties assessed against Progressive Care Network arising from a breach of the representation and warranty contained in this Section 14, including reimbursing Progressive Care Network for any cost incurred by Progressive Care Network as a result of an audit or investigation by the Secretary which may include the costs of consultants and lawyers.

16. Data Security. Vendor hereby represents and warrants that it will utilize its commercially reasonable efforts to implement technical and physical safeguards and policies and procedures to comply with the Security Standards.

**IN WITNESS WHEREOF**, the parties have executed this addendum the day and year first above written.

**Business Associate**

**Progressive Care Network**

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Signed

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