Enrollment for Education Solutions Amendment

Amendment ID EES16

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| 000-jwilmo-E-1432 |

This amendment (“Amendment”) to the Enrollment for Education Solutions is entered into between the entities identified on the signature form. It supplements the Enrollment for Education Solutions (“Enrollment”).

The Microsoft Online Services provided to Institution require Microsoft to host Institution Data that may contain Protected Health Information. Institution is a Covered Entity or the Business Associate of one or more Covered Entity(ies). Microsoft is a Business Associate. As such, the HITECH Act and HIPAA require Microsoft and Institution to comply with additional Privacy Standards and Security Standards that relate to the use, access, and disclosure of Protected Health Information.

The terms and conditions in this Amendment supersede any conflicting terms and conditions in Institution’s Agreement. The parties amend the Enrollment with the following:

# Definitions*.*

Except as otherwise defined in this Amendment, any and all capitalized terms shall have the definitions set forth in HIPAA, the HITECH Act, and Institution’s Agreement for Microsoft Online Services.

“Business Associate” shall have the same meaning as the term “business associate” in 45 CFR § 160.103.

Covered Entity” shall have the same meaning as the term “covered entity” in 45 CFR § 160.103.

“Institution” means the Institution identified on the signature form.

“Dynamics CRM Online Services” means Dynamics CRM Online volume licensing SKUs such as DynCRMOnIn ALNG SubsVL MVL PerUsr (DSD-00001). Dynamics CRM Online Services does not include the Dynamics CRM Mobile service.

“HIPAA” means the administrative simplification provision of the Health Insurance Portability and Accountability Act enacted by the United States Congress, and its implementing regulations, including the Standards for Privacy of Individually Identifiable Health Information and the Security Rule.

“The HITECH Act” means the Health Information Technology for Economic and Clinical Health Act enacted by the United States Congress, which is Title XIII of the American Recovery & Reinvestment Act, and its implementing regulations.

“Microsoft Online Services” for this Amendment only, means Office 365 Services, Windows Azure Core Services, and/or Dynamics CRM Online Services.

“Office 365 Services” means Office 365 Plans A1, A2, A3, A4, K1, and K2; Exchange Online Plan 1, Plan 2, and Kiosk; SharePoint Online Plans 1 and 2; Office Web Apps Plans 1 and 2; and Lync Online branded services.

“Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103 provided that it is limited to such protected health information that is received by Microsoft from, received by Microsoft on behalf of, or created by Microsoft on behalf of Institution or the Covered Entity for whom Institution acts as a Business Associate.

“Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information.

“Windows Azure Core Services” include Windows Azure Cloud Services (web and worker roles), Storage (blobs, tables, queues), Virtual Machines, and Networking (Windows Azure Connect, Traffic Manager, Virtual Network). They do not include Windows Azure Active Directory, Content Delivery Network, Caching, Service Bus, Web Sites, or SQL Database.

1. *Permitted uses and disclosures of Protected Health Information.*
2. **Performance of the Agreement for Microsoft Online Services.** Except as otherwise limited in this Amendment, Microsoft may use and disclose Protected Health Information for, or on behalf of, Institution as specified in the Agreement for Microsoft Online Services.
3. **Management, Administration, and Legal Responsibilities.** Except as otherwise limited in this Amendment, Microsoft may use and disclose Protected Health Information for the proper management and administration of Microsoft and/or to carry out the legal responsibilities of Microsoft, provided that any disclosure may occur only if: (1) Required by Law; or (2) Microsoft obtains written reasonable assurances from the person to whom the Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Microsoft of any instances of which it becomes aware in which the confidentiality of the Protected Health Information has been breached.
4. **Data Aggregation.** Microsoft may use Protected Health Information to provide Data Aggregation services to Institution if Microsoft determines that Data Aggregation, as it relates to the health care operations of Institution, is necessary to provide or improve the Microsoft Online Services for the benefit of Institution.
5. *Responsibilities of the Parties with Respect to Protected Health Information.*
6. **Microsoft’s Responsibilities.** To the extent Microsoft is acting as a Business Associate, Microsoft agrees to the following:
7. **Limitations on Use and Disclosure.** Microsoft shall use and/or disclose the Protected Health Information only as permitted or required by the Agreement for Microsoft Online Services or this Amendment or as otherwise Required by Law; provided that any such use or disclosure would not violate HIPAA if done by Institution unless expressly permitted for Business Associates under HIPAA and/or the HITECH Act.
8. **Safeguards.** Microsoft shall use reasonable and appropriate: (1) safeguards to prevent inappropriate use and disclosure of Protected Health Information other than as provided for in this Amendment; and (2) administrative, physical, and technical safeguards that appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Institution.
9. **Reporting.** Microsoft shall report to Institution: (1) any use and/or disclosure of Protected Health Information that is not permitted or required by this Amendment of which Microsoft becomes aware; (2) any Security Incident of which it becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents shall be given; and/or (3) any Breach of Institution’s Unsecured Protected Health Information that Microsoft may discover. Notification of a Breach will be made without unreasonable delay, but in no event more than thirty (30) calendar days after discovery of a Breach. Taking into account the level of risk reasonably likely to be presented by the use, disclosure, incident, or breach, the timing of other reporting will be made consistent with Microsoft’s and Institution’s legal obligations.

For purposes of this Section, “Unsuccessful Security Incidents” mean, without limitation, pings and other broadcast attacks on Microsoft’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Protected Health Information. Notification(s) under this Section, if any, will be delivered to contacts identified by Institution pursuant to Section 3b(ii) (Contact Information for Notices) of this Amendment by any means Microsoft selects, including via email. Microsoft’s obligation to report under this Section is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to any use, disclosure, Security Incident, or Breach.

1. **Subcontractors.** Microsoft shall require all of its subcontractors and agents to whom it provides Protected Health Information to agree in writing to: (1) the same restrictions and conditions that apply Microsoft with respect to such Protected Health Information; and (2) implement reasonable and appropriate safeguards to protect Protected Health Information.
2. **Disclosure to the Secretary.** Microsoft shall make available its internal practices, records, and books relating to the use and/or disclosure of Protected Health Information received from Institution to the Secretary of the Department of Health and Human Services for purposes of determining Institution’s compliance with HIPAA, subject to attorney-client and other applicable legal privileges.
3. **Access.** If Microsoft maintains Protected Health Information in a Designated Record Set for Institution, Microsoft shall make access to such Protected Health Information available to Covered Entity in accordance with HIPAA and the HITECH Act.
4. **Amendment.** If Microsoft maintains Protected Health Information in a Designated Record Set for institution, Microsoft shall make available such Protected Health Information to Institution for amendment and incorporate any such amendment in the Protected Health Information as may be reasonably requested by Institution in accordance with HIPAA and the HITECH Act.
5. **Accounting of Disclosure.** Microsoft shall make available to Institution such information relating to disclosures made by Microsoft as required for Institution to make any requested accounting of disclosures in accordance with HIPAA and the HITECH Act.
6. **HITECH Act Compliance.** With respect to any Business Associate functions, Microsoft shall comply with the provisions of the Security Rule that are made applicable to Business Associates by the HITECH Act, including the administrative, physical, and technical standards of the Security Rule and the requirements to maintain policies, procedures, and documentation of security safeguards.
7. **Institution Responsibilities.**
8. **No Impermissible Requests.** Institution shall not request Microsoft to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA or the HITECH Act if done by a Covered Entity.
9. **Contact Information for Notices.** This Section constitutes Institution’s agreement to receive electronic notification reports in order for Institution to timely receive notifications contemplated by Section 3a(iii) (Reporting) or other notices relevant to this Amendment. Institution shall provide contact information to [MSO-HIPAA@microsoft.com](mailto:MSO-HIPAA@microsoft.com) or such other location or method of updating contact information as Microsoft may specify from time to time, and shall ensure that Institution’s contact information remains up to date during the term of this Amendment. *Contact information must include name of individual(s) to be contacted, title of individuals(s) to be contacted, e-mail address of individual(s) to be contacted, name of Institution organization and, if available, either contract number or subscriber identification number.*
10. **Safeguards and Appropriate Use of Protected Health Information.** Institution is responsible for implementing appropriate privacy and security safeguards in order to protect its Protected Health Information in compliance with HIPAA.  Without limitation, it is Institution’s obligation to:
    1. Notinclude Protected Health Information in: (1) information Institution submits to technical support personnel or Office 365 community support forums; and (2) Institution’s address book or directory information. In addition, Microsoft does not act as, or have the obligations of, a Business Associate or a subcontractor under HIPAA with respect to Institution Data once it is sent to or from Institution outside the Microsoft Online Services over the public Internet.
    2. Implement appropriate privacy and security safeguards in the systems and software Institution controls and configures, including without limitation applications Institution uploads into the Microsoft Online Services.
    3. Conduct and document a risk analysis and risk management process with respect to Protected Health Information.
    4. Develop appropriate privacy, security, and breach notification policies and procedures.
11. *Applicability of Amendment.*

As of the effective date of this Amendment, this Amendment is applicable to Microsoft Online Services. At such time as Microsoft is willing to enter into the terms of this Amendment with respect to other current or future Microsoft online services, Microsoft will notify Institution of the effective date that this Amendment will be applicable to such other Microsoft online services. Subsequent to the effective date identified in Microsoft’s notice, and provided Institution has by that date entered into an agreement for such other Microsoft online services, this Amendment will apply to Institution’s other Microsoft online services without additional action by Institution. Institution acknowledges that this Amendment is not effective as to an applicable Microsoft online service until Microsoft notifies Institution this Amendment is effective as specified in this Section 4. It is Institution’s obligation to not store or process Protected Health Information in an Microsoft online service until on or after the date this Amendment is effective as to the applicable service.

1. *Term and Termination.*
   1. **Term.** This Amendment shall continue in effect until the earlier of (1) termination by a Party for breach as set forth in Section 5b, below, or (2) expiration of Institution’s Agreement for Microsoft Online Services.
   2. **Termination for Breach.** Either Party immediately may terminate the Agreement for Microsoft Online Services if the other Party is in material breach or default of any obligation in this Amendment that is not cured within thirty (30) calendar days written notice of such breach or default.
   3. **Return, Destruction, or Retention of Protected Health Information Upon Termination.** Upon expiration or termination, Microsoft shall return or destroy all Protected Health Information in its possession, if it is feasible to do so, and as set forth in the applicable termination provisions of the Product Use Rights and/or agreement for the Microsoft Online Services. If Microsoft determines that it is not feasible to return or destroy any portions of the Protected Health Information upon termination of this Amendment, then Microsoft shall extend the protections of this Amendment, without limitation, to such Protected Health Information and limit any further use or disclosure of the Protected Health Information to those purposes that make the return or destruction infeasible for the duration of the retention of the Protected Health Information.
2. *Miscellaneous.*
   1. **HITECH Act Requirements.** The Parties agree that the provisions under the HITECH Act that are required by law to be incorporated into this Amendment are hereby incorporated into this Amendment.
   2. **Interpretation.** The Parties intend that this Amendment be interpreted consistently with their intent to comply with HIPAA, the HITECH Act, and other applicable federal and state law. Except where this Amendment conflicts with the Agreement for Microsoft Online Services, all other terms and conditions of the Agreement for Microsoft Online Services remain unchanged. The Parties agree that, in the event an inconsistency exists between the Agreement for Microsoft Online Services and this Amendment, the provisions of this Amendment will control to the extent of such inconsistency. Any captions or headings in this Amendment are for the convenience of the Parties and shall not affect the interpretation of this Amendment.
   3. **Amendments; Waiver.** This Amendment may not be modified or amended except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
   4. **No Third Party Beneficiaries.** Nothing express or implied in this Amendment is intended to confer, nor shall anything in this Amendment confer, upon any person other than the Parties, and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
   5. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original.
   6. **Severability.** In the event that any provision of this Amendment is found to be invalid or unenforceable the remainder of this Amendment shall not be affected thereby, but rather the remainder of this Amendment shall be enforced to the greatest extent permitted by law.

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| **This Amendment must be attached to a signature form to be valid.** |