

## **BUSINESS ASSOCIATE ADDENDUM**

**THIS BUSINESS ASSOCIATE ADDENDUM** (“Addendum”) is entered into as of the date of the last signature below, and amends and is made part of any existing or future agreement (“Agreement”) by and between \_\_\_\_\_ (“Covered Entity”) and **PowerDMS, Inc., a Delaware corporation** (“Business Associate”).

### **RECITALS**

**WHEREAS**, Covered Entity and Business Associate have entered the Agreement, pursuant to which Business Associate provides certain services to Covered Entity, and in connection with those services, Business Associate will have access to certain information that is subject to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing privacy and security regulations at 45 Code of Federal Regulations (“C.F.R.”) Parts 160-164 (“HIPAA Privacy Rule” and HIPAA Security Rule”); and

**WHEREAS**, Covered Entity and Business Associate mutually agree to modify the Agreement to incorporate the terms of this Addendum; and

**WHEREAS**, this Addendum incorporates the requirements of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), that are applicable to business associates, along with any guidance and/or regulations issued by the U.S. Department of Health and Human Services (“DHHS”); and

**WHEREAS**, Covered Entity and Business Associate agree to incorporate into this Addendum any regulations issued with respect to the HITECH Act that relate to the obligations of business associates; and

**WHEREAS**, Business Associate recognizes and agrees that it is obligated by law to meet the applicable provisions of the HITECH Act.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the parties’ continuing obligations under the Agreement, compliance with all applicable laws, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Covered Entity and Business Associate agree as follows:

- A. Definitions.** Capitalized terms which are not defined in this Addendum shall have the meaning set forth in HIPAA or the HITECH Act, or any accompanying regulations, as amended from time to time.
  
- B. Conflicts and Additional Terms.** With the exception set forth in Section I.6 of this Addendum, the parties acknowledge and agree that if any of the terms and conditions set forth in this Addendum are in conflict with or in addition to the terms and conditions set forth in the Agreement, then the Addendum shall control in connection with Business Associate’s request, Use, or Disclosure of Protected Health Information (“PHI”) or Electronic Protected Health Information (“ePHI”).

C. **Privacy of Protected Health Information.**

1. **Permitted Uses and Disclosures.** Business Associate agrees to Use or Disclose PHI that it creates or receives for or from Covered Entity only as follows:
  - a) Functions and Activities on Covered Entity's Behalf. Business Associate is permitted to Use and Disclose PHI it creates or receives for or from Covered Entity for the purpose of performing its obligations under the Agreement, consistent with the Privacy Rule.
  - b) Business Associate's Operations - Use of PHI. Business Associate is permitted by this Addendum to Use PHI it creates or receives for or from Covered Entity if such Use is necessary for Business Associate's proper management and administration, or is necessary to carry out Business Associate's legal responsibilities.
  - c) Business Associate's Operations - Disclosure of PHI. Business Associate is permitted by this Addendum to Disclose PHI it creates or receives for or from Covered Entity if such Disclosure is necessary for Business Associate's proper management and administration, or is necessary to carry out Business Associate's legal responsibilities only if the following conditions are met:
    - (i) The Disclosure is required by law; or
    - (ii) Business Associate obtains reasonable assurances in writing from any person or organization to which Business Associate will Disclose such PHI that the person or organization will hold such PHI as confidential, and will only Use or further Disclose such PHI as required by law, or for the purpose for which the Business Associate Disclosed such PHI to the person or organization. The person or organization shall promptly notify the Business Associate (who shall in turn promptly notify Covered Entity) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI has been breached; and
    - (iii) Business Associate shall promptly notify Covered Entity upon making any Disclosure of PHI permitted under Section C.1(c) of this Addendum.
  - d) Minimum Necessary Standard and Limited Data Set. In performing the functions and activities on Covered Entity's behalf, Business Associate's Use, Disclosure or request of PHI shall utilize a Limited Data Set, if practicable. Otherwise, Business Associate agrees to Use, Disclose or request only the Minimum Necessary PHI to accomplish the purpose of the Use, Disclosure or request.

2. **Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither Use nor Disclose PHI it creates or receives for or from Covered Entity or from another business associate of Covered Entity, except as permitted or required by the Agreement and this Addendum, or as required by law, or following receipt of prior written approval from Covered Entity. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI except where permitted by the Agreement and consistent with applicable law. Business Associate shall not directly or indirectly receive payment for any Use or Disclosure of PHI for marketing purposes except where permitted by the Agreement and consistent with applicable law.
3. **De-identification of PHI.** For any Use or Disclosure of PHI permitted by this Addendum, Business Associate agrees to consider whether such Use or Disclosure can be made through “de-identified” PHI as set forth in 45 C.F.R. 164.514(b)(2)(i) and (ii). Business Associate agrees neither to de-identify PHI it creates or receives for or from Covered Entity or from another business associate of Covered Entity, nor Use or Disclose such de-identified PHI, unless: (i) such de-identification is expressly permitted under the terms and conditions of the Agreement; and (ii) such de-identification is for services provided by Business Associate that relate to Covered Entity’s activities for purposes of Payment or Health Care Operations. Unless expressly permitted under the terms and conditions of this Addendum, Business Associate shall not de-identify PHI.
4. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI; Covered Entity shall reimburse reasonable documented expenses incurred by Business Associate in connection with such restriction on the use or disclosure of PHI. Notwithstanding the foregoing, if the Covered Entity agrees to any restriction that materially affects the Business Associate’s ability to perform or materially increases the costs of Business Associate’s performance under the Addendum or the Agreement, this shall constitute a material breach of this Addendum, allowing termination by Business Associate under Section H.2(b) of this Addendum.

**D. Information Safeguards.**

**1. General.**

Business Associate will develop, document, implement, maintain and use reasonable and appropriate Administrative, Technical and Physical safeguards to preserve the Integrity and Confidentiality of and to prevent non-permitted Use or Disclosure of PHI created or received for or from Covered Entity. Business Associate agrees that these safeguards will meet any applicable requirements set forth by the DHHS. Upon Covered Entity’s request, Business Associate will provide Covered Entity with access to and copies of documentation regarding the safeguards. Business Associate agrees to mitigate, to the extent practicable, any

harmful effect that is known to Business Associate resulting from a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Addendum.

**2. Safeguards for Securing Electronic Protected Health Information.**

Business Associate agrees that:

- (i) Business Associate will develop, implement, maintain and use appropriate Administrative, Technical, and Physical safeguards (“Safeguards”), consistent with (and as required by) the Security Standards, 45 C.F.R. Part 164 Subpart C, that reasonably and appropriately protect the Integrity, Confidentiality and Availability of, and to prevent non-permitted or violating Use or Disclosure of, ePHI created or received in connection with the services, functions, and/or transactions to be provided under the Agreement, or that it creates, receives, maintains, or transmits on behalf of Covered Entity. These Safeguards shall extend to transmission, processing, and storage of ePHI. Transmission of ePHI shall include transportation of storage media, such as magnetic tape, disks or compact disk media, from one location to another;
- (ii) Business Associate will require its agents and Subcontractors (if applicable) to which Business Associate Discloses ePHI created or received by Business Associate in connection with the services, functions, and/or transactions to be provided under the Agreement, to provide reasonable assurance, evidenced by written contract, that, with respect to such ePHI, such agents or Subcontractors will comply with the same security requirements with which Business Associate is required to comply; and
- (iii) Business Associate will report and track all Security Incidents as described below. Business Associate will monitor and keep track of any Security Incident. Business Associate will report to Covered Entity any Security Incident that results in the unauthorized access, Use, Disclosure, modification, or destruction of Covered Entity’s ePHI or interference with Business Associate’s system operations in Business Associate’s information systems, of which Business Associate becomes aware. Business Associate will inform Covered Entity’s Privacy Official within seventy-two (72) hours after Business Associate learns of such non-permitted or violating Use or Disclosure, and provide a report within fifteen (15) days meeting the requirements of Section H.1, Breach of Privacy Obligations, of this Addendum. Business Associate’s report will contain at least information concerning the nature and impact of the Security Incident and Business Associate’s steps to mitigate this impact. Business Associate also agrees to provide such other information

concerning such Security Incident as is requested by Covered Entity. For any other Security Incident, Business Associate will provide such report upon Covered Entity's request.

3. **Documentation.** Business Associate also shall develop and implement policies and procedures and meet the Security Rule documentation requirements as required. Upon Covered Entity's request, Business Associate will provide Covered Entity with access to and copies of these policies and procedures.

4. **Mitigation.**

Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from or that may result in a Security Incident, including, but not limited to:

- a) Assess Business Associate's systems for configuration vulnerabilities and vendor patch maintenance on an ongoing basis and take reasonable steps to apply security patches and remediate any substantial vulnerabilities;
- b) Cooperate as reasonably requested by Covered Entity, in order to further investigate and resolve the Security Incident;
- c) Use best efforts to prevent any further Security Incident or other prohibited Use or Disclosure; however, such remedial actions shall in no manner relieve Business Associate's obligations or liabilities for breach hereunder.

5. **Termination upon Breach of Security Standards.**

- a) If Covered Entity determines that Business Associate has engaged in a pattern of activity or practice that constitutes a material breach or violation of the Business Associate's security obligations under this Addendum or the Agreement, Covered Entity shall notify Business Associate of this determination and Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful after a period of thirty (30) days, Covered Entity shall:
  - (i) Terminate this Addendum and the Agreement in accordance with Section H.2 of this Addendum, if feasible; or
  - (ii) If termination is not feasible, report the problem to the DHHS.
- b) **Continuing Security Obligations.** Business Associate's obligations to protect the security of the ePHI it created, received, maintained, or transmitted for or from Covered Entity will be continuous and survive termination, cancellation, expiration or other conclusion of this Addendum or the Agreement.

6. **Access to Covered Entity Information Systems.** If Business Associate is provided access to any Covered Entity information system or network containing any ePHI, Business Associate agrees to comply with all Covered Entity policies for access to and use of information from the information systems or network.
- E. **Subcontractors and Agents.** Business Associate will require any of its Subcontractors and agents to which Business Associate is permitted by this Addendum (or is otherwise given Covered Entity's prior written approval) to Disclose any of the PHI Business Associate creates or receives for or from Covered Entity, to provide reasonable assurances in writing that Subcontractor or agent will comply with the same restrictions and conditions that apply to the Business Associate under the terms and conditions of this Addendum with respect to such PHI. Business Associate shall notify Covered Entity of any agents or Subcontractors to which PHI is Disclosed promptly upon such Disclosures. Business Associate further will require its agents and Subcontractors to which Business Associate Discloses ePHI created or received by Business Associate in connection with the services, functions, and/or transactions to be provided under the Agreement, to provide reasonable assurance, evidenced by written contract, that, with respect to such Protected Health Information, such agents or Subcontractors will comply with the same security requirements with which Business Associate is required to comply.
- F. **Protected Health Information Access, Amendment and Disclosure Accounting.**
1. **Access.** Business Associate will promptly upon Covered Entity's request make available to Covered Entity for inspection and obtaining copies any PHI in a Designated Record Set so that Covered Entity may meet its access obligations under 45 C.F.R. § 164.524.
  2. **Amendment.** Business Associate will promptly upon Covered Entity's request permit Covered Entity access to amend any portion of the PHI which Business Associate created or received for or from Covered Entity, and incorporate any amendments to such PHI, so that Covered Entity may meet its amendment obligations under 45 C.F.R. § 164.526.
  3. **Disclosure Accounting.** Business Associate will maintain and make available any information that may be required for the Covered Entity to meet its Disclosure accounting obligations under 45 C.F.R. § 164.528.
- G. **Inspection of Books and Records; Cooperation with DHHS Investigations and Compliance Reviews.** Business Associate will make its internal practices, books, and records, relating to its Use and Disclosure of the PHI it creates or receives for or from Covered Entity, available to the DHHS to determine Covered Entity's compliance with 45 C.F.R. Parts 160-164. At the request of the Secretary of DHHS, Business Associate will comply with any investigations and compliance reviews, permit access to information, provide records and compliance reports, and cooperate with any complaint investigation, pursuant to 45 C.F.R. § 164.310.

## H. Breach of Privacy Obligations.

1. **Reporting.** Business Associate will report to Covered Entity any (i) acquisition, access, Use or Disclosure of PHI that is neither permitted by this Addendum nor given prior written approval by Covered Entity; and (ii) any Breach of Unsecured PHI. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under the Breach Notification Rule and any other security breach notification laws. Business Associate will make the report to Covered Entity's Privacy Official within ten (10) days after Business Associate learns of such non-permitted acquisition, access, Use or Disclosure. Business Associate shall provide information reasonably requested by Covered Entity, so that Covered Entity may meet its obligations with respect to breach notifications to individuals and, if applicable, the DHHS Office for Civil Rights (OCR).
  
2. **Termination of Agreement.**
  - a) **Covered Entity Right to Terminate for Breach.** Covered Entity may terminate the Agreement if it determines, after reasonable consultation with Business Associate, that Business Associate has breached any material provision of this Addendum and upon written notice to Business Associate of the breach, Business Associate fails to cure the breach within thirty (30) days of written notice.
  
  - b) **Business Associate Right to Terminate for Breach.** Business Associate may terminate the Agreement if it determines, after reasonable consultation with Covered Entity, that Covered Entity has breached any material provision of this Addendum and upon written notice to Covered Entity of the breach, Covered Entity fails to cure the breach within thirty (30) days of the written notice.
  
  - c) **Obligations upon Termination.**
    - (i) **Return or Destruction.** Upon termination, cancellation, expiration or other conclusion of the Agreement, Business Associate will, if feasible, return to Covered Entity or destroy all PHI and, in whatever form or medium (including in any electronic medium under Business Associate's custody or control), that Business Associate created or received for or from Covered Entity, including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the PHI. Business Associate will complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. Business Associate will identify any PHI that Business Associate created or received for or from Covered Entity that cannot feasibly be returned to Covered Entity or

destroyed, and will limit its further Use or Disclosure of that PHI to those purposes that make return or destruction of that PHI infeasible. Within such thirty (30) days, Business Associate will certify in writing to Covered Entity that such return or destruction has been completed, will deliver to Covered Entity the identification of any PHI for which return or destruction is infeasible and, for that PHI, will certify that it will only Use or Disclose such PHI for those purposes that make return or destruction infeasible.

- (ii) Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of the PHI it created or received for or from Covered Entity will be continuous and survive termination, cancellation, expiration or other conclusion of the Agreement.
- (iii) Continuing Security Obligations. Business Associate's obligations to protect the security of the ePHI it created, received, maintained, or transmitted for or from Covered Entity will be continuous and survive termination, cancellation, expiration or other conclusion of this Addendum or the Agreement.
- (iv) Other Obligations and Rights. Business Associate's other obligations and rights and Covered Entity's obligations and rights upon termination, cancellation, expiration or other conclusion of the Agreement are those set forth in the Agreement.

- 3. **Injunctive Relief.** In the event of a breach of any material term of this Addendum, Business Associate agrees that Covered Entity has a right to seek injunctive relief to prevent further Disclosure of PHI.

## I. **General Provisions.**

- 1. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of HIPAA, the HITECH Act, any final regulation or amendment to final regulations promulgated by the DHHS with respect to PHI, and any other applicable law.
- 2. **Rights of Third Parties.** This Addendum is between Covered Entity and Business Associate and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party or parties.
- 3. **Limitation of Liability.** To the extent permitted by applicable law and except with regard to liability resulting from the gross negligence or willful misconduct of Business Associate, in no event will the Business Associate's aggregate liability under this Addendum, whether in contract, tort, or any other theory of liability, exceed the sum of all amounts required to be paid by the Covered Entity to the Business Associate in connection with the Agreement in the twelve (12) month period preceding the date of the event initially giving rise to such liability. In

addition, the Business Associate shall not have any liability with respect to any claim for special, indirect, incidental, or consequential damages incurred by the Covered Entity in connection with, arising out of, or related to this Addendum.

4. **Policies and Procedures.** Business Associate agrees to provide, upon Covered Entity's request, reasonable access to and copies of any policies and procedures developed or utilized by Business Associate regarding the protection of PHI.
5. **Compliance Monitoring.** Business Associate agrees to cooperate with Covered Entity's Privacy Official during the conduct of a business associate privacy compliance review. Cooperation shall include but is not limited to providing prompt access to or copies of Business Associate's privacy policies and procedures and other documentation as may be reasonably requested that relate to Business Associate's handling of PHI.
6. **More Restrictive Confidentiality Terms.** Covered Entity and Business Associate agree that if any provisions of the Agreement that relate to the Use or Disclosure of PHI are more restrictive than the provisions of this Addendum, meaning that the terms provide greater privacy protections for the PHI at issue, then the provisions of the more restrictive document shall control. The provisions of this Addendum are intended to establish the minimum requirements regarding Business Associate's Use and Disclosure of PHI.
7. **Relationship of the Parties.** No agency, partnership, joint venture, or employment is created as a result of this Addendum and neither party has any authority of any kind to bind the other in any respect whatsoever.
8. **Governing Law.** This Addendum and the rights and obligations of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of Florida.
9. **Severability.** Should any provision of this Addendum be declared illegal, void, or unenforceable, or shall be considered severable, the Addendum shall remain in force and be binding upon the parties as though the said provision had never been included.
10. **No Assignment.** No party may assign its respective rights and obligations under this Addendum without the prior written consent of the other party. Notwithstanding the foregoing, this Addendum may be assigned by either party in connection with a merger, consolidation, sale of all of the equity interests of the party, or a sale of all or substantially all of the assets of the party to which this Agreement relates.
11. **No Waiver.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation on any other occasion.


- 12. Notices.** All notices and notifications under this Addendum shall be sent in writing to the following listed persons on behalf of Covered Entity and Business Associate, and shall be deemed given when deposited with the U.S. Postal Service for mailing by regular, certified, or overnight mail; when hand-delivered by courier; or when deposited for delivery with Federal Express or United Parcel Service for standard, expedited, or overnight delivery, or by electronic mail:

If to Covered Entity: \_\_\_\_\_ County Judge's Office \_\_\_\_\_  
\_\_\_\_\_ 710 Main Street \_\_\_\_\_  
\_\_\_\_\_ Georgetown, TX 78626 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Business Associate: PowerDMS, Inc.  
Attn: Legal  
101 S. Garland Ave, Ste 300  
Orlando, FL 32801  
legal@powerdms.com

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, Covered Entity and Business Associate execute this Addendum as of the date of the last signature below.

_____	PowerDMS, Inc.
<b>By</b> _____	<b>By</b>  _____
<b>Name</b> _____	<b>Name</b> <u>Ana Alfaro</u>
<b>Title</b> _____	<b>Title</b> <u>Revenue Accounting Manager</u>
<b>Date</b> _____	<b>Date</b> <u>02/18/2022</u>