

## Contingent Business Associate Agreement

**SUBJECT TO THE CONTINGENCY BELOW**, this Agreement is made effective on the date of last signature by and between Central Florida Behavioral Health Network, Inc. (Covered Entity); and Charlotte County, a political subdivision of the State of Florida ("Business Associate").

### Recitals

Business Associate provides or will provide behavioral health services to Covered Entity pursuant to a Purchase Agreement (Main Agreement) between Business Associate and Covered Entity. Some or all of the records related to the services in the Main Agreement constitute Protected Health Information (PHI) that are subject to privacy and security protection under the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations promulgated thereunder, as amended from time to time by the U.S. Department of Health and Human Services.

If applicable to Covered Entity and Business Associate in the implementation, administration, or services of the Main Agreement, Covered Entity and Business Associate shall comply with the applicable federal regulation governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and may not use or disclose such records except as permitted 42 C.F.R. Part 2.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual promises made in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### THIS AGREEMENT IS CONTINGENT

This Agreement is effective only if 1) Business Associate is subject to HIPAA Rules in Business Associate's performance of the Main Agreement and 2) Covered Entity is required by HIPAA Rules to enter into a Business Associate Agreement with Business Associate.

#### 1. DEFINITIONS

1.1 HIPAA Rules. "HIPAA Rules" mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

1.2 Terms used. Any terms used in this Agreement that are defined in the HIPAA Rules shall have those same definitions in this Agreement.

#### 2. BUSINESS ASSOCIATE NOT AN AGENT

2.1 No Agency Relationship. Business Associate is an independent contractor and shall not be an agent of Covered Entity under the federal common law of agency. Business Associate is not under the control of Covered Entity because the Business Associate is not the agent of Covered Entity. Covered Entity has no right or authority to direct

## **Contingent Business Associate Agreement**

any of Business Associate's services or any of the obligations of this Agreement. Business Associate shall be solely responsible for selecting and determining the means and methods of providing the services in the Main Agreement and in this Agreement. Business Associate possesses specialized skills for the services in the Main Agreement and performing this Agreement. Business Associate shall be solely responsible for selecting and providing the instrumentalities and tools to provide the services in the Main Agreement and in performing this Agreement. Business Associate shall provide the services in the Main Agreement at locations that are not provided or controlled by Covered Entity. Business Associate shall provide the services in the Main Agreement for the limited duration of this Agreement and not as a permanent relationship with Covered Entity. In performing the services in the Main Agreement or this Agreement Covered Entity has no right to assign additional projects, tasks, or responsibilities to Business Associate. Business Associate is solely responsible for determining its hours of operation. Business Associate shall be solely responsible for hiring and paying its employees and assistants.

2.2 **Covered Entity Operations.** Covered Entity is not in the business of providing the services in the Main Agreement.

2.3 **Interpretation.** Nothing in the Main Agreement shall make Business Associate the agent of Covered Entity. In case of a conflict between the Main Agreement and this Agreement, the provisions of this Agreement shall prevail. It is a primary intent and purpose of the Main Agreement and this Agreement and the parties that for all purposes, including the HIPAA Rules, Business Associate shall not be the agent of Covered Entity.

### **3. BUSINESS ASSOCIATE GENERAL HIPAA OBLIGATIONS**

3.1 **General Obligations.** In providing the services in the Main Agreement to Covered Entity Business Associate shall:

3.1.1 Not use, access, or disclosure of protected health information except for use, access, or disclosure imposed on Business Associate by law as a Business Associate independent of any authorization in this Agreement; or authorized by the Main Agreement if such uses are also authorized by the HIPAA Rules or other law.

3.1.2 Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of PHI other than as required by law.

## **Contingent Business Associate Agreement**

- 3.1.3 In accordance with HIPAA Rules, § 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit electronic protected health information on behalf of Business Associate agree to comply with the applicable requirements of Subpart C of Part 164 by entering into a contract or other arrangement that complies with § 164.314.
- 3.1.4 Report to Covered Entity any loss, damage, destruction, use or disclosure of protected health information from Covered Entity records not required by law of which Business Associate becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which Business Associate becomes aware (collectively Reportable Incidents). Business Associate shall report Reportable Incidents to Covered Entity in writing and by telephone within 48 hours of Business Associate becoming aware of information that could possibly indicate a Reportable Incident.
- 3.1.5 Allow Covered Entity access to Covered Entity records at all reasonable times.
- 3.1.6 Business Associate shall make available protected health information about an individual in a designated record set to said individual or the individual's designee as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524. Business Associate shall report in writing to Covered Entity any denial of a request for protected health information to satisfy Covered Entity's obligations under 45 CFR 164.524 within 10 days of such denial.
- 3.1.7 In carrying out Business Associate's obligations imposed on Business Associate by the HIPAA Rules, perform those obligations as direct obligations of the HIPAA Rules and not as the agent of Covered Entity or the requirements of this Agreement.
- 3.1.8 At termination of this Agreement, if feasible, return or destroy all protected health information received from Covered Entity that Business Associate as provided in Section 6.
- 3.1.9 Not interfere with Covered Entity's obligations under HIPAA Rules, §§ 164.524, 164.526, and 164.528.

### **4. INSURANCE AND INDEMNIFICATION**

- 4.1 Insurance or Self-Insurance. Notwithstanding the insurance requirements contained in any other contractual agreement between Covered Entity and Business Associate, Business Associate shall obtain and maintain, at its own expense, at all times during the term of this Agreement, commercial general liability insurance coverage with, or shall be self-insured for a minimum of \$300,000 per occurrence and \$1,000,000 annual aggregate, which coverage by its terms shall be applicable to, and not exclude coverage for Business Associate's indemnification obligations under this Agreement. Covered Entity shall be named as an additional insured on such insurance policies or self-insured program. Business Associate shall provide Covered Entity with a

## **Contingent Business Associate Agreement**

certificate evidencing such coverage. Business Associate shall notify Covered Entity in writing at least thirty days prior to any cancellation or reduction in coverage initiated by Business Associate and within ten days after Business Associate is notified by its insurance company of any cancellation or reduction in coverage initiated by the insurance company. State agencies or subdivisions as defined by subsection 768.28(2), F.S. are exempt from the requirement to name Covered Entity as an additional insured.

### **4.2 Indemnification.**

The Business Associate shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Covered Entity, the Department, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, costs, and expenses arising from or relating to an alleged act or omission by the Business Associate, its agents, employees, partners, or subcontractors, provided however that the Business Associate shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Covered Entity or the Department. If the Business Associate is an agency or subdivision of the State, its obligation to indemnify, defend, and hold harmless the Department shall be to the extent permitted by law and without waiving the limits of sovereign immunity.

The Covered Entity shall be fully liable for the actions of its agents, employees, partners, or subcontractors (except Business Associate) and shall fully indemnify, defend, and hold harmless Business Associate and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, costs, and expenses arising from or relating to an alleged act or omission by the Covered Entity, its agents, employees, partners, or subcontractors (except Business Associate), provided however that the Covered Entity shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Business Associate or the Department.

Nothing contained in this Agreement shall be construed to be consent by a party to be sued by third parties in any matter arising out of this Agreement.

### **5. NOTICE**

Any notices to be given hereunder to a party shall be made via U.S. Mail or express courier (and by telephone when required) to:

**As to Business Associate:**

County Administrator  
Charlotte County  
18500 Murdock Circle  
Port Charlotte, Florida 33948

## Contingent Business Associate Agreement

**With a copy to:**

County Attorney  
Charlotte County  
18500 Murdock Circle  
Port Charlotte FL 33948

**As to Covered Entity:**

Alan Davidson  
Central Florida Behavioral Health Network, Inc.  
719 U.S. Highway 301 South  
Tampa, FL 33619

**As to Covered Entity in case of notice required by Section 3.1.4:**

Risk Management  
Central Florida Behavioral Health Network, Inc.  
719 U.S. Highway 301 South  
Tampa, FL 33619

**6. TERM AND TERMINATION**

6.1 Term. The term of this Agreement shall be effective as stated in the first paragraph of this Agreement and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate is destroyed pursuant to law or returned to Covered Entity.

6.2 Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

a. Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, and thereafter terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or

b. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

6.3 Effect of Termination.

6.3.1 Upon Records. Except as provided in Section 6.3.2, upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity all Protected Health Information received from Covered Entity unless such records were destroyed pursuant to Florida law. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. Covered Entity shall be responsible for all charges related to the return of the Protected Health Information as set forth in the Main Agreement.

## **Contingent Business Associate Agreement**

6.3.2 If return is infeasible. In the event that Business Associate determines that returning the Protected Health Information is infeasible, and such infeasibility is agreed to by Covered Entity in writing, Business Associate shall continue to extend the protections of this Agreement to such Protected Health Information.

6.3.3 Survival. The rights and obligations of Business Associate under this Section 6 shall survive the termination of this Agreement. Termination of this Agreement shall not affect the rights and obligations of the parties under the Main Agreement and/or any other agreement between Business Associate and Covered Entity. Any provisions which remain to be performed, or by their nature are intended to be applicable, following any expiration or termination of this Agreement shall remain in full force and effect after such expiration/termination. All remedies including indemnification in Section 4.2 Indemnification shall survive termination of this Agreement.

### **7. MISCELLANEOUS AND 42 C.F.R. Part 2 ADDITIONAL PROVISIONS**

7.1 Inconsistencies. To the extent there are any inconsistencies between this Agreement and the terms of the Main Agreement with respect to compliance with HIPAA Rules, the terms of this Agreement will prevail and shall continue to prevail after termination of this Agreement.

7.2 Equitable Relief. Subject to Florida law, Business Associate acknowledges that any breach of confidentiality obligations will result in irreparable damage for which there may be no adequate remedy at law. Therefore, it is agreed that Covered Entity shall be entitled to equitable relief, including, but not limited to, an injunction enjoining any such breach. Such injunction shall be without prejudice to any other right or remedy to which Covered Entity may be entitled, including damages.

7.3 No Offshore Work. In performing this Agreement or the Main Agreement and subject always to Florida law, Business Associate shall not, and shall not permit any of its subcontractors or agents to transmit or make available any PHI to any entity or individual outside the United States.

7.4 No Third Party Beneficiaries. There shall be no third-party beneficiaries to this Agreement. Nothing express or implied in this Agreement shall confer upon any person or entity, other than the parties hereto, any rights, remedies, obligations or liabilities whatsoever.

7.5 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules. However, any amendment shall only be by a written instrument signed by both Covered Entity and Business Associate. No amendment is effective until it is in a written instrument signed by Covered Entity and Business Associate.

## Contingent Business Associate Agreement

- 7.6 Severability, Applicable Law and Jurisdiction. This Agreement is severable, such that if any provision herein contained is properly determined to be illegal or invalid, then the remaining provisions shall continue to be in full force and effect. This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida, and any action brought to enforce, to interpret or arising from, this Agreement shall be brought in the courts in Charlotte County, Florida, to which the parties hereto submit to the exclusive jurisdiction and venue thereof.
- 7.7 No assignment. Neither party may assign this Agreement without the prior written consent of the other party.
- 7.8 Execution and counterparts. For the convenience of the parties, this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document. Telefacsimile or email transmissions of any executed original in portable document format (PDF) and/or retransmission of any executed telefacsimile or email transmission of this Agreement in PDF shall be deemed to be the same as the delivery of an executed original. At the request of any party hereto, the other party shall confirm telefacsimile or email transmissions by executing duplicate original documents and delivering the same to the requesting party.
- 7.9 42 C.F.R. Part 2. Business Associate when dealing with records subject to 42 C.F.R. Part 2 shall resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.
- 7.10 Regulatory Reference. A reference in this Agreement to a section in the Privacy Standards, Security Standards, HIPAA or 42 C.F.R. Part 2 means the section as in effect or as amended.
- 7.11. Preemption. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the Privacy Standards, Security Standards, HIPAA or 42 C.F.R. Part 2, as amended, the Privacy Standards, Security Standards, HIPAA and 42 C.F.R. Part 2 shall control. In the event of an inconsistency between the provisions of the Privacy Standards, Security Standards, HIPAA, 42 C.F.R. Part 2 and other applicable confidentiality laws, including Florida law, the provisions of the more restrictive rule or law will control.

## Contingent Business Associate Agreement

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives.

**Charlotte County, a political subdivision of the State of Florida**  
**BUSINESS ASSOCIATE**


By: \_\_\_\_\_  
Joseph M. Tiseo, Chair

Date: April 8, 2025


ATTEST:  
Roger D. Eaton, Clerk of Circuit Court and  
Ex-officio Clerk of the  
Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Janette S. Knowlton, County Attorney  
UR25-0348 

### COVERED ENTITY

Signed By:  \_\_\_\_\_

Name: Julie Patel

Title: CFO

Date: 3.31.2025