

# **Business Associate Agreement**

This Business Associate Agreement (“Agreement”) is entered into as of the Effective Date (as defined in Section 8 below) by and between Polk County, a political subdivision of the State of Florida (the “Covered Entity”), and Cove Behavioral Health, Inc., a Florida corporation, authorized to transact business in Florida (the “Business Associate”).

## **1. Background**

(1) Business Associate will obtain Protected Health Information from Covered Entity in the performance of one or more contracts or agreements between Covered Entity and Business Associate. Business Associate and Subcontractors of Business Associate that provide services in relation to said contracts or agreements are permitted to receive and use protected health information in connection with said contracts or agreements, subject to the terms of this Agreement.

(2) Covered Entity and Business Associate acknowledge that each Party has obligations to maintain the privacy and security of Protected Health Information under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (“HITECH” Act), the HIPAA Privacy Regulations, the HIPAA Security Regulations, the HITECH Standards, and the Florida Information Protection Act of 2014 (“FIPA”) (collectively, “Privacy Rules”).

**NOW THEREFORE**, in consideration of the mutual promises and conditions contained herein, and for other good and valuable consideration, the Parties hereto agree as follows:

## **2. Definitions**

(1) Access - The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource.

(2) Administrative Safeguards - The administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic Protected Health Information (“ePHI”) and to manage the conduct of the covered entity's workforce in relation to the protection of that information.

(3) ARRA - The American Recovery and Reinvestment Act (2009).

(4) Authentication - The corroboration that a person is the one claimed.

(5) Availability - The property that data or information is accessible and useable upon demand by an authorized person.

(7) Business Associate – Business Associate shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the Party to this Agreement, shall mean the entity named “Business Associate” in the introductory paragraph of this Agreement.

(8) Compromises the Security - Posing a significant risk of financial, reputational, or other harm to individuals.

(9) Confidentiality - The property of data or information being undisclosed and unavailable to unauthorized persons or processes.

(10) Covered Entity – Covered Entity shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the Party to this Agreement, shall mean Polk County, a political subdivision of

the State of Florida.

(11) Electronic Protected Health Information - Individually identifiable health information transmitted by or maintained in electronic media, as specified in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(12) HIPAA - The Health Insurance Portability and Accountability Act (1996) Pub. L. No. 104-191, and the regulations promulgated thereunder, including, without limitation, and the regulations deified at 45CFR Parts 160 and 164 (the “HIPAA Regulations”).

(13) Information System - An interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people.

(14) Integrity - The property of data or information being whole and not altered in an unauthorized manner.

(15) Malicious Software - Software, such as a virus, designed to damage or disrupt an electronic information system.

(16) Part I - Part I — Improved Privacy Provisions and Security provisions located at 42 United States Code (U.S.C.) §§ 17931 and 17934 (2010).

(17) Password - Confidential authentication information composed of a string of characters.

(18) Physical Safeguards - The physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

(19) Privacy Rule - The Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, subparts A and E, along with FIPA, as referenced above.

(20) Security or Security Measures - All of the administrative, physical, and technical safeguards in an information system.

(26) Security Rule - The Security Standards for the protection of Protected Health Information at 45 C.F.R. part 164, subpart C, and amendments thereto.

(27) Technical Safeguards - The technology and the policy and procedures for its use that protect electronic protected health information and control access to it.

(28) Unless otherwise provided in this Agreement, all other capitalized terms used herein but not otherwise defined, including without limitation, the following: Breach, Data Aggregation, Designated Record Set, Disclosure (including Disclosures and Disclosed(d)), Health Care Operations, Individual, Minimum Necessary, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and Use(s/d) shall have the same meaning ascribed to them in the Privacy Rules, as applicable.

### **3. Obligations and Activities of Business Associate**

(1) Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

(2) Business Associate agrees to:

(a) Implement policies and procedures to prevent, detect, contain and correct security violations in accordance with 45 C.F.R. Part 164;

(b) Prevent Use or Disclosure of the PHI other than as provided for by this Agreement or as Required By Law;

- (c) Use appropriate safeguards and comply, where applicable, with Subpart C of 45 C.F.R. Part 164 with respect to ePHI that the Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity, to prevent Use or Disclosure of the information other than as provided for by this Agreement or as Required By Law;
  - (d) Comply with the Security Rule requirements including the Administrative Safeguards, Physical Safeguards, Technical Safeguards, and policies and procedures and documentation requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316, including the provisions of training on such policies and procedures to applicable employees, independent contractors, and volunteers, that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and/or ePHI that the Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity; and
  - (e) Comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations, to the extent Business Associate is able to carry out Covered Entity's obligations under 45 C.F.R. Part 164 or this Agreement.
- (3) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- (4) Reporting
- (a) Security Incidents and/or Unauthorized Use or Disclosure. Business Associate shall report to Covered Entity a successful Security Incident or any Use and/or Disclosure of PHI other than as provided for by this Agreement or permitted by applicable law within a reasonable time of becoming aware of such Security Incident and/or unauthorized Use or Disclosure (but not later than ten (10) days thereafter), in accordance with the notice provisions set forth herein. Such notice shall include, but shall not be limited to, (i) identification of any Individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such security breach in accordance with 45 C.F.R. §164.404; and (ii) all information required for the *Notice to the Secretary of HHS of Breach of Unsecured Protected Health Information*, available on the U.S. Department of Health and Human Services website Business Associate shall take (i) prompt action to cure any such deficiencies as reasonably requested by Covered Entity; and (ii) any action pertaining to such Security Incident and/or unauthorized Use or Disclosure required by applicable federal and state laws and regulations. If such successful Security Incident or unauthorized Use or Disclosure results in a Breach as defined in the HITECH Act, then Business Associate shall comply with the requirements of Section 3(4)(b) below. A successful Security Incident shall mean any and all Security Incidents other than Unsuccessful Security Incidents. An Unsuccessful Security Incident shall mean pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful long-on attempts, denials of services and any combination of the above, so long as no such incident results in unauthorized access, Use or Disclosure of PHI.
  - (b) Breach of Unsecured PHI. With respect to any unauthorized acquisition, access, Use or Disclosure of Covered Entity's PHI by Business Associate, its agents or Subcontractors, in addition to its obligations stated in Section 3(4)(a), Business Associate shall (i) investigate such unauthorized acquisition, access, Use or Disclosure; (ii) determine whether such unauthorized acquisition, access, Use or Disclosure constitutes a reportable Breach under the HITECH Act; and (iii) document and retain its findings under clauses (i) and (ii). If Business Associate Discovers that a reportable Breach has occurred, Business Associate shall notify Covered Entity of such reportable Breach in writing within ten (10) days of the date Business Associate Discovers such Breach. Business Associate shall be deemed to have discovered a Breach as of the first day that the Breach is either known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach, or by exercising reasonable diligence should have been known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach. To the extent the information is available to Business Associate, Business Associate's written notice shall include the information required by 45 CFR § 164.410(c). Business Associate shall promptly supplement the written report with additional information regarding the Breach as it obtains such information. Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HITECH Act with respect to such Breach. In the event of an unauthorized or unlawful acquisition, access, Use, or Disclosure of PHI by Business Associate, or its

employees, officers, agents or Subcontractors which compromises the security or privacy of Covered Entity's PHI, the Business Associate shall be solely responsible for, and shall indemnify County with respect to, any and all costs associated with notification obligations under the HITECH Act, including, without limitation, proper notification as set forth under HIPAA and under FIPA to affected Individuals that is Required By Law and any and all fines or administrative penalties incurred on behalf of Covered Entity as a result of such Breach or as a result of delayed reporting. If Business Associate is responsible for the Breach, Business Associate shall be responsible for providing notification to comply with the Breach notification requirements. Such notification shall be provided in a form mutually agreed upon by the Business Associate and Covered Entity.

- (5) Business Associate agrees to maintain and provide to the Secretary such records and compliance reports as the Secretary may determine to be necessary and to comply with all compliance reviews and complaint investigations as required by the 45 C.F.R. § 160, Subsection C.
- (6) Business Associate agrees to ensure that any agent, including a Subcontractor, to whom it provides PHI that was created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (7) If Business Associate has PHI in a Designated Record Set:
  - (a) Business Associate agrees to provide at the request of Covered Entity during regular business hours, access to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under 45 C.F.R. § 164.524; and
  - (b) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an individual within 10 business days of receiving the request.
- (8) Business Associate agrees to make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Covered Entity, or the Secretary upon request of either for purposes of determining Covered Entity's compliance with the Privacy Rule.
- (9) Business Associate agrees to document such Disclosures of PHI and information related thereto as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (10) Business Associate agrees to provide to Covered Entity or an authorized individual, upon request, information collected in accordance with paragraphs 3(7) and 3(9) above, in response to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. §§ 164.528, 164.502, and 164.504.
- (11) Business Associate specifically agrees to use security measures that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI in electronic or any other form, that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (12) Business Associate agrees to implement security measures to secure passwords used to access ePHI that it accesses, maintains, or transmits as part of this Agreement from malicious software and other man-made and natural vulnerabilities to assure the availability, integrity, and confidentiality of such information.
- (13) Business Associate agrees to implement security measures to safeguard ePHI that it accesses, maintains, or transmits as part of this Agreement from malicious software and other man-made and natural vulnerabilities to assure the availability, integrity, and confidentiality of such information.

#### **4. Permitted Uses and Disclosures by Business Associate**

Except as otherwise limited in this Agreement or any related agreement, Business Associate may use or disclose PHI to perform functions, activities, or services on behalf of Covered Entity, provided that such Use or Disclosure would not

violate the Privacy Rule as it applies to Business Associate and Covered Entity, or the minimum necessary policies and procedures of the Covered Entity that are provided to Business Associate by Covered Entity.

## **5. Specific Use and Disclosure Provisions**

- (1) Except as otherwise limited in this agreement or any related agreement, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that Business Associate will appropriately safeguard the information in accordance with the Privacy Rule.
- (2) Except as otherwise limited in this agreement or any related agreement, Business Associate may authorize a Business Associate that is a Subcontractor to create, receive, maintain or transmit PHI on behalf of Business Associate for the proper management and administration of the Business Associate, provided that Business Associate obtains satisfactory assurances, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), and documented in accordance with 45 C.F.R. § 164.502(e)(1)(ii)(X2), that the Subcontractor will appropriately safeguard the information, and in the event of termination, will return or destroy all PHI and ePHI in accordance with paragraph 8(3) of this agreement and 45 C.F.R. § 164.504(e)(2)(ii)(J).
- (3) Business Associate may use PHI to provide Data Aggregation services relating to the health care operations of Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), only when specifically authorized by Covered Entity.
- (4) Business Associate may use or disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

## **6. Obligations of Covered Entity**

- (1) Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI, by providing a copy of the most current Notice of Privacy Practices (NPP) to Business Associate.
- (2) Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of an Individual's PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

## **7. Permissible Requests by Covered Entity**

Except for Data Aggregation or management and administrative activities of Business Associate, Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

## **8. Effective Date and Termination**

- (1) The parties hereby agree that this Agreement amends restates and replaces any other Business Associate Agreement currently in effect between Covered Entity and Business Associate and that the provisions of this Agreement shall be effective on the last date that the Agreement has been signed by both parties the ("Effective Date").
- (2) Termination for Cause — Upon Covered Entity's knowledge of a material breach of this Agreement or a violation of the Security Rule or the Privacy Rule by Business Associate, Covered Entity shall either:
  - (a) Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  - (b) Immediately terminate this Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible; or
  - (c) If neither termination nor cure is feasible, covered Entity shall report the violation to the Secretary.

(3) Effect of Termination — Except as provided in subparagraph (b) of this section, upon termination of this Agreement, Business Associate shall return or destroy all PHI and ePHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity.

(a) This provision shall apply to PHI and ePHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI and ePHI.

(b) In the event that Business Associate or Covered Entity determines that returning the PHI or ePHI is infeasible, notification of the conditions that make return of PHI or ePHI infeasible shall be provided to the other party. Business Associate shall extend the protections of this Agreement to such retained PHI and ePHI and limit further Uses and Disclosures of such retained PHI and ePHI to those purposes that make return or destruction of the information infeasible, for a minimum of six years and so long as Business Associate maintains such PHI and ePHI, but no less than six (6) years after the termination of this Agreement.

(4) Expiration and Effect — Unless sooner terminated pursuant to Section 8(2) above, this Agreement shall expire once the Business Associate no longer has any PHI in its possession, whether by destruction or return to Covered Entity. Business Associate shall provide a certification to Covered Entity once the Business Associate no longer has any data in its possession. Any agreements in place pursuant to Section 3(6) hereof shall remain in effect until such agent no longer has any PHI in its possession and certifies same.

## **9. Regulatory References**

A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section then in effect or as may be amended in the future.

## **10. Amendments**

The parties agree to take such action as is necessary to amend this Agreement as necessary for Covered Entity to comply with the requirements of HIPAA, the Privacy Rule, the Security Rule, and other applicable Privacy Rules.

## **11. Survival**

Ant term, condition, covenant or obligation which requires performance by either party hereto subsequent to the termination of this Agreement shall remain enforceable against such party subsequent to termination.

## **12. Interpretation**

This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and the HITECH Act. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with such laws.

## **13. Incorporation by reference**

Any future new requirement(s), changes or deletion(s) enacted in federal law which create new or different obligations with respect to HIPAA privacy and/or security, shall be automatically incorporated by reference to this Business Associate Agreement on the respective effective date(s).

## **14. Notices**

All notices and communications required, necessary or desired to be given pursuant to this Agreement, including a change of address for purposes of such notices and communications, shall be in writing and delivered personally to the other party, or sent by express 24-hour guaranteed courier or delivery service, or by certified mail of the United States Postal Service, postage prepaid and return receipt requested, addressed to the other party at their primary business address on record at the time of the notice. Any such notice shall be deemed delivered upon receipt. If any notice cannot be delivered or delivery thereof is refused, delivery will be deemed to have occurred on the date such delivery was attempted. The initial primary business address on record for each of the parties is as follows:

If to Covered Entity: Polk County, a political subdivision of the State of Florida  
330 West Church Street  
Bartow, Florida 33830  
Attn: Marybeth Moore

If to Business Associate: Cove Behavioral Health, Inc.  
4422 E. Columbus Drive  
Tampa, FL 33605  
Attention: Deanna Obregon

### **15. Governing Law; Jurisdiction**

The laws of the State of Florida, without giving effect to principles of conflict of laws, govern all matters arising under this Agreement, to the extent not governed by federal law. Any suit or proceeding arising from or relating in any way to the subject matter of this Agreement shall be brought only in the courts, state and federal, located in the County of Polk, State of Florida, and the Parties hereby consent to the exclusive personal jurisdiction and venue of such courts.

### **16. Severability**

If any provision in this Agreement is unenforceable to any extent, the remainder of this Agreement, or application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.

### **17. Successors**

Any successor to Business Associate (whether by direct or indirect or by purchase, merger, consolidation, or otherwise) is required to assume Business Associate's obligations under this Agreement, and agree to perform them in the same manner and to the same extent that Business Associate would have been required to if that succession had not taken place. This assumption by the successor of the Business Associate's obligations shall be by written agreement satisfactory to Covered Entity.

### **18. Public Records**

- (1) Business Associate acknowledges the COUNTY's obligation under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the materials created under this Contract. Business Associate further acknowledges that the constitutional and statutory provisions control over the terms of this Contract. In association with its performance pursuant to this Contract, Business Associate shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws.
- (2) Without in any manner limiting the generality of the foregoing, to the extent applicable, Business Associate acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:
  - (a) keep and maintain public records required by the COUNTY to perform the services required under this Contract;
  - (b) upon request from the COUNTY's Custodian of Public Records or his/her designee, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Contract and following completion of this Contract if Business Associate does not transfer the records to the COUNTY; and

(d) upon completion of this Contract, transfer, at no cost, to the COUNTY all public records in possession of Business Associate or keep and maintain public records required by the COUNTY to perform the service. If Business Associate transfers all public records to the COUNTY upon completion of this Contract, Business Associate shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Business Associate keeps and maintains public records upon completion of this Contract, Business Associate shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNTY, upon request from the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the COUNTY.

**(3) IF BUSINESS ASSOCIATE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO BUSINESS ASSOCIATE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**RECORDS MANAGEMENT LIAISON OFFICER  
POLK COUNTY  
330 WEST CHURCH ST.  
BARTOW, FL 33830  
TELEPHONE: (863) 534-7527  
EMAIL: [RMLO@POLK-COUNTY.NET](mailto:RMLO@POLK-COUNTY.NET)**

**19. Entire Agreement**

This Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all other oral or written Agreements or policies relating thereto, except that this Agreement does not limit the amendment of this Agreement in accordance with section 10 of this Agreement.

**(THE REMAINDER OF THE PAGE IS LEFT INTENTIONALLY BLANK;  
THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE  
WITH THE PARTIES SIGNATURES.)**



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**ATTEST:**

Stacy Butterfield  
CLERK OF THE BOARD

**Polk County**, a political subdivision  
of the State of Florida

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

By: \_\_\_\_\_  
Dr. Marth Santiago, Chairperson  
Board of County Commissioners

Date Signed By County \_\_\_\_\_

Reviewed as to form and legal sufficiency:

Sandra B. [Signature] 8/24/22  
County Attorney's Office Date

**WITNESSES:**

**COVE BEHAVIORAL HEALTH, INC.**  
**A FLORIDA CORPORATION**

By: Antoinette Hagley  
[Signature]  
PRINT NAME

By: [Signature]  
DEANNA Oregon  
PRINT NAME

By: [Signature]  
Alyssa R. Acevedo  
PRINT NAME

Principal CEO  
TITLE

Date: 9/8/2022