

**BUSINESS ASSOCIATE
PROTECTED HEALTH INFORMATION DISCLOSURE AGREEMENT**

This Business Associate Protected Health Information Disclosure Agreement is entered into effective as of February 1, 2025 by and between **Tropical Texas Behavioral Health (TTBH)**, a community center under the provisions of Chapter 534 of the Texas Health & Safety Code Ann., as amended, and Hidalgo County Health & Human Services (Business Associate).

RECITALS

- A. WHEREAS, Business Associate provides services to TTBH, and Business Associate receives, has access to, or creates Protected Health Information in order to provide those services in the United States;
- B. WHEREAS, TTBH is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information (Privacy Regulations) and the Security Standards for Electronic Protected Health Information (Security Regulations) at 45 Code of Federal Regulations Parts 160, 162, and 164 (together, the “Privacy and Security Regulations”);
- C. WHEREAS, the Privacy and Security Regulations require TTBH to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the Disclosure to or Use of Protected Health Information by Business Associate if such a contract is not in place.
- D. WHEREAS, Business Associate acknowledges that effective January 1, 2010, as a Business Associate, it is responsible to comply with the HIPAA Security and Privacy regulations pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), including, but not limited to, Sections 164.308, 164.310, 164.312 and 164.316 of title 45 of the Code of Federal Regulations.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

- 1.1 Breach shall mean the unauthorized acquisition, access, use, or disclosure of unsecured Protected Health Information or PHI which compromises the security or privacy of such information, except where an authorized person to whom such information is disclosed would not reasonably have been able to retain such information.
- 1.2 Disclose and Disclosure means, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate’s internal operations or to other than its employees.
- 1.3 Electronic Media means:
 - (a) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or

- (b) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, electronic mail/e-mail, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.
- 1.4 Electronic Protected Health Information or E-PHI means Protected Health Information that is transmitted or maintained in electronic media.
- 1.5 HITECH shall mean the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act, and any amendments, regulations, rules and guidance issued thereto and the relevant dates for compliance.
- 1.6 Information System means 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.
- 1.7 Protected Health Information or PHI means information that (i) relates 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; (ii) identifies the individual, or for which there is a reasonable basis for believing that the information can be used to identify the individual; and (iii) is received by Business Associate from or on behalf of TTBH, or is created by Business Associate, or is made accessible to Business Associate by TTBH. Protected Health Information includes Electronic Protected Health Information.
- 1.8 Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information in, or interference with system operations of, an Information System which contains Electronic Protected Health Information.
- 1.9 Unsecured PHI shall mean PHI not secured through the use of a technology or methodology specified in guidance by the Secretary that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals.
- 1.10 Use or Uses mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate's internal operations.
- 1.11 Data must reside in the United States.
Business Associate shall not "offshore" or use, disclose, create, receive, transmit or maintain confidential information out of the United States.

ARTICLE II
OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate:

- (a) shall use and disclose Protected Health Information as necessary or appropriate to perform the services, as provided in Article II of this Agreement, and shall not use or disclose Protected Health Information other than as permitted or by law;
- (b) shall disclose Protected Health Information to TTBH upon request;
- (c) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:
 - (i) use Protected Health Information; and
 - (ii) disclose Protected Health Information if (a) the disclosure is required by law, or (b) Business Associate obtains reasonable assurance from the person to whom the information is disclosed that the Protected Health Information 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 agrees to notify Business Associate of any instances of which the person is aware in which the confidentiality of the Protected Health Information has been breached.

All uses and disclosures of and requests by Business Associate for PHI are subject to the minimum necessary rule of the Privacy Standards and shall be limited to the information contained in a limited data set, to the extent practical, unless additional information is needed to accomplish the intended purpose, or as otherwise permitted in accordance with Section 13405(b) of HITECH and any implementing regulations.

Furthermore, Business Associate acknowledges that in receiving, storing, processing, or otherwise dealing with any information from TTBH about any individuals receiving services from TTBH, it is fully bound by the provisions of the Federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and undertakes to resist in judicial proceedings any effort to obtain access to information governed by 42 CFR Part 2 as such information pertains to such individuals otherwise than as expressly provided for in 42 CFR Part 2.

2.2. Adequate Safeguards for Protected Health Information. Business Associate represents and warrants that it shall implement and maintain appropriate safeguards to prevent the use or disclosure of Protected Health Information in any manner other than as permitted by this Agreement. Effective as of January 1, 2010, specifically as to Electronic Protected Health Information, in accordance with Section 13401(a) of HITECH, Business Associate warrants that it shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information. To ensure the security and confidentiality of Electronic Protected Health Information pursuant to 45 C.F.R. § 164.312(e)(2)(ii) and Section 13401(a) of HITECH, Business Associate shall implement a mechanism to encrypt Electronic Protected Health Information on all its Electronic Media containing any of TTBH's Protected Health Information.

- 2.3 Reporting Non-Permitted Use or Disclosure and Security Incidents. Business Associate shall immediately report to TTBH each use or disclosure that is made by Business Associate, its employees, representatives, agents or subcontractors which is not specifically permitted by this Agreement, as well as effective as of January 1, 2010, each security incident of which Business Associate becomes aware, in accordance with Section 13402(b) of HITECH. The initial report shall be immediately made by telephone call to TTBH's Privacy Officer (Privacy Officer) at 956-289-7080 within twenty-four (24) hours from the time the Business Associate becomes aware of the non-permitted use or disclosure or security incident, followed by a written report to the Privacy Officer no later than ten (10) business days from the date the Business Associate becomes aware of the non-permitted use or disclosure or security incident.
- 2.4 Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent practicable, any harmful effects of a use or disclosure of PHI by Business Associate or is known to Business Associate to be in violation of the requirements of this Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements.
- 2.5 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of Protected Health Information available to the Secretary of the Federal Department of Health and Human Services for purposes of determining TTBH's compliance with the Privacy and Security Regulations. Business Associate shall immediately notify TTBH of any requests made by the Secretary and provide TTBH with copies of any documents produced in response to such request.
- 2.6 Access to and Amendment of Protected Health Information. Business Associate and TTBH, to the extent either determines that any Protected Health Information retained constitutes a "designated record set" under the Privacy Regulations, shall: (a) make the Protected Health Information available to the individual(s) identified as being entitled to access and copy that Protected Health Information; and (b) make any amendments to Protected Health Information that are requested. Business Associate and TTBH shall provide such access and make such amendments within the time and in the manner specified by either party.
- 2.7 Documentation of Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for TTBH to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. At a minimum, Business Associate shall provide TTBH with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.
- 2.8 Accounting of Disclosures. Within ten (10) days of notice by TTBH to Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to TTBH information collected in accordance with Section 1.1 of this Agreement, to permit TTBH to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. §164.528. In the case of an electronic health record maintained or hosted by Business

Associate on behalf of TTBH, the accounting period shall be three (3) years and the accounting shall include disclosures for treatment, payment and healthcare operations, in accordance with the applicable effective date of Section 13402(a) of HITECH. 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 TTBH. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this section.

- 2.9 Obligations of TTBH. TTBH shall notify Business Associate in writing of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate's performance of the services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.
- 2.10 Term and Termination. The term of this Agreement shall continue until terminated by either party. Both party's legal obligations under this Article II shall survive the termination or expirations of this Agreement.
- 2.11 Disposition of Protected Health Information Upon Termination or Expiration. Upon the termination of the Services Agreement or this Agreement for any reason, Business Associate shall return to TTBH or, at TTBH's direction, destroy all PHI received from TTBH 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 PHI. This provision shall apply to PHI that is in the possession of Business Associates or agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Agreement, even after termination of the Services Agreement or Agreement until such time as all PHI has been returned, de-identified or otherwise destroyed as provided in this Section.
- 2.12. Breach of Contract by Business Associate. In addition to any other rights TTBH may have in the Services Agreement, this Agreement or by operation of law or in equity, TTBH may i) immediately terminate the Services Agreement and this Agreement if TTBH determines that Business Associate has violated a material term of this Agreement, or ii) at TTBH's option, permit Business Associate to cure or end any such violations within the time specified by TTBH. TTBH's option to have cured a breach of this Agreement shall not be construed as a waiver of any other rights TTBH has in the Services Agreement, this Agreement or by operation of law or in equity.
- 2.13 Third Party Beneficiaries. The terms of this Agreement are not intended, nor should they be construed, to grant any rights to any parties other than Business Associate and TTBH, and any TTBH subsidiaries and affiliates.
- 2.14 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Agreement.

- 2.15 Relationship to Services Agreement Provisions. In the event that a provision of this Agreement is contrary to a provision of the Services Agreement, the provision of this Agreement shall control. Otherwise, this Agreement shall be construed under, and in accordance with, the terms of the Services Agreement.
- 2.16 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits TTBH to comply with the Privacy and Security Regulations. If there are any direct conflicts between the Agreement and this Agreement, the terms and conditions of this Agreement shall control.
- 2.17 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for TTBH to comply with the requirements of the Privacy and Security Regulations.
- 2.18 Indemnification. BUSINESS ASSOCIATE HEREBY AGREES, TO THE EXTENT PERMITTED UNDER THE LAWS OF THE STATE OF TEXAS, TO INDEMNIFY AND HOLD HARMLESS LMHA, ITS BOARD, EMPLOYEES, AND AGENTS FROM ALL SUITS, ACTIONS, CLAIMS, COSTS OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION, INCLUDING ATTORNEYS' FEES AND LEGAL EXPENSES BROUGHT, MADE FOR, OR ON ACCOUNT OF ANY DEATH, INJURY OR DAMAGE RECEIVED OR SUSTAINED BY ANY PERSON OR PROPERTY ARISING OUT OF OR OCCASIONED BY THE PERFORMANCE OF THIS CONTRACT, BY THE ACTS OR OMISSIONS OF ATTENDANT, ITS REPRESENTATIVES, EMPLOYEES, OR AGENTS, IF ANY, AND WHETHER ARISING OUT OF OR CONTRIBUTED TO BY THE CONCURRENT NEGLIGENCE, BUT NOT GROSS NEGLIGENCE, OF LMHA, ITS BOARD, EMPLOYEES, AND AGENTS, OR OTHERWISE
- 2.19 Injunctive Relief. Business Associate acknowledges and stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to the Services Agreement or this Agreement would cause irreparable harm to TTBH, and in such event TTBH shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to obtain damages and injunctive relief, together with the right to recover from Business Associate costs, including reasonable attorney's fees, for any such breach of the terms and conditions of the Services Agreement or this Agreement.
- 2.20 Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI used or disclosed by or to Business Associate pursuant to the terms of the Agreement.
- 2.21 Changes in the Law. TTBH may amend either the Services Agreement or this Agreement, as appropriate, to conform to any new or revised legislation, rules and regulations to which TTBH is subject now or in the future including, without limitation, HIPAA, HITECH, the Privacy Standards, Security Standards or Transaction Standards.
- 2.22 Exclusion from Limitation of Liability. To the extent that Business Associate has limited its liability under the terms of the Services Agreement, whether with a maximum recovery for direct

damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any damages to TTBH arising from Business Associate's breach of its obligations relating to the use and disclosure of PHI.

2.23 Judicial and Administrative Proceedings. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, TTBH shall collaborate with Business Associate to create a response to such request. Business Associate shall notify TTBH of the request as soon as reasonably practicable, but in any event within forty-eight (48) business hours of receipt of such request.

IN WITNESS, WHEREOF, TTBH and Business Associate have caused this Agreement to be executed as of the Effective Date.

**HIDALGO COUNTY HEALTH
& HUMAN SERVICES**

TROPICAL TEXAS BEHAVIORAL HEALTH

Richard Cortez
Hidalgo County Judge
Date: _____

W. Terry Crocker
Chief Executive Officer
Date: _____