# BUSINESS ASSOCIATE AGREEMENT

THIS **BUSINESS ASSOCIATE AGREEMENT** (this “Agreement”) is made and entered into as of

the day of , 202\_, by and between. The Health Planning Council of SWF. , a private not for profit

(the “Covered Entity”), and **,** , a with an

office at (the “Business Associate”). Covered Entity and Business Associate may hereinafter be referred to individually as a “Party” and collectively the “Parties.”

# R E C I T A L S

**WHEREAS**, the Parties have entered into one or more agreements for the provision of services/products (the “Underlying Contracts”); and

**WHEREAS**, the Underlying Contracts require Business Associate to be provided with, to have access to, and/or to create Protected Health Information (as defined in 45 C.F.R. § 160.103) on behalf of Covered Entity that is subject to the federal privacy regulations (the “Privacy Rule”) and the federal security regulations (the “Security Rule”) issued pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) and codified at 45 C.F.R. parts 160 and 164, and the Health Information Technology for Economic and Clinical Health Act and any rules promulgated thereunder (“HITECH Act”) as may be amended from time-to-time; and

**WHEREAS**, the Parties desire to meet their obligations under the Privacy Rule, Security Rule, HIPAA and the HITECH Act; and

**WHEREAS**, the Parties desire to make procedural arrangements to assure that their business relationships meet these regulatory requirements as of the required compliance date(s); and

**WHEREAS**, the Parties desire to set forth the terms and conditions pursuant to which Protected Health Information that is provided by, or created or received by, the Business Associate on behalf of the Covered Entity, will be handled between themselves and third parties; and

**WHEREAS**, the Parties desire to set forth the terms and conditions pursuant to which any Breach of Unsecured Protected Health Information is reported; and

**WHEREAS**, any provisions in any Underlying Contract regarding the limitation or exclusion of liability or damages shall not apply to Business Associate’s breach of its obligations hereunder with respect to PHI.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

# DEFINITIONS.

Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement have the meanings ascribed to them in the Privacy Rule, the Security Rule, HIPAA, and/or the HITECH Act.

* 1. “Breach” shall mean the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.
  2. “Electronic PHI” shall mean Electronic Protected Health Information, as defined in 45

C.F.R. § 160.103, limited to the information received from or created or received by Business Associate on behalf of Covered Entity.

* 1. “PHI” shall mean Protected Health Information, as defined in 45 C.F.R. § 160.103, limited to the information received from or created or received by Business Associate on behalf of Covered Entity.
  2. “Required by Law” shall mean, as defined in 45 C.F.R. § 160.103, a mandate contained in law that compels an entity to make a use or disclosure of Protected Health Information and that is enforceable in a court of law. Required by Law shall include, but is not limited to, court orders and court- ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or trial inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicaid conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
  3. “Secretary” shall mean the Secretary of the Department Health and Human Services or his or her designee.
  4. “Subcontractor” shall mean, as defined in 45 C.F.R. § 160.103, a person to whom Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of Business Associate
  5. “Unsecured PHI” shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary.

# OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI.

* 1. **Obligations of Business Associate**. Business Associate agrees to:
     1. Not use or disclose the PHI other than as permitted or required by this Agreement or other arrangement pursuant to 45 C.F.R. § 164.504(e) or as Required by Law. The Business Associate may not use or disclose PHI in a manner that would violate the requirements of 45 C.F.R. Part 164, if done by the Covered Entity, except for the purposes specified under 45 C.F.R. § 164(e)(2)(i)(A) or (B) if such uses or disclosures are permitted by this Agreement or other arrangement.
     2. Access only the PHI of patients who are assigned by Covered Entity to Business

Associate.

* + 1. Use appropriate safeguards and comply, where applicable, with subpart C of 45

C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement.

* + 1. Comply with the applicable requirements of 45 C.F.R. Part 164.
    2. 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 Secretary for purposes of the Secretary’s determination of Covered Entity’s compliance with the Privacy Rule.
    3. 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. Report to Covered Entity, within three (3) days of discovery, any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware, including, but not limited to, a Breach of Unsecured PHI as required by 45 C.F.R. § 164.410.
    5. Report to Covered Entity, within three (3) days of discovery, any Security Incident with respect to Electronic PHI of which it becomes aware, including, but not limited to, a Breach of Unsecured PHI as required by 45 C.F.R. § 164.410.
    6. Report to Covered Entity, within three (3) days of discovery, any Breach with respect to Electronic PHI of which it becomes aware or which Business Associate should be aware. Such report shall include the identity of each individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such Breach, the circumstances surrounding the Breach, and actions taken by the Business Associate to remediate the Breach.
    7. Ensure that all of its Subcontractors and agents that create, receive, maintain, transmit, use or have access to PHI agree, in writing, to safeguard the PHI and comply with the same restrictions and conditions on the use and/or disclosure of PHI that apply through this Agreement to Business Associate with respect to such information.
    8. Ensure that any Subcontractors that create, receive, maintain, or transmit Electronic PHI on behalf of Business Associate agree, in writing, to the same restrictions and conditions that apply to the Business Associate with respect to such information, and agree to comply with the applicable requirements of 45 C.F.R. § 164.314 by entering into a contract or other agreement that complies with that section.
    9. At the request of Covered Entity and in the time and manner specified by Covered Entity, provide access to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an individual in order to meet applicable access requirements of the Privacy Rule.
    10. At the request of Covered Entity and in the time and manner specified by Covered Entity, make amendment(s) to PHI in a Designated Record Set pursuant to 45 C.F.R. § 164.526.
    11. Make its internal practices, books and records (including, without limitation, policies and procedures) 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 Secretary, in the time and manner specified by the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule.
    12. Document such disclosures of PHI and information related to such disclosures 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 the requirements of the Privacy Rule.
    13. Provide to Covered Entity, in the time and manner specified by Covered Entity, information collected in accordance with Section 2.1.l of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI.
    14. Return to Covered Entity or destroy, within thirty (30) days of the termination or expiration of this Agreement or any Underlying Contract, all PHI obtained from Covered Entity or created or obtained by Business Associate on behalf of Covered Entity with respect to the affected Underlying Contract(s), including such PHI that is in the possession of Business Associate’s Subcontractors and agents, and retain no copies if it is feasible to do so. If return or destruction of the PHI is infeasible, Business Associate shall notify Covered Entity of the conditions that make return or destruction infeasible, extend all protections contained in this Agreement to any retained PHI, and limit any further uses and/or disclosures of the PHI to the purposes that make the return or destruction of the PHI infeasible. This Section 2.1.17 shall survive any termination or expiration of this Agreement.
    15. Cooperate with Covered Entity during any audits, investigations or actions taken against Covered Entity or Business Associate.
    16. To the extent the Business Associate is to carry out a Covered Entity’s obligation under 45 C.F.R. § 164.502, comply with the requirements of this subpart that apply to the Covered Entity in the performance of such obligation.
  1. **Permitted Uses and Disclosures of PHI by Business Associate**. Except as otherwise specified in this Agreement, Business Associate may use and disclose the PHI as reasonably necessary to perform its obligations under the Underlying Contracts. Unless otherwise limited herein, Business Associate may (a) use the PHI in its possession for its proper management and administration and to carry out the legal responsibilities of Business Associate; and (b) disclose the PHI in its possession to a third party for the purpose of Business Associate’s proper management and administration or to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required by Law or Business Associate obtains reasonable assurances from the third party that (i) the 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 third party, and (ii) the third party will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached; and (c) use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).
  2. **Prohibited Access and Use of Certain PHI by Business Associate**. Business Associate understands and agrees that it will not access or use any PHI of any patient except for those patients whose accounts have been assigned to Business Associate, and it will further limit access to that PHI to that which is necessary to the activities undertaken by Business Associate on behalf of Covered Entity.

# Obligations of Covered Entity.

* + 1. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of PHI.
    2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI.
    3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of 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.
  1. **Effect of Changes to the Law**. 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 Privacy Rule, the Security Rule, HIPAA, HITECH Act, and applicable state privacy and security laws and regulations.

# EFFECTIVE DATE; TERMINATION.

* 1. **Effective Date**. This Agreement is effective as of the date set forth in the first paragraph of this Agreement. This Agreement shall continue in effect unless terminated as provided in Sections 3.2 or 3.3.
  2. **Termination without Cause**. This Agreement shall terminate when (a) all of the PHI obtained from Covered Entity or created or obtained by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity as Required by Law, or (b) each Underlying Contract has terminated or expired, provided that if it is infeasible to return or destroy the PHI, protections shall be extended to such information in accordance with Section 2.1.17 of this Agreement.

# Termination for Cause.

* + 1. If either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of this Agreement, then the Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a cure reasonably satisfactory to the non-breaching Party within the specified time frame, or in the event the breach is reasonably incapable of cure, then the non-breaching Party may do the following: (a) if feasible, terminate this Agreement and any and all Underlying Contracts; or (b) if termination of this Agreement or the Underlying Contracts is infeasible, report the issue to the Department of Health and Human Services.
    2. Notwithstanding the foregoing, Covered Entity may immediately terminate this Agreement and any and all Underlying Contracts if Covered Entity determines that Business Associate has breached a material term of this Agreement and no cure is possible.

# MISCELLANEOUS.

* 1. **Ownership of PHI**. The PHI which Business Associate, or any agent or Subcontractor of Business Associate, creates, receives, maintains, transmits, uses or has access to on behalf of Covered Entity under this Agreement shall be, and shall remain, the property of Covered Entity.
  2. **Independent Contractors**. Business Associate and Covered Entity agree that they are independent parties and not employees, partners, or party to a joint venture of any kind.
  3. **Regulatory References**. A reference in this Agreement to a section of the Privacy Rule, Security Rule, HIPAA, or HITECH Act means the section as in effect or as amended.
  4. **Interpretation**. As of the Effective Date, the terms of this Agreement shall prevail in the case of any conflict with the terms of any Underlying Contract to the extent and only to the extent of the conflict and only to the extent that it is reasonably impossible to comply with both the terms of the Underlying Contract and the terms of this Agreement.
  5. **No Third Party Beneficiaries**. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
  6. **Indemnification**. Business Associate shall indemnify and hold harmless Covered Entity and its owners, officers, directors, employees and agents (collectively, the “Indemnified Parties”) from and against any and all claims, losses, liabilities, fines, penalties, costs and other expenses (including, but not limited to, attorneys’ fees) imposed upon, incurred by, or asserted against any of the Indemnified Parties as a result of, or arising in connection with, the acts or omissions of Business Associate or any of its owners, officers, directors, employees, Subcontractors or agents related to the performance or nonperformance of this Agreement. This Section 4.6 shall survive the termination, expiration or non-renewal of this Agreement or the Underlying Contracts.
  7. **Reimbursement of Notification Expenses**. In the event Business Associate is required to indemnify the Covered Entity pursuant to Section 4.6, Business Associate shall, in addition to any costs, damages or expenses set forth in Section 4.6, reimburse the Covered Entity for all reasonable costs associated with all statutorily prescribed notifications related to a Breach. This Section 4.7 shall survive the termination, expiration or non-renewal of this Agreement or the Underlying Contracts.
  8. **Right to Audit**. Business Associate understands and agrees that its access to PHI stored in databases and information systems at Covered Entity is subject to review and audit by Covered Entity at any time, that remote audits of such access may occur at any time, that on-site audits of such access will be conducted during regular business hours, and that any review or audit may occur with or without prior notice to Business Associate by Covered Entity.
  9. **Notices**. Any notice or document required or permitted to be given under this Agreement shall be deemed to be given on the date such notice is (i) deposited in the United States mail, postage, prepaid, certified mail, return receipt requested or (ii) deposited with a commercial overnight delivery service, to the principal business address of the recipient or such other address or addresses as a Party may designate from time-to time by notice satisfactory under this section. A copy of any notice sent to the Covered Entity
  10. **Limitation on Subcontracting**. **Business Associate understands and agrees that it will not assign, delegate, or subcontract any of its rights or obligations under this Agreement to individuals or entities residing outside the United States**. Business Associate further understands and agrees that it will not assign, delegate or subcontract any of its rights or obligations under this Agreement to individuals or entities residing within the United States without the prior written consent of Covered Entity’s HIPAA Privacy Officer.
  11. **Governing Law; Jurisdiction**. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any other jurisdiction. Any litigation brought hereunder shall be conducted in the State or Federal courts located in the State of Florida.
  12. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all the Parties reflected herein as the signatories. Signatures transmitted by facsimile or pdf/email transmission shall be deemed originals for this purpose.

# [SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, each of the undersigned has caused this Agreement to be executed in its name and on its behalf by its duly authorized representative as of the date first written above.

# COVERED ENTITY:

**The Health Council of SWF**

By: Print Name: Title:

# BUSINESS ASSOCIATE:

**[INSERT NAME OF BA]**

By: Print Name: Title: