

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is entered into on _____, 2023 is made by and between Fletcher Group, Inc., a 501 c(3) Kentucky Corporation having its principal place of business at 601 Meyers Baker Rd, Ste 238, London, KY 40741 (hereinafter referred to as “Company”) and _____, (hereinafter referred to as “Subcontractor”) located at _____ and collectively, may be referred to herein as the “Parties”.

ARTICLE 1 INTRODUCTION

1.1 Company and SUBCONTRACTOR enter into this Agreement to comply with the requirements of Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, including the privacy, security, breach notification and enforcement rules at 45 C.F.R. Part 160 and Part 164 and the Genetic Information Nondiscrimination Act of 2008, Public Law 110-233 (“Gina”), the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009 ("HITECH"), as amended, as well as the Federal Confidentiality Law, 42 USC Sections 290dd-2 and the underlying regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records at 42 CFR Part 2 and other applicable federal and state laws (collectively the "HIPAA Rules").

1.2 This Agreement is intended to ensure that SUBCONTRACTOR will establish and implement appropriate safeguards for certain individually identifiable Protected Health Information relating to patients of Company ("PHI") as that term is defined below) that SUBCONTRACTOR may receive, create, maintain, use or disclose in connection with certain functions, activities and services that SUBCONTRACTOR performs for Company. The functions, activities and services that SUBCONTRACTOR performs for Company are defined in one or more agreements between the Parties (the "Underlying Agreements").

ARTICLE 2 DEFINITIONS

2.1 Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the HIPAA Rules, which definitions are incorporated in this Agreement by reference

2.2 For purposes of this Agreement:

2.2.1 “Electronic Protected Health Information” or “ePHI” shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. 160.103, as applied to the information created, received, maintained or transmitted by SUBCONTRACTOR from or on behalf of Company.

2.2.2 "Individual" shall have the same meaning given to such term in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

2.2.3 “Protected Health Information” or “PHI” shall have the meaning given to such term in 45 C.F.R. 160.103, limited to the information created, received, maintained or transmitted by SUBCONTRACTOR from or on behalf of Company.

2.2.4 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information published in 45 C.F.R. Parts 160 and 164, Subparts A and E.

2.2.5 "Required by Law" shall have the meaning given to such term in 45 C.F.R. 164.103.

2.2.6 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

2.2.7 "Security Rule" shall mean the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C.

ARTICLE 3

GENERAL OBLIGATIONS OF SUBCONTRACTOR

3.1 Use and Disclosure. SUBCONTRACTOR agrees not to use or disclose PHI, other than as permitted or required by this Agreement or as Required by Law. To the extent SUBCONTRACTOR is carrying out one or more of Company’s obligations under the Privacy Rule pursuant to the terms of the Underlying Agreement or this Agreement, SUBCONTRACTOR shall comply with the requirements of the Privacy Rule that apply to Company in the performance of such obligation(s). In addition, SUBCONTRACTOR acknowledges and agrees that this Agreement may include PHI involving substance use disorder and/or mental health records and SUBCONTRACTOR acknowledges and agrees it may use or disclose such PHI only if it is in compliance with HIPAA Rules, and in particular 42 CFR Part 2. Company and SUBCONTRACTOR agree that this Agreement constitutes a Qualified Service Subcontractor Agreement (“QSOA”) as required by 42 CFR Part 2. Accordingly, information

obtained by SUBCONTRACTOR about individuals who may have been identified as needing mental health and/or substance use disorder treatment shall be used and disclosed only for the purposes intended under this Agreement, in accordance with the HIPAA Rules and in conformity with all applicable provisions of 42 CFR Part 2.

3.2 Appropriate Safeguards. SUBCONTRACTOR shall develop, implement, maintain and use appropriate physical, technical and administrative safeguards, and shall comply with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by this Agreement or as Required by Law. To the extent SUBCONTRACTOR receives, stores, processes, or otherwise deals with substance use disorder patient records, it is bound by 42 Part 2, including the requirement to resist any efforts to obtain access to PHI related to substance use disorder diagnosis, treatment or referral for treatment, except as permitted by 42 CFR Part 2.

3.3 Mitigation. SUBCONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to SUBCONTRACTOR as a result of a use or disclosure of PHI by SUBCONTRACTOR in violation of this Agreement's requirements or that would otherwise cause a Breach of Unsecured PHI.

3.4 Breach Reporting. Without unreasonable delay and, in any event, no more than forty-eight (48) hours after discovery, SUBCONTRACTOR shall report to Company any suspected or actual: (a) use or disclosure of PHI not provided for or permitted by this Agreement; (b) Breach of Unsecured PHI as required under 45 C.F.R. § 164.410; (c) Security Incident; and (d) use or disclosure of PHI in violation of any HIPAA Rules, applicable federal or state laws or regulations, of which it becomes aware.

3.4.1 Such notice to be provided by SUBCONTRACTOR under this Section 3.4 shall include the identification of each individual whose Unsecured PHI has been, or is reasonably believed by SUBCONTRACTOR to have been, accessed, acquired, or disclosed in connection with such Breach. In addition, SUBCONTRACTOR shall provide any additional information reasonably requested by Company for purposes of investigating the Breach and any other available information that Company is required to include to the individual under 45 C.F.R. § 164.404(c) and other applicable HIPAA Rules at the time of notification. SUBCONTRACTOR's notification of a Breach of Unsecured PHI under this Section shall comply in all respects with each applicable provision of the HIPAA Rules and related guidance issued by the Secretary from time to time.

3.5 SUBCONTRACTORS. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii), 164.308(b)(2), if applicable, SUBCONTRACTOR shall enter into a written agreement with any agent or SUBCONTRACTOR that creates, receives, maintains or transmits PHI on behalf of the SUBCONTRACTOR for services provided to Company, which provides that the agent agrees to

the same restrictions, conditions and requirements that apply to the SUBCONTRACTOR with respect to such information SUBCONTRACTOR shall ensure that any agent, including a SUBCONTRACTOR, to whom it provides Electronic PHI agrees in writing to implement reasonable and appropriate safeguards to protect such information, including, but not limited to, any such safeguards required with respect to such agent or SUBCONTRACTOR by the Privacy Rule or the Security Rule. SUBCONTRACTOR acknowledges and agrees that if the PHI is covered by 42 CFR Part 2, that SUBCONTRACTOR is prohibited from disclosing to agents or subcontractors such PHI without the specific consent of the subject individual.

3.6 Access to PHI. SUBCONTRACTOR agrees to provide access, in the time and manner designated by Company, to PHI in a Designated Record Set to the Company. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to SUBCONTRACTOR, or inquires about his or her right to access, SUBCONTRACTOR shall, within five (5) business days of receipt of such request, forward it to Company. Any response to such a request shall be the responsibility of Company. SUBCONTRACTOR agrees to resist any efforts in judicial proceedings to obtain access to PHI except as provided for in 42 CFR Part 2.

3.7 Minimum Necessary Requirement. SUBCONTRACTOR agrees that when requesting, using or disclosing PHI in accordance with 45 C.F.R. § 502(b)(1) that such request, use or disclosure shall be to the minimum extent necessary, including the use of a "limited data set" as defined in 45 C.F.R. § 164.514(e)(2), to accomplish the intended purpose of such request, use or disclosure, as interpreted under related guidance issued by the Secretary from time to time.

3.8 Amendment of PHI. SUBCONTRACTOR agrees to make PHI contained in a Designated Record Set available to Company for amendment pursuant to 45 C.F.R. § 164.526 within five (5) business days of SUBCONTRACTOR's receipt of a request from Company. If an Individual makes a request for amendment pursuant to 45 C.F.R. § 164.526 directly to SUBCONTRACTOR, or inquiries about his or her right to access, SUBCONTRACTOR shall, within five (5) business days of receipt of such request, forward it to Company. Any response to such request shall be the responsibility of Company.

3.9 Accounting of Disclosures. Within five (5) business days after SUBCONTRACTOR receives a request from Company, SUBCONTRACTOR shall provide to Company information collected in accordance with Section 3.11 of this Agreement, to permit Company to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. If any Individual requests an accounting of disclosures of PHI directly from SUBCONTRACTOR, SUBCONTRACTOR shall, within five (5) business days of receipt thereof, forward such request to Company. Any response to such requests shall be the responsibility of Company.

3.10 Access to Policies and Records. SUBCONTRACTOR agrees to make its internal practices, books and records, including policies and procedures regarding PHI, relating to the use and disclosure of PHI and Breach of any Unsecured PHI received from Company, or created or received by the SUBCONTRACTOR on behalf of Company, available to Company or the Secretary for the purpose of Company or the Secretary determining compliance with the HIPAA Rules. In the event such a request comes directly from the Secretary, SUBCONTRACTOR agrees to notify the Company immediately of such request. SUBCONTRACTOR will retain records in compliance with applicable records retention laws and HIPAA Rules. SUBCONTRACTOR shall also comply with applicable records security provisions of 42 CFR Part 2 for the maintenance and destruction of PHI contained in substance use disorder records.

3.11 Documentation of Disclosures. SUBCONTRACTOR shall document such disclosures of PHI and information related to such disclosures as would be required for Company to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. SUBCONTRACTOR shall document, at a minimum, the following information (“Disclosure Information”): (i) the date of the disclosure, (ii) the name and, if known, the address of the recipient of the PHI, (iii) a brief description of the PHI disclosed, (iv) the purpose of the disclosure that includes an explanation of the basis for such disclosure, and (v) any additional information required under the HIPAA Rules and any implementing regulations.

3.12 Genetic Information. SUBCONTRACTOR shall not use or disclose PHI that contains Genetic Information if such use or disclosure would violate GINA.

3.13 Access. SUBCONTRACTOR shall make its internal practices, books, and records, including without limitation its policies and procedures and other information relating to services available upon request from Company or upon request of the Secretary to determine SUBCONTRACTOR’S compliance with the HIPAA Rules.

ARTICLE 4 SECURITY OF ELECTRONIC PHI

4.1 Electronic PHI. To fulfill its obligations under the Security Rule or other applicable HIPAA Rules, SUBCONTRACTOR agrees to do the following:

4.1.1 Establish and maintain appropriate administrative, physical, and technical safeguards, as provided in 45 CFR Sections 164.308, 164.310, and 164.312, and 42 CFR Part 2 respectively, that reasonable and appropriately protect the confidentiality, integrity, and availability of Electronic PHI.

4.1.2 Follow generally accepted system security principles and the requirements of the Security Rule.

4.1.3 Establish and maintain appropriate policies and procedures and documentation, as provided in 45 CFR Section 164.316.

4.1.4 If appropriate under the HIPAA Rules, ensure that any agent, including a subcontractor, to whom it provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect such Electronic PHI.

4.1.5 Report any Security Incident pursuant to 45 CF Section 164.304 to Company within 10 days of becoming aware of such Security Incident.

ARTICLE 5

PERMITTED USES AND DISCLOSURES BY SUBCONTRACTOR

5.1 General Uses and Disclosures. SUBCONTRACTOR agrees to receive, create, use, or disclose PHI only as permitted by this Agreement, the HIPAA Rules, and only in connection with providing services to Company; provided that the use or disclosure would not violate the HIPAA Rules.

5.2 SUBCONTRACTOR may use or disclose PHI as Required by Law.

5.3 Except as otherwise provided in this Agreement, SUBCONTRACTOR may:

5.3.1 Use PHI for the proper management and administration of SUBCONTRACTOR, or to carry out its legal responsibilities.

5.3.2 Disclose PHI for the proper management and administration of SUBCONTRACTOR or to carry out legal responsibilities of SUBCONTRACTOR, provided that the disclosures are Required by Law, in accordance with the HIPAA Rules or SUBCONTRACTOR obtains prior written consent from the subject individual.

5.3.3 Use PHI to provide Data Aggregation Services to Company as permitted under the HIPAA Rules.

ARTICLE 6

OBLIGATIONS OF COMPANY

6.1 Company shall:

6.1.1 Notify SUBCONTRACTOR of any limitation(s) in its Notice of Privacy Practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect SUBCONTRACTOR's use or disclosure of PHI.

6.1.2 Notify SUBCONTRACTOR of any restriction to the use or disclosure of PHI that the Company has agreed to in accordance with 45 C.F.R. § 164.522 or 42 CFR Part 2, to the extent that such changes may affect SUBCONTRACTOR's use or disclosure of PHI.

6.1.3 Notify SUBCONTRACTOR of any changes in or revocation of permission by an individual to use or disclose his or her PHI, to the extent that such change or revocation may affect SUBCONTRACTOR's permitted or required uses and disclosures of PHI.

6.2 Company shall not request SUBCONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules.

ARTICLE 7 INDEMNIFICATION

SUBCONTRACTOR shall indemnify, defend and hold harmless Company, and Company's affiliates ("Indemnified Parties"), from and against any and all losses, expense, damage or injury (including, without limitation, all costs and reasonable attorneys' fees) that the Indemnified Parties may sustain as a result of, or arising out of (a) a breach of this Agreement by SUBCONTRACTOR or its agents or SUBCONTRACTORS, including but not limited to any unauthorized use, disclosure or breach of PHI, (b) SUBCONTRACTOR's failure to notify any and all parties required to receive notification of any Breach of Unsecured PHI pursuant to Section 3.4 or (c) any negligence or wrongful acts or omissions by SUBCONTRACTOR or its agents or SUBCONTRACTORS, including without limitation, failure to perform SUBCONTRACTOR's obligations under this Agreement or the HIPAA Rules.

ARTICLE 8 TERM AND TERMINATION

8.1 Term. This Agreement shall be in effect as of the date of execution of this Agreement by both parties. This Agreement shall terminate as provided in Section 8.2 below or upon ninety (90) days written notice by the Company to SUBCONTRACTOR.

8.2 Termination for Cause. Upon either party's knowledge of a material breach of this Agreement by the other party, the non-breaching party shall either:

8.2.1 Provide an opportunity for the breaching party to cure the breach or end the violation and, if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party, terminate this Agreement and any Underlying Agreement; or

8.2.2 Immediately terminate this Agreement and any Underlying Agreement if breaching party has breached a material term of this Agreement and cure is not possible; or

8.2.3 If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary.

8.3 Effect of Termination. All PHI received from Company or created or received by SUBCONTRACTOR on behalf of Company, shall be destroyed or returned to Company. If it is determined, upon the mutual agreement of the Parties, to be infeasible to return or destroy PHI, protections shall be extended to such information in accordance with this Section 8.3.

This provision shall apply to the agents or subcontractors of SUBCONTRACTOR, if applicable. SUBCONTRACTOR shall retain no copies of the PHI.

ARTICLE 9

MISCELLANEOUS

9.1 Amendment. The Parties agree to take such action as is necessary to amend this Agreement to comply with the requirements of the HIPAA Rules and any other applicable law. This Agreement may be modified or amended only by written agreement of the parties and such amendment shall comply with the applicable requirements of the HIPAA Rules.

9.2 Survival. The respective rights and obligations of SUBCONTRACTOR under Article 7 of this Agreement and other applicable provisions, particularly concerning obligations involving any breach, shall survive the termination of this Agreement.

9.3 Regulatory References. A reference in this Agreement to a section of the HIPAA Rules means the section as in effect or amended.

9.4 Interpretation. This Agreement shall be interpreted in the following manner:

9.4.1 Any ambiguity shall be resolved in favor of a meaning that permits Company to comply with the HIPAA Rules.

9.4.2 Any inconsistency between the Agreement's provisions and the HIPAA Rules, including all amendments, as interpreted by the Department of Health and Human Services, court or another regulatory agency with authority over the Parties, shall be interpreted according to the

interpretation of the Department of Health and Human Services, the court or the regulatory agency.

9.4.3 Any provision of this Agreement that differs from those mandated by the HIPAA Rules, but is nonetheless permitted by the HIPAA Rules, shall be adhered to as stated in this Agreement.

9.5 Entire Agreement, Severability. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement, except to the extent that the Underlying Agreement(s), if any, impose more stringent requirements related to the use and protection of PHI upon SUBCONTRACTOR. This Agreement supersedes all prior negotiations, discussions, representations or proposals, whether oral or written. If any provision of this Agreement, or part thereof, is found to be invalid, the remaining provisions shall remain in effect.

9.6 Assignment. This Agreement will be binding on the successors and assigns of Company and SUBCONTRACTOR. However, this Agreement may not be assigned by SUBCONTRACTOR, in whole or in part, without the written consent of Company. Any attempted assignment in violation of this provision shall be null and void.

9.7 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

9.8 Governing Law. Except to the extent preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the state in which the Company's principal place of business is located.

9.9 Notices. All notices, requests, consents and other communications hereunder will be: (a) in writing; (b) addressed to the receiving party's address set forth below, or to such other address as a party may designate by notice hereunder; and (c) will be either (1) delivered by hand; (2) made via email or facsimile transmission; (3) sent by overnight courier; or (4) sent by registered or certified mail, return receipt requested, postage prepaid.

If to Company:

If to SUBCONTRACTOR:

9.10 No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Company or SUBCONTRACTOR and their respective successors or assigns, any rights, remedies, or obligations whatsoever.

9.11 Relationship of the Parties. SUBCONTRACTOR shall be deemed an independent contractor in the performance of its obligations hereunder and shall not be considered an agent of Company.

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

Authorization

Each person whose signature appears hereon represents and warrants that he/she has been duly authorized and has full authority to execute this Agreement on behalf of the Party on whose behalf this Agreement is executed.

IN WITNESS WHEREOF, the parties hereto have caused their authorized officials to execute this Agreement as of the date(s) set forth below:

Subcontractor	Fletcher Group, Inc.
Signature _____	Signature _____
Name: _____	Name (Printed): <u>David Johnson</u>
Title: _____	Title: <u>CEO</u>
Date: _____	Date: _____

Addendum – Different Locations:

This Addendum (the “Addendum”) forms an integral part of the BAA dated _____, between FGI and Subcontractor. This Addendum specifically addresses the provision of services/products in different locations as follows:

1. Location(s) Covered:

The parties agree that the services/products provided under the main body of the Agreement shall be executed in the following additional location(s):

1. _____
2. _____
3. _____

4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____

2. Applicable Terms:

All terms and conditions outlined in the main body of the Agreement shall remain applicable to the provision of services/products in the aforementioned locations. No changes to the fundamental terms of the Agreement are implied by this Addendum.

3. Additional Considerations:

Any additional costs, responsibilities, or adjustments related to providing services/products in the listed locations shall be mutually agreed upon by the Parties and documented in writing as necessary.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract Agreement along with the Addendum as of the date first above written.

Fletcher Group, Inc:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Subcontractor:

Signature: _____

Printed Name: _____

Title: _____

Date: _____